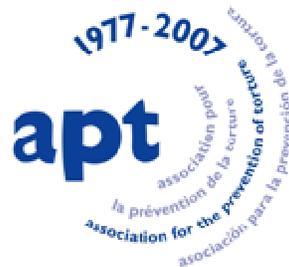


# Preventing torture through the promotion of the UN Convention against Torture and its Optional Protocol in

## Argentina, Brazil, Madagascar, Morocco, Thailand and Turkey

2009-2011



## BASELINE SURVEY

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## INTRODUCTION

In 2007, the Association for the Prevention of Torture (APT) submitted a funding request to the European Commission European Instrument for Democracy and Human Rights (EIDHR) within the framework of its Support to Human Rights and Democracy Actions on Torture and other Forms of Ill-treatment budget line. The APT multi-year project, entitled “Preventing torture through the promotion of the UN Convention against Torture and its Optional Protocol in six target countries of five world regions”, was approved for funding and began in 2009. It will be carried out over a thirty-six-month period.

In its application form (EIDHR/2007/47) the APT proposed to undertake a baseline survey in the initial phase of the project. The survey reviews the situation of torture and ill treatment as well as existing monitoring institutions and practices in Argentina, Brazil, Madagascar, Morocco, Thailand and Turkey. For each country, it helps identify particular benchmarks and issues which the activities will seek to address, as well as indicators of change (SMART) which can be assessed by the end of the three-year programme.

To achieve this, the format chosen for each country component of the survey includes a profile and a logical framework. The country profile recalls the political context and extent of torture and ill-treatment; highlights populations at risk and aggravating factors; provides information in relation to the status of the Convention against torture and its Optional Protocol (OPCAT); summarises relevant observations and recommendations of regional and UN bodies as well as leading civil society stakeholders; lists existing monitoring institutions and practices; gives an update on the status of relevant National Prevention Mechanisms and recalls the issues and activities addressed by the APT project.

The APT is mandated to work on prevention of torture and does not engage in research on the extent of torture in individual countries. Sources for the profiles tapped into published material by national and international non-governmental organisations, independent national human rights institutions, academia, United Nations human rights bodies and mechanisms as well as regional inter-governmental organisations, government reports to such bodies and government responses to communications by independent human rights enquiry mechanisms. Research for the baseline survey was also considerably enriched through discussions with and input received from APT staff including the Secretary General, the Funding Officer, the Publications Officer and in particular the five Regional Project Officers.

The six countries in the project present interesting analogies. Argentina, Brazil and Turkey are recovering from a heavy inheritance of torture and ill-treatment - and impunity – as a result of dictatorships and/or military coups which overthrew constitutional order and brought an end to the rule of law for years. Morocco also was marred for years by systematic torture under an autocratic regime. Thailand and Turkey have used torture and ill-treatment in response to internal dissent by independence or minority ethnic movements and both countries as well as Morocco have also used torture in response to real or perceived terrorist threats. Madagascar, so far little known for torture and ill-treatment, is struggling to restore constitutional order. Other analogies of relevance in crafting activities for the prevention of torture and ill treatment include heavy overcrowding of prisons (denounced by NGOs, UN treaty bodies and special procedures in Argentina, Brazil, Morocco, Madagascar, Morocco and Thailand). Similarly children reportedly are particularly vulnerable to torture and ill-treatment in Argentina, Brazil, and to a lesser extent Madagascar. Argentina and Brazil both are federal states, which present additional challenges for OPCAT implementation.

The APT has previous experience in all six countries and has developed a good level of trust and cooperation with relevant authorities and sectors of civil society. It thus is in a good starting position to roll out torture prevention programmes in the situations detailed below.

## ARGENTINA

### Situation of torture and ill-treatment

The country has taken historic steps to confront past abuses and fight impunity. Since 2003 it has prosecuted military and police personnel responsible for “disappearances”, killings and torture during the military dictatorship of 1976-1983. The Supreme Court ruled in 2005 that the Laws of Final Stop and Due Obedience were unconstitutional and several federal judges have rescinded presidential pardons in favour of former officials convicted or facing trials for human rights violations committed during that period. Senator Cristina Fernandez de Kirchner won presidential elections and took office in December 2007, continuing the human rights policy of her predecessor.

However, despite a demonstrated commitment to be bound by international and regional norms and standards, and legislative and other changes, torture and ill-treatment, abuse of authority under both federal and provincial jurisdiction and failure to investigate complaints and allegations remain a concern. In particular, conditions in Argentina’s overcrowded prisons and detention centres have repeatedly been denounced as harsh and even “subhuman”.<sup>1</sup>

### Populations at risk and aggravating factors

Populations especially at risk include juveniles. For example, the Secretariat of Institutional Affairs of the Supreme Court of Buenos Aires (*Secretaria de Asuntos Institucionales de la Suprema Corte de Justicia Bonaerense*) registered 658 allegations of cases of violations of the human rights of children and juveniles, including threats, harassment, torture in places of detention, including police stations and institutions, from June 2006 to June de 2007.<sup>2</sup> Many children who are detained reportedly have never been taken before a judge. Children who have broken the law are detained, but the practice of detaining children for their own protection as well as the practice of taking them to police stations has been denounced.

### Observations and recommendations of relevant UN bodies

In 2004, the **Committee against Torture** (CAT) expressed its concern at the many allegations of torture and ill-treatment committed in a widespread and habitual manner by the State’s security forces and agencies, both in the provinces and in the federal capital. From a torture prevention perspective, the relevant concerns included:

- the very small number of convictions for offences, as well as the unjustifiable delays in the investigation of cases of torture;
- the repeated practice of biased judgements of offences by judicial officials, who treated the crime of torture as a minor offence;
- the uneven application of the Convention in the various provinces and the lack of machinery for accommodating the requirements of the Convention to the federal structure of the country;

<sup>1</sup> Including in recent annual reports and specific publications by Amnesty International, Human Rights and the Center for Legal and Social Studies (CELS)

<sup>2</sup> Observatorio Internacional de Prisiones de Argentina Situación de los derechos humanos en los institutos de detención durante el año 2007 Buenos Aires, 21 of March, 2008

- that the national register of information from domestic courts on cases of torture and ill-treatment in the State party had still not been established;
- the overcrowding and poor physical conditions prevailing in the prisons, and particularly the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment;
- the high number of persons being held in pre-trial detention, which according to the State party is as high as 78 per cent in the Buenos Aires prison system;
- the failure to apply the principle of separation between convicted prisoners and remand prisoners in detention centres, and between them and immigrants awaiting expulsion;
- alleged reprisals, intimidation and threats received by persons reporting acts of torture and ill-treatment;
- humiliation and degrading treatment during body searches of persons visiting prisons;
- the fact that medical staff in prisons are not independent but are members of the prison service.

#### Recommendations from the Universal Periodic Review of the UN Human Rights Council

Seven out of the twenty-one recommendations made to Argentina in 2008 – all accepted by Argentina – relate to issues of torture and ill-treatment and ask Argentina to:

- Implement the national mechanism established in the Optional Protocol to the Convention against Torture. (Netherlands)
- Take steps to ensure that, both at federal and provincial level, there is no impunity for the crime of torture. (Sweden)
- Adopt measures to improve prison conditions, especially overcrowding, and address the issue of unduly protracted detentions and to promote the use of alternative measures to pre-trial detention, in particular for pregnant women and young children. (Slovenia, Germany, Canada)
- Consider the creation of a national register of detained persons. (Peru)
- Give adequate attention to the improvement of the cooperation between penitentiary and judicial bodies. (Ukraine)
- Continue its efforts to improve the situation of children in detention as recommended by the Committee against Torture and the Committee on the Rights of the Child. (Canada, Italy, Slovenia)
- Adopt a penal system that is in conformity with the Committee on the Rights of the Child recommendations, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); and prohibit the sentencing to life imprisonment for persons under 18 years of age in conformity with article 37 (a) of the Convention on the Rights of the Child. (Slovenia)

#### **Existing federal and provincial monitoring institutions and practices:**

A number of organisations and institutions in Argentina have a mandate and established practice of visiting places of detention. Notably, the Prison Ombudsman Office (Procuración Penitenciaria) has a legal mandate to visit all places of detention under federal jurisdiction. An Ombudsman Office (Defensoría del Pueblo) with visiting powers also exists, both at the federal level and in some provinces. A range of local and national civil society organisations also have experience of visiting places of detention. The Public Defenders and Public Prosecutors Office are also active in monitoring.

To cite just a few examples, teams from the Human Rights Office, of the Ministry of Justice, sometimes with additional members from social and human rights groups carried out visits in 2005. “On these visits, the mechanism of the Optional Protocol was used, together with other associated instruments such as the Monitoring Manual for Sanctioning and Preventing Torture drafted by the Association for the Prevention of Torture (APT), so as to improve the use of visits as a system of control with a view to future implementation of the national mechanism.”<sup>3</sup> A thematic observatory for the study of conditions of detention in places of confinement was established in the province of Río Negro in June 2005, based on a joint project between the United Nations Development Programme (UNDP), the Human Rights Office of Argentina’s Ministry of Justice and Human Rights, and the Human Rights and Imprisoned Persons’ Group formed at the local university.<sup>4</sup>

The Human Rights Office has carried out visits to detention centres for children and young people in different provinces and in the Autonomous City of Buenos Aires. In addition, the Commission to Monitor the Institutional Treatment of Children and Young Persons, which operates under the Office of the Advocate-General in the Public Prosecutor’s Office, carries out significant work, making periodic visits to the various internment centres under federal jurisdiction. This mechanism for periodic visits ensures that the rights of interned children and young people are respected and that referrals, complaints and requests for reports are made to the competent bodies.<sup>5</sup> Also from the judiciary, the Appeals Section of the Public Defenders Office (*Defensoría de Casación Penal*) of the Province of Buenos Aires has a programme of periodic detention monitoring and organized courses for public defenders throughout the country to monitor from an inter-disciplinary perspective.

## **NPM status<sup>6</sup>**

Argentina ratified the UN Convention against Torture in 1986 and was the first Federal State in the world, and the first State in Latin America, to ratify the OPCAT in 2004.

### Challenges linked to the federal structure

One of the principal challenges for implementing the OPCAT in Argentina is its federal structure. In Argentina’s federal system, the Federal Government has constitutional authority to ratify treaties, which become part of the Constitution, and is internationally responsible for their implementation. Legally, the provinces are expected to implement the Constitution, but in practice effective implementation depends on their political will. The Federal Government decided to act on its authority to ratify the OPCAT quickly, only subsequently initiating detailed consultations with the provincial governments regarding implementation, expecting that acquiring the international obligation first would then prompt provincial governments to implement the treaty. Several parallel and complementary NPM processes are currently underway.

The debates and proposals for implementing the OPCAT in light of the specific characteristics of the country have been particularly reflective in Argentina. The federal government has proposed that a new Committee for the Prevention of Torture be established

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<sup>3</sup> Comments submitted by the Government of Argentina on the conclusions and recommendations of the Committee against Torture (CAT/C/CR/33/1), CAT/C/ARG/CO/4/Add.1\*, March 2006

<sup>4</sup> Comments submitted by the Government of Argentina on the conclusions and recommendations of the Committee against Torture (CAT/C/CR/33/1), CAT/C/ARG/CO/4/Add.1\*, March 2006

<sup>5</sup> Comments submitted by the Government of Argentina on the conclusions and recommendations of the Committee against Torture (CAT/C/CR/33/1), CAT/C/ARG/CO/4/Add.2, January 2008

<sup>6</sup> This section is drawn from CELS, [Informe sobre la situación de los derechos humanos en la Argentina, 2009](#) and from the APT generated OPCAT Country Status web pages

as NPM and that each province have its own provincial preventive mechanism. Furthermore, in some provinces (for example, Cordoba, Neuquén, Rio Negro, Mendoza and Buenos Aires) there are already advanced debates, proposals and draft laws for the establishment of provincial preventive mechanisms.

As of early 2009, three different NPM proposals are examined by the Congress at the federal level, while authorities of some provinces are drafting proposals for provincial preventive mechanisms.

### **Issues and activities addressed by the APT project**

The APT has been engaged in initiatives to prevent torture and ill-treatment in Argentina for decades and more recently has accompanied and supported closely the process of OPCAT implementation (See Full Application Form EIDHR2007/47). This groundwork, combined with the growing momentum on OPCAT implementation, and the federal government's political will to meet with its international obligations, as well as the APT's vast network of contacts, are seen as a timely opportunity to make lasting institutional changes to prevent the ongoing practice of torture and ill-treatment in Argentina.

The appended Logical Framework for Argentina provides a detailed overview of the three-year programme's objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

**LOGICAL FRAMEWORK FOR THE ACTION - ARGENTINA**

	<b>Intervention Logic</b>	<b>Objectively verifiable indicators of achievement</b>	<b>Sources and means of verification</b>	<b>Assumptions</b>
<b>Overall objective</b>	Support and facilitate the designation and functioning of a suitable and OPCAT compliant NPM at the federal and provincial levels	<ul style="list-style-type: none"> <li>- Qualitative assessment of the NPM designation process</li> <li>- Number of NPM proposals presented and approved at the provincial and federal level</li> <li>- Access to all places of detention unhindered, unannounced visits, Access to all detainees in detention facilities, etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Congress records for adoption of NPM legislation</li> <li>- NGOs and Human Rights Office reports and statements</li> <li>- APT reports</li> </ul>	Continued political will at highest provincial and federal level to move forward on NPM
<b>Specific objectives</b>	Facilitate an open, transparent and participatory process leading to NPM designation at federal and provincial levels	<ul style="list-style-type: none"> <li>- Proportion of relevant stakeholders taking an active part in NPM set up meetings (academics, NGOs, governmental entities, etc)</li> <li>- Attention given by relevant decision makers to relevant NPM proposals from stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>- Reports from relevant stakeholders and NPM "working groups"</li> </ul>	Decision makers on NPM proposals continue to actively engage with other stakeholders in the run up to the shaping of NPM(s)
	Support the setting-up of OPCAT compliant NPMs at federal and provincial levels	<ul style="list-style-type: none"> <li>- Suitable financial and human resources</li> <li>- Access to all places of detention and all individuals</li> <li>- Multidisciplinary and gender balance of monitoring teams</li> <li>- Faculties and guarantees</li> </ul>	NPM, APT and other relevant stakeholders' reports	Decision makers on NPM maintain OPCAT complacency as a priority
	Mobilize relevant actors on prevention of torture and NPMs nationwide	<ul style="list-style-type: none"> <li>- Number of public meetings on torture prevention and NPMs</li> <li>- Proportion of relevant stakeholders aware of the benefits and implications of the designation of an NPM</li> </ul>	APT and other relevant stakeholders' reports	Political will to establish a constructive and transparent dialogue
	Strengthen the capacities of national actors to monitor places of detention	<ul style="list-style-type: none"> <li>- Number of individuals trained on detention monitoring methodology</li> <li>- Participation of trainees in NPM activities</li> </ul>	APT and trainees reports and feedbacks	Trainees remain committed to and engaged in torture prevention activities
<b>Expected results</b>	Enhanced prevention of torture	<ul style="list-style-type: none"> <li>- Proportion of detention facilities monitored regularly</li> <li>- Proportion of detainees interviewed</li> <li>- Qualitative assessment of dialogue between relevant authorities and monitors</li> </ul>	NPM and other monitoring bodies reports	Political stability in the country, rule of law
	Argentina will be better equipped to designate and set up an OPCAT-compliant, legitimate and effective NPM at the federal level	Informed transparent discussions and emergence of one consolidated NPM proposal	Official records and reports (Congress, MOJ), NGO information, media, academics articles, legal journals	Same as above
	Local NPM proposals in some of the key provinces are expected to be approved	Public information available on each scheme	Official records and reports, NGO information, media, academics articles, legal journals	Same as above
	A pool of national actors with strong skills on monitoring places of detention within and independently of the NPM will have been set up	More actors carry out visits and trainings more professionally; with greater impact; and organise meetings on prevention	Reports by relevant bodies, SPT reports	Same as above
	Civil society will have increased its participation in detention monitoring and NPM work	More actors and bodies carry out visits, trainings and organise meetings on prevention including NGOs working with juveniles and other vulnerable groups	Reports by all these bodies, medical professions, media	NPM willingness to cooperate and work in partnership

## BRAZIL

### Situation of torture and ill-treatment

Brazil offers a much contrasted picture. It was one of the first countries to draw up a National Human Rights Plan in 1994 in follow up to the Vienna Conference on human rights. Yet Brazil has never prosecuted those responsible for atrocities committed during its period of military dictatorship (1964-1985) and, until very recently, the 1979 amnesty law had been interpreted to bar prosecutions of state agents. The use of torture has been widely recognised and condemned by the federal and some state governments. Several steps have been taken to combat its continued practice including the criminalisation of torture in 1997. Brazil widely cooperates with a number of UN special procedures which have been invited to visit the country, including the Special Rapporteur on Torture and the UN Committee against Torture, but torture and ill-treatment remain widespread and systematic.<sup>7</sup> Despite several government initiatives, torture by law enforcement officials is still common at the point of arrest, during interrogation and in detention. Reporting, investigation and prosecution of such cases under the 1997 Torture Law are rare.<sup>8</sup>

### Populations at risk and aggravating factors

Prisons conditions in Brazil have been described as "abysmal" and detention conditions as "inhumane."<sup>9</sup> A multiparty National Parliamentary Commission of Inquiry on the Penitentiary System, based on evidence collected from all 26 states plus Brasilia, concluded in July 2008 that the national detention system is plagued by "physical and psychological torture." The Commission noted that it received reports of torture at every single centre it inspected in six states. According to 2008 figures, overcrowding reaches one of the worst occupancy levels in the world at 255 % of the official capacity of the prison system<sup>10</sup> which is chronically understaffed and underfunded. Delays in the justice system contribute to overcrowding. The inmate population has grown over 40 percent in five years and approximately 43 percent are pre-trial detainees. There is evidence that some judges and prosecutors are deficient in fulfilling their inspection mandates.<sup>11</sup> Judges do not apply the 1997 Torture Law and prefer to classify cases of torture as bodily harm or abuse of authorities.<sup>12</sup> Impunity has been denounced.

Although children and adolescents are granted special protection under Brazilian and international law, they are subjected to serious abuses by the juvenile detention system.<sup>13</sup> Women held in prisons and police cells continue to experience torture and other ill-treatment.<sup>14</sup> Women and girls have been incarcerated with men in violation of international standards. Though women are a minority of the prison population their needs have been consistently neglected. Some human rights defenders, particularly those working on issues of police violence and land conflicts, suffer intimidation and violence.<sup>15</sup> There are reports of discriminatory nature in prison conditions against persons of African descent.<sup>16</sup>

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<sup>7</sup> Amnesty International Submission to UPR, April 2008

<sup>8</sup> Amnesty International [Report 2009](#)

<sup>9</sup> Human Rights Watch, [World Report 2009](#)

<sup>10</sup> The International Centre for Prison Studies, King's College, London

<sup>11</sup> Human Rights Watch, [World Report 2009](#)

<sup>12</sup> Committee against Torture, Report on Brazil under Article 20 and reply from Government, CAT/C/39/2, July 2008

<sup>13</sup> Human Rights Watch, [World Report 2009](#)

<sup>14</sup> Amnesty International [Report 2008](#)

<sup>15</sup> Human Rights Watch, [World Report 2009](#)

<sup>16</sup> CAT, *Ibid.*

## Observations and recommendations of relevant regional and UN bodies and civil society

### Special Procedures

The **Special Rapporteur on Torture** made 30 recommendations after his visit to Brazil in 2000. Based on a follow up report he issued in 2006, the following recommendations related to prevention still remain valid:<sup>17</sup>

- unannounced visits by (top federal and State political leaders) to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment
- permanent monitoring presence in every institution and in places of detention of juveniles, independent of the authority responsible for the institution (the presence would in many places require independent security protection)
- resourced community councils to be established in each state, with representatives of civil society, notably human rights non-governmental organizations, with unrestricted access to all places of detention and the power to collect evidence of official wrongdoing

Other UN special procedures have also made observations relevant to the prevention of torture:

- **prison monitoring:** the many institutions required by law to monitor prison conditions, most notably including judges of penal execution, are unable or fail to play this role in any adequate manner, the number of such judges must be increased, and the manner in which they work must be greatly improved
- **prison administration** prisons must be run by the wardens, not by the inmates. The practice in Rio de Janeiro of forcing new prisoners who have never belonged to any gang to choose one upon entry into the system is cruel and causes the size of gangs to swell.  
*Special Rapporteur on extrajudicial, summary or arbitrary executions*<sup>18</sup>

### Treaty monitoring bodies

In a report on Brazil issued in July 2008 by the CAT under Article 20, the following recommendations were made with particular relevance to the APT programme:

- the State party should carry out awareness-raising campaigns in order to sensitize all sectors of society about the issue of torture and ill-treatment and on the existing conditions of detention centres;
- the material conditions of detention centres must be improved without delay as a matter of highest urgency and importance. The State party must allocate sufficient financial resources to improve these conditions so that all detainees may be treated humanely;
- the material conditions of juvenile detention centres must also be urgently improved. The State party should ensure the application of the Statute of the Child and Adolescent and adopt all necessary measures to provide educational and vocational training, medical and recreation facilities to help reintegrate children and adolescents into society;
- the problem of overcrowding in detention centres must be solved by adopting measures urgently, such as awareness-raising of the judiciary of the possibility of applying alternative sentences;

<sup>17</sup> Follow-up to the recommendations the Special Rapporteur, Visits to Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the Russian Federation, Spain, Turkey, Uzbekistan and Venezuela, E/CN.4/2006/6/Add.2, March 2006

<sup>18</sup> Mission to Brazil, (4-14 November 2007), A/HRC/8/3/Add.4, 14 May 2008

- detainees should be separated, depending on whether they are awaiting trial or sentenced, whether they have been sentenced to an open, semi-open or closed regime, as well as by the seriousness of the offence;
- the State party should ensure adequate funding to recruit sufficient prison personnel. Furthermore, all law enforcement personnel, including police officers and prison guards should receive training on the rights of suspects and detainees and their obligation to respect such rights, including the provisions set forth in the Convention and other relevant international instruments;
- the State party should review the disciplinary policy regimes for detainees (RDD/RDE) currently being implemented. The State party is reminded that prolonged isolation may amount to torture.

*Committee against Torture*<sup>19</sup>

### **Existing monitoring institutions and practices** <sup>20</sup>

National legislation in Brazil foresees a wide range of detention monitoring mechanisms, accordingly to the specific places of detention, including:

- **prisons:** Prison Judges, National Council of Criminal and Penitentiary Policies (Conselho Nacional de Política Criminal e Penitenciária), National Penitentiary Department (Departamento Penitenciário Nacional), Penitentiary Council (Conselho Penitenciário), Community Councils (Conselho da Comunidade) and NGOs (Prison Pastoral Services, ACAT-Brazil, Grupo Tortura Nunca Mais)
- **psychiatric centres:** Federal Council of Psychology (Conselho Federal de Psicologia); Bar Association (Ordem dos Advogados do Brasil); National Inspectorate of Psychiatric Units in favour of Human Rights (Inspeção Nacional de Unidades Psiquiátricas em prol dos Direitos Humanos)
- **places of detention for juveniles:** National Council for Children and Adolescents (Conselho Nacional da Criação e do Adolescente), Juveniles judges, specific Councils and NGOs (Association of Mothers and Friends of Children and Adolescents at Risk)
- **general monitoring mechanisms:** Parliamentary Human Rights Commission, Public Prosecutors, Human Rights Councils (Conselho de Direitos Humanos), Ombudsman (ouvidorias) and Judicial and administrative department (corregedorias)

A 2005 study by Fernando Salla on the above monitoring mechanisms concluded that these were not OPCAT compliant. Additionally, significant gaps and overlaps were noted in the mechanisms' operations.

### **OPCAT related information**<sup>21</sup>

Brazil ratified the OPCAT in January 2007. Debates about NPM implementation began before ratification. Implementation is complex as Brazil is divided into 26 States and one Federal District. The Human Rights Secretariat of the Presidency is officially in charge of coordinating the NPM definition process. The Secretariat established a National Committee to Prevent and Combat Torture with representatives of the state and civil society to i) supervise the Secretariat's pilot project for combating torture in eight states and ii) propose independent national preventive mechanisms.

<sup>19</sup> "Report on Brazil produced by the Committee under article 20 of the convention and reply from the Government of Brazil" CAT/C/39/2

<sup>20</sup> APT, OPCAT Country Status, 19 May 2009

<sup>21</sup> APT, OPCAT Country Status, 19 May 2009

An NPM draft law was prepared by the Secretariat and submitted for consultations to relevant ministries. Significant amendments were made to the first draft and a second draft was made public. The Human Rights Secretary convened meetings in a few States to discuss this draft proposal and a meeting of the National Committee was convened in September 2008 in Brasilia, with the participation of the APT, to revise this draft. On the basis of the observations received and considerations of an international seminar on OPCAT in federal states which took place in Argentina in September 2008, the Secretariat drafted a third proposal. This version, which includes a national committee to monitor places of detention, is being finalized and was submitted for scrutiny to the Presidency's Legal Affairs Advisory Department (Civil House), with a special request for congressional approval under constitutional urgency. This draft proposal has not yet been made public.

### **Issues and activities addressed by the APT project**

As per APT's Application Form for the project (See EIDHR/2007/47), the APT has actively been engaged in Brazil for numerous years. The APT has a three-year Memorandum of Understanding with the Human Rights Secretariat to convene training workshops on monitoring places of detention in different states. Additionally, the APT convened a seminar in Sao Paulo on OPCAT implementation in Brazil and other federal and decentralized states in 2005 and conducted active lobbying in coordination with national actors, eventually leading to ratification. The APT then assisted the HRS in convening an NPM workshop and commented on the first draft NPM law. The persistent practice of torture and ill-treatment, combined with an open government policy to combat the practice as well as a solid partnership established over the last years with the national Human Rights Secretariat (the main policy maker on torture prevention in the country) makes Brazil a country where APT activities could potentially have a strong impact.

The appended Logical Framework for Brazil provides a detailed overview of the three-year programme's objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

**LOGICAL FRAMEWORK FOR THE ACTION - BRAZIL**

	<b>Intervention Logic</b>	<b>Objectively verifiable indicators of achievement</b>	<b>Sources and means of verification</b>	<b>Assumptions</b>
<b>Overall objective</b>	Support and facilitate the designation and functioning of a suitable and OPCAT compliant NPM at the federal and state levels	<ul style="list-style-type: none"> <li>- Qualitative assessment of the NPM designation process</li> <li>- Number of NPM proposals presented and approved at the state and federal level</li> <li>- Access to all places of detention unhindered, unannounced visits, Access to all detainees in detention facilities, etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Congress records for adoption of NPM legislation</li> <li>- NGOs and Human Rights Office reports and statements</li> <li>- APT reports</li> </ul>	Continued political will at highest provincial and federal level to move forward on NPM
<b>Specific objectives</b>	Facilitate an open, transparent and participatory process leading to NPM designation at federal and state levels	<ul style="list-style-type: none"> <li>- Proportion of relevant stakeholders taking an active part in NPM set up meetings (academics, NGOs, governmental entities, etc)</li> <li>- Attention given by relevant decision makers to relevant NPM proposals from stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>- Reports from relevant stakeholders and NPM "working groups"</li> </ul>	Decision makers on NPM proposals continue to actively engage with other stakeholders in the run up to the shaping of NPM(s)
	Support the setting-up of OPCAT compliant NPMs at federal and state levels	<ul style="list-style-type: none"> <li>- Suitable financial and human resources</li> <li>- Access to all places of detention and all individuals</li> <li>- Multidisciplinary and gender balance of monitoring teams</li> </ul>	NPM, APT and other relevant stakeholders' reports	Decision makers on NPM maintain OPCAT complacency as a priority
	Mobilize relevant actors on prevention of torture and NPMs nationwide	<ul style="list-style-type: none"> <li>- Number of public meetings on torture prevention and NPMs</li> <li>- Proportion of relevant stakeholders aware of the benefits and implications of the designation of an NPM</li> </ul>	APT and other relevant stakeholders' reports	Political will to establish a constructive and transparent dialogue
	Strengthen the capacities of national actors to monitor places of detention	<ul style="list-style-type: none"> <li>- Number of individuals trained on detention monitoring methodology</li> <li>- Participation of trainees in NPM activities</li> </ul>	APT and trainees reports and feedbacks	Trainees remain committed to and engaged in torture prevention activities
<b>Expected results</b>	Enhanced prevention of torture	<ul style="list-style-type: none"> <li>- Proportion of detention facilities monitored regularly</li> <li>- Proportion of detainees interviewed</li> <li>- Qualitative assessment of dialogue between relevant authorities and monitors</li> </ul>	NPM and other monitoring bodies reports	Political stability in the country, rule of law
	Brazil will be better equipped to designate and set up an OPCAT-compliant, legitimate and effective NPM at the federal level	Informed transparent discussions and emergence of one consolidated NPM proposal	Official records and reports (Congress, MOJ), NGO information, media, academics articles, legal journals	same as above
	A pool of national actors with strong skills on monitoring places of detention within and independently of the NPM will have been set up	More actors carry out visits and trainings more professionally; with greater impact; and organise meetings on prevention	Reports by relevant bodies, SPT reports	same as above
	Local NPM proposals in some of the key states are expected to be approved	Public information available on each scheme	Official records and reports, NGO information, media, academics articles, legal journals	same as above
	Civil society will have increased its participation in detention monitoring and NPM work	More actors and bodies carry out visits, trainings and organise meetings on prevention including NGOS working with juveniles and other vulnerable groups	Reports by all these bodies, medical professions, media	NPM willingness to cooperate and work in partnership

## MADAGASCAR

### Political context

The move in early 2009 to challenge and finally overthrow President Ravalomanana has been condemned by the African Union (AU). The AU suspended Madagascar from its activities until the restoration of constitutional order in the country and asked member States and the international community to totally reject the unconstitutional change and refrain from any action that might comfort the illegal regime in place in Madagascar.<sup>22</sup> The AU established International Contact Group (GIC) also called on all members of the International Community to refrain from any action which might complicate efforts to re-establish constitutional order in the Country.<sup>23</sup> After facilitating a series of encounters, the GIC decided to suspend negotiations due to obstruction and lack of cooperation by the various parties.<sup>24</sup> Aid has been suspended to the country, except on humanitarian grounds but it is largely insufficient.<sup>25</sup> The overall humanitarian situation is very bleak and is further compounded by the effects of the political crisis. According to the relief organisation CARE, "Madagascar is facing an evolving humanitarian crisis of proportions unprecedented in its history."<sup>26</sup>

### Situation of torture and ill-treatment

Prior to 2009, scant information on the situation of human rights in Madagascar was generally available, contrary to the situation in the other five countries in the APT multi-year project for the prevention of torture. Action by Christians for the Abolition of Torture, ACAT-Madagascar, received some fifty allegations of torture and ill-treatment in detention and during interrogation by persons detained and their relatives during 2008.<sup>27</sup> In the wake of the political violence, more than one hundred persons allegedly lost their lives during the repression of demonstrations. Human Rights violations include homicides, torture, harassment and intimidation of alleged political opponents, including killings and torture on Nosy Be Island and arbitrary detentions.<sup>28</sup> A June 2009 UNICEF youth participatory report includes testimonies about "friends having disappeared, being put in prison, wounded or killed" and coercion by adults - including law enforcement officials - to take part in street protests.<sup>29</sup> Generally speaking, although no reports point to overcrowding of prisons as an aggravating factor, the occupancy level is high at 170.1% and the percentage of pre-trial detainees / remand prisoners is very high at 64.7%.<sup>30</sup> (See relevant Human Rights Committee recommendations below).

### Observations and recommendations of relevant regional and UN bodies

#### Regional organisations

As mentioned above, the African Union suspended Madagascar from membership in early 2009. In its periodic report to the African Commission on Human and Peoples' Rights, in

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<sup>22</sup> African Union, Conseil De Paix et de Sécurité, 181eme Réunion, Addis Abeba, Ethiopia, 20 March 2009

<sup>23</sup> Communiqué du Groupe International de Contact sur la Situation – Madagascar, 1 mai 2009

<sup>24</sup> Madagascar-tribune.com, Négociations du Carlton - Le Groupe de contact décide la suspension, 17 June 2009

<sup>25</sup> IRIN, *MADAGASCAR: Political events upstage humanitarian crisis*, Antananarivo, 24 April 2009

<sup>26</sup> Care statement, 22nd April 2009

<sup>27</sup> Acat-Madagascar, *Renforcer l'interdiction absolue de la torture, Rapport d'activité 2008*

<sup>28</sup> Amnesty International, *MADAGASCAR : Le problème des atteintes aux droits humains doit être pris en compte dans tout accord politique*, AFR 35/003/02, 21 June 2009

<sup>29</sup> UNICEF, Pandora's Box : Youth at a Crossroad – Emergency Youth Assessment on the Socio-Political Crisis in Madagascar and its Consequences, June 2009

<sup>30</sup> Kings College, London, World Prison Brief, 2008

accordance to the African Charter on Human Rights and Peoples' Rights, for 2008, Madagascar referred to a brainstorming session facilitated by the APT on UNCAT implementation in January 2007 under the auspices of the Ministry of Justice, in collaboration with ACAT Madagascar, which resulted in an action plan. The government committed to adopt laws domesticating the provisions of the Convention in the national legislation (in line with Human Rights Committee recommendations) and to elaborate the (overdue) initial and periodic reports to CAT.

### Special Procedures

Madagascar has not extended an open invitation to Special Procedures. However, this is not pivotal as, possibly due to the size of its country and its overall context until recently, Madagascar has apparently never been visited by any of the mandates.<sup>31</sup> Interaction with SPs and the Human Rights Council (and the previous Commission on Human Rights) has been remarkably scant. Aside from *one* NGO submission of information about recourse to violence in relation to events in December 2008 and January 2009,<sup>32</sup> only the SR on opinion and expression and the SRSG on IDPs (who reports having visited the country in 2008) briefly refer to Madagascar in some of their annual reports. The OHCHR website indicates that agreement has been given in principle for a visit by the SR on the right to food.

### Treaty monitoring bodies

Madagascar ratified UNCAT in December 2005 but never submitted reports to CAT. Meanwhile, two other treaty bodies have made recommendations relevant to the prevention of torture:

- amend legislation and practice in order to guarantee to anyone under arrest access to effective legal assistance from the moment of arrest, in particular where people are unable to pay a private defence attorney
- define torture in legislation, taking into account internationally established norms, and make it a separate offence with appropriate sanctions
- submit information on existing measures for prevention of torture and similar maltreatment, and on the number of complaints of such treatment received and action taken in response
- continue to improve conditions of detention and ensure that the Covenant is observed; in particular establish a programme of prison rehabilitation and put in place a system to ensure that accused persons are separated from convicted prisoners, and minors from other detainees
- bring legislation and practice into conformity with the Covenant and take vigorous measures to limit the duration of police custody and remand detention; consequently amend the Code of Criminal Procedure
- the proper functioning of judicial structures in accordance with the Covenant and with the principles governing the rule of law; give sufficient resources to the judiciary to allow it to function properly.

*Human Rights Committee, 2007*<sup>33</sup>

- concerns at the poor conditions of detention of children and at incidents of ill-treatment by prison guards, amounting in many cases to cruel, inhuman and degrading treatment prohibited under article 37 (a) of the Convention

<sup>31</sup> OHCHR website, Countries, Madagascar Homepage, consulted on 25 June 2009

<sup>32</sup> Pax Romana, Exposé écrit au Conseil des droits de l'homme, A/HRC/10/NGO/72, February 2009

<sup>33</sup> CCPR/C/MDG/CO/3

- State party to take all necessary measures to improve the conditions of detention of children, to provide these children with accessible and safe procedures for filing complaints to an independent body, and to ensure that each case of violence and abuse is duly investigated, that perpetrators are brought to justice without undue delay and that victims are provided with opportunities for social rehabilitation, full physical and psychological recovery and access to adequate procedures for seeking compensation
  - *Committee on the Rights of the Child, 2003*<sup>34</sup>

Madagascar will be reviewed in the UPR in 2010. This occasion should provide traction for CAT related activities on implementation.

### **Existing monitoring institutions and practices**

The Madagascar National Human Rights Commission (CNDH), which went through a restructuring process in 2008, is now in conformity with basic Paris Principles of independence and it is mandated to undertake regular visits to places of detention. It remains to be seen whether the institution will truly embark in a proactive programme of regular preventive visits and whether these will result in lasting changes in the treatment of individuals deprived of their liberty in Madagascar.

One of the most active institution in providing humanitarian assistance and support to individuals deprived of their liberty in Madagascar is the prison chaplaincy. Although chaplains do not monitor as such places of detention, they usually get a privileged access to detainees and through the provision of humanitarian assistance and support, they are also able to gather information and in some cases, to report, cases of torture and other ill treatment.

As mentioned above, ACAT-Madagascar has been able to undertake a few visits to places of detention, as it maintains good relations with the Ministry of Justice and law enforcement officials. However, the organisation reports that in absence of adequate facilities for interviewing prisoners, interviews happen in open places, in the presence of wardens, which considerably hampers the prisoners' readiness to report details of torture or ill-treatments during interrogation and in prison.

### **Issues and activities addressed by the APT project**

Due to the relatively weak involvement of international human rights actors (be it NGOs or IGOs) APT's initiative to approach the Madagascar authorities on the issue of torture prevention has been pivotal. As per APT's Application Form (See EIDHR/2007/47), drafted prior to the current political crisis, the project aims at assisting Madagascar in implementing UNCAT through the effective implementation of the national anti-torture law adopted in June 2008 and advocating for OPCAT ratification. APT has made contingency plans to adapt its plans and strategy in view of the political context and will initially focus on a commentary on the anti-torture law.

The appended Logical Framework for Madagascar provides a detailed overview of the three-year programme's objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

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<sup>34</sup>Concluding Observations about Madagascar, CRC/C/15/Add.218, 27 October 2003

LOGICAL FRAMEWORK FOR THE ACTION - MADAGASCAR				
	Intervention Logic	Objectively verifiable indicators of achievement	Sources and means of verification	Assumptions
<b>Overall objective</b>	Support the effective implementation of the UN Convention against Torture and its Optional Protocol in Madagascar	<ul style="list-style-type: none"> <li>- Recognition of improvements in implementation of UNCAT by CAT</li> <li>- Establishment of a process paving the way towards OPCAT ratification</li> </ul>	<ul style="list-style-type: none"> <li>- Government and shadow reports to CAT</li> <li>- CAT questions and government responses</li> <li>- APT and other stakeholders' reports</li> </ul>	Restoration of constitutional order; governmental stakeholders willing to continue cooperation with APT
<b>Specific objectives</b>	Facilitate and support the implementation of the anti-torture law	<ul style="list-style-type: none"> <li>- Adoption of an "implementation decree" (décret de mise en œuvre)</li> <li>- Provision of expert tools on the criminalisation law</li> </ul>	<ul style="list-style-type: none"> <li>- Governmental records and journals</li> <li>- APT reports</li> </ul>	Madagascar authorities remain willing to fully implement the recent anti-torture law
	Strengthen the capacity of judiciary actors to prevent torture	<ul style="list-style-type: none"> <li>- Better understanding and increased use of the Madagascar law on all allegations of torture and other ill treatment</li> <li>- Increased prosecution and sentencing of perpetrators</li> </ul>	<ul style="list-style-type: none"> <li>- Official records and reports from judiciary bodies</li> </ul>	<ul style="list-style-type: none"> <li>- Main judiciary institutions and judiciary training institutes remain willing to cooperate with APT</li> <li>- Law enforcement institutions are willing to cooperate with the judiciary on the implementation of the law</li> </ul>
	Facilitate the implementation of activities addressing CAT recommendations	<ul style="list-style-type: none"> <li>- Increased number of activities aimed at addressing CAT recommendations by National actors</li> </ul>	<ul style="list-style-type: none"> <li>- Reports by relevant National stakeholders</li> <li>- APT reports</li> </ul>	Madagascar authorities remain willing to fully implement CAT recommendations
	Advocate and facilitate the ratification and effective implementation of OPCAT	<ul style="list-style-type: none"> <li>- Setting up of a committed group of relevant stakeholders who lobby for the ratification and effective implementation of OPCAT</li> <li>- Qualitative assessment of the process (inclusive, transparent and participatory)</li> <li>- NPM proposals</li> </ul>	<ul style="list-style-type: none"> <li>- NGO, government reports, etc</li> </ul>	Madagascar stakeholders remain committed to the OPCAT
<b>Expected results</b>	The anti-torture law is being implemented and used regularly and suitably in court proceedings	<ul style="list-style-type: none"> <li>- Increased reference to the law in court proceedings</li> </ul>	Courts' official records	Judiciary actors remain willing to fully implement the recent anti-torture law
	<ul style="list-style-type: none"> <li>- Judges and prosecutors are aware of the provisions of the anti-torture law as well as main international standards with regards to the prohibition of torture</li> <li>- Training institutes for the members of the judiciary have taken necessary steps to ensure that all future Judges and prosecutors are properly trained on the prevention and prohibition of torture</li> </ul>	Inclusion of a module on the prohibition and prevention of torture, including the anti-torture law, in judiciary personnel professional training	Judiciary training institute curricula	Main judiciary institutions and judiciary training institutes remain willing to cooperate with APT
	<ul style="list-style-type: none"> <li>- National actors take on the task of addressing CAT recommendations</li> </ul>	<i>Indicators rely on specific CAT recommendations</i>	NA	NA
	Relevant stakeholders have engaged in an open national process (transparent, participatory and inclusive) leading towards the ratification of OPCAT and subsequent designation or establishment of an independent and effective NPM in Madagascar	<ul style="list-style-type: none"> <li>- Advancement of ratification</li> <li>- Quality of ratification and implementation process (representativeness of stakeholders, level of democratic decision making, openness/inclusiveness of consultations, etc)</li> <li>- Compliance of NPM option with OPCAT requirements</li> </ul>	Relevant stakeholders reports	Madagascar maintains commitment to ratify and effectively implement OPCAT

## MOROCCO

### Situation of torture and ill-treatment

Morocco has undertaken important institutional and legal reforms since the 1990s. In 2005 the Equity and Reconciliation Commission (IER) issued its report on grave human rights violations of the past. Despite noticeable advancements Morocco presents a mixed picture on human rights and “certain allegations of torture are not investigated.”<sup>35</sup> Reports of torture leading to death have been documented and despite findings from national and international NGOs, few prosecutions have taken place.<sup>36</sup> The EU considers Morocco’s process of democratization and consolidation of the rule of law “as the most advanced in the region,” according to its Morocco “Strategy Paper” for 2007-2013. However, it called upon “the forces of authority [sic] to show restraint in the recourse to force” in October 2008.<sup>37</sup> Reports about the continuing use of torture in Moroccan prisons and by various branches of the security forces still emerge, especially in relation to the so called “war on terror”, and the implementation of the law on terrorism, adopted in 2003.<sup>38</sup>

### Populations at risk and aggravating factors<sup>39</sup>

There are a high number of allegations of torture or ill-treatment of people arrested in Western Sahara. There is also a sharp rise in reported cases of torture or ill-treatment in the context of “counter-terrorism” measures in Morocco/Western Sahara since 2002. Among the hundreds of Islamists or presumed Islamists arrested and detained on suspicion of belonging to “criminal gangs” or of involvement in planning or carrying out violent acts, scores of people are alleged to have been tortured or otherwise ill-treated. While allegations of torture or ill-treatment of presumed Islamists during interrogation have decreased since 2005, there has been continued impunity for such violations. In the majority of cases where complaints were made involving allegations of torture or other ill-treatment, investigations have either not been opened, have been dismissed without adequate investigation, or have not resulted in perpetrators being prosecuted. Allegations of excessive use of force and violation of the principle of non-refoulement vis-à-vis migrants and asylum-seekers have also been reported.<sup>40</sup> According to 2006 figures, Moroccan prison occupancy level is 197.6% and includes 46.5% pre-trial detainees/remand prisoners.<sup>41</sup> This acute overcrowding in many places of detention and the abuse it generates has been denounced.<sup>42</sup>

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<sup>35</sup> Amnesty International, Report 2009.

<sup>36</sup> Organisation Marocaine des Droits de l’Homme, in joint OMDH/FIDH Submission to the UN Universal Periodic Review, November 2007 (French version only)

<sup>37</sup> Human Rights Watch, World Report 2009

<sup>38</sup> International Commission of Jurists, Submission to the Human Rights Council Universal Periodic Review of Morocco, November 2007

<sup>39</sup> Excerpts from Amnesty International submission to UPR, November 2007

<sup>39</sup> The International Centre for Prison Submission to the UN Universal Periodic Review, November 2007

<sup>40</sup> Groupe antiraciste d’accompagnement et de défense des étrangers et migrants (GADEM), Rapport relatif à l’application par le Maroc de la Convention internationale sur la protection des droits de tous les travailleurs migrants et les membres de leur famille, March 2009 ; Amnesty International, Maroc et Sahara occidental. Morocco/Western Sahara: Open investigation in migrant’s killing, MDE 29/001/2009, janvier 2009; joint OMDH/FIDH submission to UPR, November 2007

<sup>41</sup> The International Centre for Prison Studies, King’s College, London

<sup>42</sup> Centre Marocain des Droits de l’Homme, Informations sur la situation des droits de l’Homme au Maroc, Submission to UPR, 2007

## UNCAT/OPCAT related information

Morocco ratified UNCAT in 1993, accepting the CAT competence to receive individual complaints since October 2006<sup>43</sup> and the inquiry procedures. Its fourth report had been overdue since 2006 and was submitted in April 2009.<sup>44</sup> Morocco promulgated a new penitentiary code in 1991 and - in the context of implementation of the recommendations of the IER - a law criminalising torture in 2006, which is broadly consistent with UNCAT provision. One remaining concern, however, is that neither the “attempt to commit torture” nor “complicity or participation in torture” are explicitly defined as an offence, as they should be according to Article 4 of the Convention.<sup>45</sup>

## Observations and Recommendations of relevant UN bodies

### Special Procedures and OHCHR<sup>46</sup>

As for the vast majority of countries in the MENA region, Morocco has not extended a standing invitation to Special Procedures. However, it has generally cooperated with the various thematic mechanisms and there is no pending request for visit. In partnership with OHCHR, Morocco established in 2000 the Human Rights Training, Information and Documentation Centre, which reportedly organises training sessions for, inter alia, prison officials, judges and NGO leaders.<sup>47</sup>

A number of special procedures visited Morocco and made observations and recommendations relevant to the prevention of torture:

- use of force against participants in, and journalists covering, political and/or protest demonstrations
- reports of incommunicado detention, torture and ill-treatment of journalists charged with, among other things, “dishonouring national symbols”  
Special Rapporteur on freedom of opinion and expression.<sup>48</sup>

- majority of the cases transmitted to the Government on persons who reportedly disappeared because they or their relatives were known or suspected supporters of the Polisario Front
- disappeared persons were reportedly confined in secret detention centres
- cells in some police stations or military barracks and secret villas in the Rabat suburbs were also allegedly used to hide the disappeared persons.<sup>49</sup>  
Working Group on Enforced and Involuntary Disappearances<sup>50</sup>

In a response to a joint communication by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the

<sup>43</sup> Two cases registered but not considered yet as of 15/05/2009.

<sup>44</sup> Available in Arabic only at the time of writing, CAT/C/MAR/4

<sup>45</sup> Amnesty International, Ibid. APT “La criminalisation de la torture en Maroc : Commentaire et recommandation », février 2008.

<sup>46</sup> This section is largely excerpted from OHCHR Compilation prepared for the Universal Periodic Review, A/HRC/WG.6/1/MAR/2, March 2008

<sup>47</sup> The centre is a branch of the CCDH. OHCHR, Annual Report 2005 and OHCHR Compilation prepared for the Universal Periodic Review, A/HRC/WG.6/1/MAR/2, March 2008

<sup>48</sup> E/CN.4/2006/55/Add.1, paras. 584-599.

<sup>49</sup> E/CN.4/2006/73/Add.1, para 47

<sup>50</sup> A/HRC/4/41, paras 276 and 277

Working Group on arbitrary detention and the Special Rapporteur on Torture in 2008, the Government indicated that the *garde à vue* period for crimes linked to terrorism was ninety-six hours, which could be renewed twice, pending written authorization by the Procureur Général du Roi (*wakil al malik*) (Article 66 of the Penal Code).

#### Human Rights Council<sup>51</sup>

The Universal Periodic Review of Morocco took place in April 2008. Four/five recommendations relate to the prevention of torture and were supported by Morocco:

- to sign the OPCAT (United Kingdom of Great Britain and Northern Ireland);
- to continue its efforts to improve prison conditions (United Kingdom of Great Britain and Northern Ireland);
- while recognizing achievements of the Instance Équité - Reconciliation (IER), to continue to implement the remaining recommendations of the IER (Netherlands);
- to continue with the training of law enforcement officials, based on the request for technical cooperation contained in paragraph 152 of the national report (Switzerland).

To some extent, the following one (albeit very diplomatically couched) is also relevant:

- to continue, as it has done, to ensure respect for the human rights of all migrants (Mexico).

Morocco provided the following relevant response during the review in the UPR Working Group: “With reference to IER, compensation has been granted to victims of ill-treatment. Regarding prisoners, there is legislation prohibiting torture, and trainings are organized for prison guards with the support of several partners. The overcrowding of prisons can be dealt with through budgetary or legal measures, or by identifying alternatives to prison terms. For the first time in Morocco, a definition of torture in accordance with CAT has been adopted and many measures have been taken to prevent torture.”<sup>52</sup>

#### **Existing monitoring institutions and practices**<sup>53</sup>

Morocco’s national human rights institution, the Conseil Consultatif des Droits de l’Homme (CCDH) visits prisons and monitors the treatment and conditions of prisoners. Established in 1990 it started to visit prisons after its mandate was strengthened and its structure reorganized in 2001. On the basis of the findings after its visits to prisons, the CCDH published in 2004 a “Report on the situation in the prisons” that assesses the conditions and treatment in the light of the law on the reorganization of prisons of August 1999. In 2005 and 2006 the CCDH conducted around 10 visits of one to three days duration to different prisons in the country.<sup>54</sup>

Moroccan prisons are also visited by interdepartmental committees established at the level of the provinces and prefectures by the governor. They monitor the conditions in prisons, in particular in relation to health, nutrition, living conditions, moral education and integration into society. Similar committees exist for monitoring places of detention for juveniles. Composition and mandate of these committees are laid down in the new Criminal Procedure Code (3 October 2002, articles 620 – 621).

<sup>51</sup> OHCHR UPR webpage and UPR-Info.Org webpage

<sup>52</sup> A/HRC/8/22, para 49

<sup>53</sup> From APT, OPCAT Country Status, February 2009

<sup>54</sup> CCHR Annual Report 2005 – 2006, page 124, French version only

In addition, several Moroccan NGOs visit prisons, for different purposes, including monitoring.<sup>55</sup> The promulgation of the law on the reorganization of prisons of 1999 opened the possibility for NGOs to visit prisons for the delivery of social services and for facilitating the reintegration of prisoners. Article 84 of this law specifies however that NGOs need a special authorization from the Ministry of Justice in order to visit the living quarters and meet with detainees. Since the promulgation of this law several specialized NGOs were created, such as the Observatoire Marocain des Prisons (OMP) whose members regularly visit prisons and follow-up on individual complaints received, or the Association Relais-Prison-Société.

### **Issues and activities addressed by the APT project**

As per APT's Application Form for the project (See EIDHR/2007/47), the APT has actively lobbied for the OPCAT ratification and conducted a first in-country visit to Morocco in May 2006, followed by further missions in April 2007 and October 2007 and several missions in 2008. In all its activities, the APT will aim at facilitating collaboration between different stakeholders, including the government, CCDH and civil society organisations. One angle of intervention will be to follow up on the request of the Ministry of Justice to conduct more training on the criminalisation of torture for specific professional groups and to draft a manual for magistrates and law enforcement officials on the criminalisation of torture.

The appended Logical Framework for Morocco provides a detailed overview of the three-year programme's objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

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<sup>55</sup> Amnesty International, Ibid.

**LOGICAL FRAMEWORK FOR THE ACTION - MOROCCO**

	<b>Intervention Logic</b>	<b>Objectively verifiable indicators of achievement</b>	<b>Sources and means of verification</b>	<b>Assumptions</b>
<b>Overall objective</b>	Support the effective implementation of the UN Convention against Torture and its Optional Protocol in Morocco	<ul style="list-style-type: none"> <li>- Recognition of improvements in implementation of UNCAT by CAT</li> <li>- Headway on ratifying the OPCAT and setting up a suitable National Preventive Mechanism</li> </ul>	<ul style="list-style-type: none"> <li>- Government and shadow reports to CAT</li> <li>- CAT questions and government responses</li> <li>- CCDH, civil society and INGO reports</li> <li>- APT reports</li> </ul>	Political stability, rule of law, national commitment to preventing torture
<b>Specific objectives</b>	Facilitate and support the implementation of the torture criminalisation law	<ul style="list-style-type: none"> <li>- Provision of expert tools on the criminalisation law</li> </ul>	<ul style="list-style-type: none"> <li>- APT reports</li> </ul>	Moroccan authorities and judiciary remain willing to fully implement the law on criminalisation
	Strengthen the capacity of judiciary and law enforcement actors to prevent torture	<ul style="list-style-type: none"> <li>- Increased use of the criminalisation law on all allegations of torture and other ill treatment</li> <li>- Increased prosecution and sentencing of perpetrators</li> <li>- Improved treatment of individuals deprived of their liberty in accordance with basic human rights standards</li> </ul>	<ul style="list-style-type: none"> <li>- Official records and reports from judiciary bodies and law enforcement authorities</li> </ul>	<ul style="list-style-type: none"> <li>- Main judiciary institutions, judiciary training institutes and law enforcement authorities remain willing to cooperate with APT</li> </ul>
	Facilitate the implementation of activities addressing CAT and HRC recommendations	<ul style="list-style-type: none"> <li>- Increased number of activities aimed at addressing CAT and HRC recommendations by National actors</li> </ul>	<ul style="list-style-type: none"> <li>- Reports by relevant National stakeholders</li> <li>- CAT &amp; HRC reports</li> <li>- APT reports</li> </ul>	Moroccan authorities remain willing to comply with basic international HR standards and in particular UNCAT and ICCPR
	Advocate and facilitate the ratification and effective implementation of OPCAT, including through the setting up of a suitable NPM	<ul style="list-style-type: none"> <li>- Qualitative assessment of the process (inclusive, transparent and participatory) leading to OPCAT ratification and NPM setting up and designation</li> </ul>	<ul style="list-style-type: none"> <li>- CCDH, INGOs and government reports, etc</li> </ul>	Moroccan stakeholders and key decision makers remain committed to the OPCAT
<b>Expected results</b>	The torture criminalisation law is being implemented and used regularly and suitably in court proceedings	<ul style="list-style-type: none"> <li>- Increased reference to the law in court proceedings</li> </ul>	Courts' official records	Judiciary actors remain willing to fully implement the law on criminalisation
	<ul style="list-style-type: none"> <li>- Judges and prosecutors are aware of the provisions of the law on criminalisation as well as Main international standards with regards to the prohibition of torture</li> <li>- training institutes for the members of the judiciary have taken necessary steps to ensure that all future judges and prosecutors are properly trained on the prevention and prohibition of torture</li> </ul>	<ul style="list-style-type: none"> <li>- Inclusion of a module on the torture criminalisation law in judiciary personnel professional training</li> </ul>	Judiciary training institute curricula	Main judiciary institutions and judiciary training institutes remain willing to cooperate with APT
	<ul style="list-style-type: none"> <li>- National actors take on the task of addressing CAT and HRC recommendations</li> </ul>	<p align="center"><i>Indicators rely on specific CAT &amp; HRC recommendations</i></p>	NA	NA
	Relevant stakeholders have engaged in an open national process (transparent, participatory and inclusive) resulting in the ratification of OPCAT and subsequent designation or establishment of an independent and effective NPM in Morocco	<ul style="list-style-type: none"> <li>- Advancement of ratification</li> <li>- Qualitative assessment of ratification and implementation process (representativeness of stakeholders, level of democratic decision making, etc)</li> <li>- Qualitative and quantitative assessment of NPM proposals</li> </ul>	Relevant stakeholders reports	Morocco maintains commitment to ratify and effectively implement OPCAT

## THAILAND

### Situation of torture and ill-treatment

Torture, ill-treatment, arbitrary arrests and use of excessive force have been a concern in Thailand for at least a decade. Although Article 32 of the abrogated 1997 Constitution of Thailand held torture to be an illegal act, it has remained unenforceable for want of an enabling law and measures to permit complaints.<sup>56</sup> In a recent report, however, Amnesty International says that it “has obtained no positive evidence to suggest that it is an express policy of the Thai security forces to torture or otherwise ill-treat detainees in their counter-insurgency work in Southern Thailand, and believes that written and verbal policies prohibiting torture under penalty have been promulgated in good faith.”<sup>57</sup>

### Populations at risk and aggravating factors

The three provinces bordering Malaysia comprised the independent Islamic sultanate of Pattani more than 200 years ago before it fell under Bangkok’s rule in 1902. More than 80 percent of the three provinces’ two million people are Muslims, making the region an anomaly in predominantly Buddhist Thailand. A separatist low-level intensity struggle has simmered in the area for decades but took a turn for the worse in January 2004. Torture and ill-treatment are reportedly practiced systematically against suspected insurgents in Thailand’s Southern provinces, Narathiwat, Pattani, Yala and Songkhla and torturers almost invariably enjoy impunity.<sup>58</sup>

The Martial Law Act of 1914 and the Emergency Decree on Government Administration in Emergency Situations, which was put in place by the Thaksin Government, are often invoked for the detention of suspected insurgents. They have been cited as reducing judicial guarantees and other safeguards<sup>59</sup>, thereby facilitating conditions in which torture and ill-treatment can take place with impunity.

Harsh conditions in prisons, including extreme overcrowding, lack of adequate food, sanitation, and medical care are aggravating factors. Official figures indicate a prison occupancy level of 157,3%.<sup>60</sup> Overcrowding has been an escalating problem, as the authorities arrest more and more people on drugs charges. The government has been accused of systematic police brutality, abuse of power and alleged torture of persons suspected of drug offences and little progress has been made to bring perpetrators to justice.<sup>61</sup>

Refugees and asylum seekers have also been at risk of torture and persecution as Thailand does not respect the international law prohibition against refoulement. Migrant workers are

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<sup>56</sup> Asian Human Rights Commission, Open Letter to the United Nations Office on Drugs and Crime: THAILAND: Key issue for police reform is command responsibility, February 2007

<sup>57</sup> Amnesty International, Thailand: Torture in the southern counter-insurgency, ASA 39/001/2009, January 2009

<sup>58</sup> AI, *ibid.*

<sup>59</sup> Human Rights Watch, Thailand: End Official Cover-Up in Lawyer’s ‘Disappearance’, March 2008; in a Joint Oral Statement issued at the Human Rights Council five NGOs cited a regulation a “permit[ting] incommunicado detention in places” during the first three days of detention: ASIA: The ongoing deep divide between discourse and implementation, Asian Legal Resource Centre, Lawyers Rights Watch Canada, the Asian Forum for Human Rights and Development (FORUM-ASIA), and Pax Romana-ICMICA/MIIC, 13 March 2008.

<sup>60</sup> International Centre for Prison Studies, King’s College, London, February 2008

<sup>61</sup> Human Rights Watch, World Report 2009

largely unprotected by Thai labour laws and remain vulnerable to arrest and extortion by corrupt officials, and risk exploitation, abuse and death.<sup>62</sup>

### **UNCAT/OPCAT related information**

Thailand ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 2<sup>nd</sup> October 2007. Its initial report was due in October 2008 but it has not been submitted as of July 2009. According to information received by the APT from senior officials of the Ministry of Justice during a visit to the country in May 2009, reporting to CAT is little advanced.

Thailand made an interpretative declaration at the time of ratification of UNCAT and indicated that it would need to revise its domestic law to be more consistent with Article 1 of UNCAT (in order to define torture under the Thai Penal Code) and with Article 4 (to ensure that all acts of torture are offences under criminal law), however these legislative reforms have not yet materialized. While the Ministry of Justice, with support from the UN Office of the High Commissioner for Human Rights, favours a pragmatic course by amending the existing criminal and penal codes, NGOs are pushing for an anti-torture bill that would be more comprehensive.

A recent development indicates that the ratification of UNCAT is having some positive effects. The Bangkok Civil Court recently accepted the civil lawsuit filed by two Yala students against the Thai Army and Ministry of Defence claiming for compensation for being tortured in army custody in 2008. This sets a legal precedent to ensure responsibility of army personal and authority involved in the act of torture.<sup>63</sup>

The APT expects that time will be ripe to intensify lobby work on the OPCAT by year three of the project.

### **Existing monitoring institutions and practices**

There is no functioning mechanism for systematically and effectively monitoring the conditions of suspects locked up without charge in military camps across the southern border provinces. This is of major concern, especially since the June 2007 launch of security force sweep operations under the code name, "Battle Plan for the Protection of the Southern land."<sup>64</sup>

Neither official nor unofficial detention facilities are subject to regular independent monitoring. Although the Committee on Violence in the South appointed by the legislature of the military government made a number of visits to detention centres from late September 2006 through early 2008, such visits were made only to investigate ad hoc complaints of torture. Likewise, the NHRC's Subcommittee against Torture conducted several visits to the two official detention centres in 2007, but they also took place only after detainees complained, and Internal Security Operations Command Region 4 refused all requests for visits in 2008. Several military officers told Amnesty International that family members of detainees or village or religious leaders were permitted to witness security forces interrogate detainees, but this information was not substantiated by any other primary or secondary research by the organization.

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<sup>62</sup> Human Rights Watch, Ibid.

<sup>63</sup> Cross Cultural Foundation and Lawyers Human Rights Association, "Bangkok Civil Court accepted the civil lawsuit filed by the two Yala students against the Thai Army and Ministry of Defense", January 2009

<sup>64</sup> HRW World Report 2008

The International Committee of the Red Cross (ICRC), part of whose core mandate is to monitor detention facilities, only has access to jails and prisons in the south pertaining to the pre-existing/non-emergency criminal justice system. While detainees are sometimes moved to these correctional facilities after the expiry of the 37 days pre-charge detention allowed by martial law and the Emergency Decree - and in some cases, after they have been tortured or ill-treated - they receive no visits by the ICRC until that critical period has passed.

Operational officers of a Special Taskforce in Yala province told Amnesty International that they are not permitted to torture or ill-treat detainees. A senior officer visits the Taskforce once each month to talk about human rights and has reminded them that perpetrators of violations will be punished. However, they have received no complaints, and so no one has in fact been punished. They have also been trained by the Ministry of Foreign Affairs, as recently as October 2008 in Sirindhorn military camp in Pattani province, with both oral and written guidance. The officers said that they invite family members or the village headman to witness interrogations, as well as a doctor to examine the detainees, to ensure that torture or ill-treatment does not occur.”

During a visit to Thailand in May 2009, staff from the Cross Cultural Foundation informed the APT that they occasionally succeed in making visits to places of detention in the south.

## **Observations and Recommendations of relevant UN bodies**

### Special Procedures

As for the vast majority of Asian countries, Thailand has not issued an open invitation to UN special Procedures.<sup>65</sup> The country has received the following requests for visits, which are left pending: Independent Expert on minority issues (request in 2006, reminder in 2007); Special Rapporteur on extrajudicial, summary or arbitrary executions (request in 2005, reminder in 2008) and Working Group on arbitrary detention (request in 2008). The latter two mandates are particularly relevant for the prevention of torture.

### Treaty Bodies

Thailand ratified the International Covenant on Civil and Political Rights in January 1997. It submitted its initial report in 2004, with a delay of over 6 years. In its Concluding Observations, the Human Rights Committee<sup>66</sup> expressed concern “about reports of the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called “safe houses”. It also expressed concern “at the impunity flowing from the fact that only a few of the investigations into cases of ill-treatment have resulted in prosecutions, and fewer, in convictions, and that adequate compensation to victims has not been provided”. It made the following recommendation: “The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families.”

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<sup>65</sup> See OHCHR webpage, <http://www2.ohchr.org/english/bodies/chr/special/invitations.htm>, as of May 2009, 64 countries have extended a standing invitation to thematic procedures.

<sup>66</sup> Concluding Observations of the Human Rights Committee, Thailand, CCPR/CO/84/THA, 8 July 2005

## Human Rights Council

Thailand presented its candidature for membership of the Human Rights Council in 2006. The pledge, which announced that Thailand was considering becoming a party to UNCAT was scrutinized by Asian NGOs. In particular, they called upon the Government to submit the overdue follow-up report to the initial report submitted to the Human Rights Committee, including information on torture and ill-treatment. Thailand will be reviewed in the UPR in 2011. This occasion should provide traction for CAT related activities on implementation.

### **Recommendations by civil society**

Amnesty International recommendations to the Thai authorities that are specifically relevant for the prevention of torture include the following:

- adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and other relevant international standards
- in particular, pass legislation expressly criminalizing torture and implementing the provisions of UN Convention against Torture not already covered by existing Thai law
- immediately close all unofficial places of detention, and amend Section 12 of the Emergency Decree of 2005 to expressly prohibit such secret and unlawful detentions and ensure that all reports of the existence of secret detention locations operated by the security forces are investigated promptly, independently, impartially and effectively
- amend the Emergency Decree of 2005 to expressly permit visits by family members, lawyers, and medical personnel immediately upon detention, and allow such visits to take place
- amend Section 17 of the Emergency Decree of 2005 to remove the immunity for officials who violate human rights in the course of carrying out their official duties; then prosecute all alleged perpetrators of torture and ill-treatment
- allow the NHRC and the ICRC immediate and unfettered access to all places of detention and all detainees
- invite the UN Working Group on Arbitrary Detention to visit the country, including the south
- invite the UN Special Rapporteur on Torture to visit the country, including the south
- sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and establish a national preventive mechanism in accordance with this Protocol
- ensure, in law and in practice, that a lawyer is present during interrogations
- ensure that conditions of detention conform to international standards for the treatment of prisoners
- prohibit torture and other ill-treatment in law
- ensure that the prohibition against torture and other ill-treatment and the essential safeguards for their prevention are not be suspended under any circumstances, including states of war or other public emergency.

## **The National Human Rights Commission of Thailand<sup>67</sup>**

The Human Rights Committee, in its Concluding Observations on Thailand in July 2005, noted that “many of the recommendations by the NHRC to the relevant authorities [had] not been implemented”, and that there was a “lack of sufficient resources allocated to the Commission”.<sup>68</sup>

A new NHRC was appointed in early May 2009. NGOs have denounced the selection process that violated constitutional requirements and international standards and are calling on the new members to step down on account of their lack of experience and lack of representativeness.<sup>69</sup> Others have called on the International Coordinating Committee of National Institutions for Human Rights to review the status of the Commission as it no longer complies with the Paris Principles and asked that it be downgraded. It remains to be seen whether the new Commission will engage in proactive and effective monitoring of places where individuals are deprived of their liberty.

### **Issues and activities addressed by the APT project**

As per the APT’s Application Form for the project (See EIDHR/2007/47), the APT has been involved in prevention of torture activities in Thailand since November 2006. It intends to focus on the implementation of the UNCAT and the reporting to the UN Committee against Torture by Thailand and will strive to build up national support for the ratification and implementation of the OPCAT by direct contact with key public officials and through like-minded Thai NGOs.

The appended Logical Framework for Thailand provides a detailed overview of the three-year programme’s objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

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<sup>67</sup> This section draws on remarks by Professor Saneh Charmarik, President of the NHRC, as reprinted in the 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, published by the Asian NGOs Network on National Institutions (ANNI), compiled and printed by the Asian Forum for Human Rights and Development (FORUM-ASIA)

<sup>68</sup> See FORUM-ASIA

<sup>69</sup> Human Rights Watch, Thailand: Replace Flawed Rights Panel, 13 May 2009

**LOGICAL FRAMEWORK FOR THE ACTION - THAILAND**

	<b>Intervention Logic</b>	<b>Objectively verifiable indicators of achievement</b>	<b>Sources and means of verification</b>	<b>Assumptions</b>
<b>Overall objectives</b>	Support the ratification and implementation of the Optional Protocol to UNCAT (OPCAT)	<ul style="list-style-type: none"> <li>- Level of advancement of national debate on OPCAT: understanding of positive implications of the instrument by relevant actors; assessment of existing monitoring mechanisms, etc.</li> <li>- Level of advancement and quality of NPM designation process</li> </ul>	<ul style="list-style-type: none"> <li>- NHRC, MOJ and MFA statements and reports; NGO, media, OHCHR reports</li> <li>- Qualitative assessment of the NPM designation process</li> </ul>	Political stability and prevailing government willingness to move forward on prevention of torture
	Help the Government of Thailand to implement effectively the UN Convention against Torture	<ul style="list-style-type: none"> <li>- Adoption of a plan of action for the implementation of recommendations</li> <li>- Torture criminalised under national legislation</li> </ul>	MOJ and MFA statements and reports; acceptance of request for visit by UN Working Group on Arbitrary Detention (WGAD); possible invitation to SR on Torture	Political will to end impunity, respect for non-derogable human rights
<b>Specific objectives</b>	Raise awareness on the OPCAT among relevant stakeholders in Thailand and promote its ratification and effective implementation	<ul style="list-style-type: none"> <li>- Public discussions, activities, on advantages for Thailand to ratify; national ratification campaign</li> <li>- NPM designation process</li> </ul>	NGO, National Human Rights Commission (NHRC) OHCHR regional office statements and reports	Risk: lack of political will, non reporting to CAT
	Increased knowledge and use of the UNCAT and the legislation on criminalisation of torture, resulting in better prosecution of perpetrators	Increased number of cases filed in courts, increased number of perpetrators adequately prosecuted & sentenced	NGO, NHRC, UN Special Procedures and media reports	Courts accept cases
<b>Expected results</b>	Improved implementation of recommendations of the Committee against Torture as well as increased quality of reporting to it by governmental and civil society actors	Increased number of actions taken by Government to implement CAT recommendations and increased quality of implementation process (representativeness of stakeholders, level of democratic decision making, openness/inclusiveness of consultations etc). Increased quality of governmental and alternative reports to CAT, in the view of relevant stakeholders (UN, NGOs, state officials, civil society)	APT and other relevant stakeholders' reports	Continued government willingness to move forward on torture prevention
	Enhanced knowledge and capacity of local actors to implement the OPCAT	Draft proposals for the NPM process	Reports from NGOs, Ministries, NHCR, academia, parliamentary committees	Political situation in Thailand remains stable
	Support the ratification and implementation of the Optional Protocol to UNCAT (OPCAT)	<ul style="list-style-type: none"> <li>- Level of advancement of national debate on OPCAT: understanding of positive implications of the instrument by relevant actors; assessment of existing monitoring mechanisms, etc.</li> <li>- Level of advancement and quality of NPM designation process</li> </ul>	<ul style="list-style-type: none"> <li>- NHRC, MOJ and MFA statements and reports; NGO, media, OHCHR reports</li> <li>- Qualitative assessment of the NPM designation process</li> </ul>	Political stability and prevailing government willingness to move forward on prevention of torture

## TURKEY

### Situation of torture and ill-treatment

Torture and ill-treatment by the security services were systematic for some twenty years in Turkey in the wake of the 1980 military coup. Yet, Turkey was amongst the first countries to ratify the European Convention for the Prevention of Torture in 1988 and has received some twenty visits by the CPT since 1990. Significant progress has been achieved through successive legislative reforms since 1997. Human rights experts have however warned that there should be no ground for complacency.<sup>70</sup> Despite substantive improvements in legislation, a retrograde trend and a rise in reports of ill-treatment and torture have been registered in recent years.

### Populations at risk and aggravating factors

Ill-treatment is reported during arrest, outside places of official detention and in the context of demonstrations. This trend was exacerbated by a new police law granting wide-ranging powers of "stop and search" in 2007.<sup>71</sup> There are persistent allegations of ill-treatment in prisons and during transfer.<sup>72</sup> Breaches of principle of non-refoulement put asylum seekers and refugees at risk of abuse and torture including at the time of expulsion.<sup>73</sup> Impunity is a concern: Turkish courts are reportedly notoriously lenient towards members of the security forces charged with abuse or misconduct.<sup>74</sup> Investigations into human rights violations by law enforcement officials remain flawed and prosecutions remain insufficient. Official human rights mechanisms are largely ineffective.<sup>75</sup> Ill treatment of patients in psychiatric hospitals has also been reported.<sup>76</sup>

### Observations and recommendations of relevant regional and UN bodies

#### Special Procedures

The Special Rapporteur on Torture visited Turkey in 1998. In a follow up report to the Human Rights Council in 2008, his successor gave an update on developments since then.<sup>77</sup> Based on information he had received in relation to the recommendations, the SR made a series of observations relevant to prevention:

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<sup>70</sup> Special Rapporteur on Torture, *Follow-up to the recommendations made by the Special Rapporteur, A/HRC/7/3/Add.12, February 2008*; Committee on the Prevention of Torture, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November to 4 December 2006*

<sup>71</sup> HRW, *Ibid.*

<sup>72</sup> AI, *Ibid.*

<sup>73</sup> Amnesty International Turkey, Helsinki Citizens' Assembly, MAZLUMDER, the Human Rights Association, Mülteci Der, the Humanitarian Relief Foundation, Human Rights Agenda Association, joint press release, *Van Gen. Directorate Of Security Illegally Deported 22 Uzbek Refugees To Iran*, Thursday, 23 October 2008; AI, *Ibid.*

<sup>74</sup> HRW, *Ibid.*

<sup>75</sup> AI, *Ibid.*

<sup>76</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Turkish Government on the visit to Turkey carried out by the from 22 November to 4 December 2006*, CPT/Inf (2009) 17

<sup>77</sup> Follow-up to the recommendations made by the Special Rapporteur Visits, A/HRC/7/3/Add.2, February 2008

- Turkey is encouraged to expedite its ratification of OPCAT
- elements of law enforcement agencies continue to demonstrate negative attitudes to lawyers and adopt various tactics that obstruct them from discharging their professional duties
- while the zero tolerance for torture policy of the Government is a commendable one, it cannot be an effective strategy until it is accompanied by a policy of “zero tolerance for impunity”
- In 1998, the SR had recommended that: “A system permitting an independent body, consisting of respected members of the community, representatives of legal and medical professional organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty should be set up as soon as possible.” Ten years later, the SR received information according to which “Lack of independent monitoring of places of detention has been repeatedly remarked upon by domestic and international human rights NGOs and lawyers, with future ratification of the OPCAT seen as extremely important. Information is awaited on plans for strengthening the independent monitoring powers of the Human Rights Boards. “

Turkey will be reviewed in the UPR in 2010. This occasion should provide traction for CAT related activities on implementation.

### **Existing monitoring institutions and practices**

As detailed above, the components of the current system are weak and often flawed. The Government has created, or announced the future creation of a number of bodies that would, inter alia, be mandated to visit places of detention. However, none of these seems to actually be in a position to undertake independent visits.

Although the system of Human Rights Monitoring Boards, referred to above and established in 2001, is often vaunted by the authorities as independent entities, this is not the case. In theory there are 931 Human Rights Monitoring Boards spread throughout Turkey's regions and on paper they have access to various detention facilities. However, in practice such bodies fall far short of what would be acceptable under the Optional Protocol.<sup>78</sup> The UN Special Representative on Human Rights Defenders (SRSG) found that “despite reforms to exclude the security forces, the composition and the selection process of these boards remained problematic.”<sup>79</sup> However, she also met with the Chair of the Human Rights Parliamentary Commission and wrote: “it conducts on-site visits to detentions centres and prisons, receives and investigates individual applications concerning alleged violations of human rights, and issues reports that are forwarded to the relevant institutions or Government offices for action. Defenders have reported that this institution has been open to dialogue with NGOs.”<sup>80</sup>

Turkey previously announced its intention to create an “ombudsman”. However, in December 2008, the Constitutional Court recently annulled a law establishing an ombudsman's office which was designed to hold public authorities to account.<sup>81</sup> This prompted a question to the European Commission in the European Parliament in February 2009. The Commission responded that “the establishment of a scrutiny mechanism via the Ombudsman would help defuse tensions between different sections of society by

<sup>78</sup> APT, OPCAT Country Status, May 2008

<sup>79</sup> SRSG, Ibid.

<sup>80</sup> SR SG, Ibid.

<sup>81</sup> Hurriyet, Zaman, Reuters, 26 December 2008

strengthening the rule of law and the protection of individual rights.”<sup>82</sup> The process for establishing a “Human Rights Council of Turkey” has been criticized by NGOs in June 2009. They asked for the immediate withdrawal of the draft law alleging that this third attempt of the Government has been prepared secretly. The organizations had criticized earlier attempts also prepared as a fait accompli.<sup>83</sup>

#### **OPCAT related information<sup>84</sup>**

As detailed above, Turkey lacks any robust and independent mechanism for OPCAT implementation. Some NGO have promoted the ratification of the instrument, in particular the Human Rights Foundation of Turkey and the Foundation for Society and Legal Studies. The Ministry of Foreign Affairs informed the APT that the Turkish authorities are currently collecting information about how a range of countries in the EU are planning to implement the OPCAT. The European Commission’s Technical Assistance Information Exchange Instrument sponsored a seminar on the subject in May 2008. While some participants believed that Turkey required a completely new monitoring mechanism for the purpose of the OPCAT, others were of the opinion that existing bodies could possibly be modified to function as the NPM. Several participants also stressed that an inclusive national dialogue on this issue was essential.

#### **Issues and activities addressed by the APT project**

As per APT’s Application Form (See EIDHR/2007/47), through this project the APT seeks to make a considerable contribution to the establishment of Turkey’s NPM through a combination of advocacy missions and high-profile national seminars.

The appended Logical Framework for Turkey provides a detailed overview of the three-year programme’s objectives and expected results, indicators of achievements, possible sources of verification for assessing progress and information on external conditions that need to be met for the programme to be fully implemented.

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<sup>82</sup> E-0010/2009

<sup>83</sup> Helsinki Citizens’ Assembly Human Rights Association The Association of Human Rights and Solidarity for Oppressed People Human Rights Foundation of Turkey Amnesty International-Turkey Section, Joint Statement, *The draft law on the establishment of National Human Rights Institution of turkey must be withdrawn immediately*, 3 June 2009

<sup>84</sup> This section is excerpted from the APT OPCAT Country Status, May 2008

LOGICAL FRAMEWORK FOR THE ACTION - TURKEY				
	Intervention Logic	Objectively verifiable indicators of achievement	Sources and means of verification	Assumptions
<b>Overall objective</b>	To support and facilitate a transparent, inclusive and participatory process leading to OPCAT ratification and implementation in Turkey	<ul style="list-style-type: none"> <li>- Qualitative assessment of the process leading to OPCAT ratification and implementation</li> <li>- OPCAT ratification status</li> <li>- NPM designation status</li> <li>- Qualitative assessment of NPM</li> </ul>	<ul style="list-style-type: none"> <li>- APT, SPT and CPT reports</li> <li>- UN registry of ratifications</li> <li>- APT and other relevant bodies reports</li> </ul>	Political will to ratify. Risk: Public hostility by some EU member states to eventual EU membership lessens the EU's leverage on OPCAT ratification
<b>Specific objectives</b>	To advocate towards and strengthen the capacities of relevant actors on ratifying the OPCAT	<ul style="list-style-type: none"> <li>- Knowledge and understanding of OPCAT benefits by relevant actors</li> <li>- Proportion of relevant decision makers taking part in APT activities</li> </ul>	Reports by government, academia, legal and medical professions, UN, COE, EC and CPT related experts and human rights NGOs (including domestic ones: e.g. Human Rights Foundation of Turkey and the Foundation for Society and Legal Studies/TOHAV, IHOP) as well as APT reports	Political will; government sees it as a priority to ratify OPCAT
	To facilitate a process leading to the setting up and designation of an OPCAT compliant NPM in Turkey	Consultations and debates on NPM options including representatives from government (MFA), academia, legal and medical professions, domestic human rights NGOs, UN, Council of Europe, European Commission, CPT and SPT related experts	See above	See above
<b>Expected results</b>	Judges, lawyers, human rights defenders, the Human Rights Parliamentary Commission, media, medical professions are informed about the benefits of OPCAT and advocate for its ratification	<ul style="list-style-type: none"> <li>- Status of OPCAT awareness in target groups</li> <li>- Level of headway on ratification of OPCAT</li> </ul>	Statements by members of legal and medical professions and parliamentarians; NGO and media reports	Government encourages public discussions on OPCAT
	All relevant actors from the governmental, non governmental and academia sectors are able to participate freely and meaningfully in the process leading to the setting up and designation of Turkey's NPM	<ul style="list-style-type: none"> <li>- Status of NPM designation status</li> <li>- Qualitative assessment of the NPM proposal</li> <li>- Qualitative assessment of the process leading the shaping of an NPM proposal (free, open, and transparent debate)</li> </ul>	<ul style="list-style-type: none"> <li>- Target groups reports</li> <li>- APT reports</li> </ul>	See above
	Advances are registered in some building blocks for the NPM process: Planned ombudsman or national human rights institution is/are finally established in line with Paris Principles; flaws composition and modus operandi of Province and district Human Rights Boards and Human Rights Advisory Boards are either brought into line with HR standards of independence or suppressed; a consultative and transparent process for the NPM is underway	See above	OHCHR reports, TB reports, SP reports, Government and NGO reports, media reports	Government sees it as priority to set up an NPM through a suitable consultative process

## **Conclusion**

As per the European Commission practice and recommendations, the APT can review, fine tune and as necessary adapt its planned programmes and activities in response to unforeseen changes in the relevant context for each country. Indeed, at the outset, this is the case with Madagascar, as the elected President was overthrown since the APT proposal to the Commission was drafted and accepted. It is thus expected that the baseline survey, which in and of itself represents an innovative component of the project proposal, also constitutes a useful internal tool for monitoring progress of the project and for self-accountability purposes.

The APT funding request foresees that an external evaluator will be commissioned at the end of the three-year programme in order to assess achievements reached in comparison to the situation identified at the beginning of the period in the baseline survey. To that end, the survey should be read in combination with the APT application form, which provides specific rationale and background for the choice of the target countries, as well as the objectives and expected results of the project.