

Survey of detention visiting mechanisms in Africa

Marilize Ackermann
2013

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The aim of CSPRI is to improve the human rights of prisoners through research-based lobbying and advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building.

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EXECUTIVE SUMMARY

People held in places of detention are at risk of suffering violations of human rights because they are usually detained out of sight and their well-being is not prioritised by states. Domestic and international laws prescribe the procedures through which and conditions under which people may be held in detention. The function of detention oversight institutions is to ensure that state institutions comply with these human rights laws and are held accountable for any non-compliance.

In most democracies which embrace the separation of powers, Parliament exercises oversight over the implementation of laws. Ministers and Cabinet are collectively answerable to Parliament for the implementation of and adherence to laws, primarily through the mechanisms of public reports made available to Parliament and the answering of Parliamentary questions, which may lead to the removal from office of ministers or state officials.

Because of the particular risks posed by places of detention, traditional Parliamentary oversight has been supplemented by additional institutions exercising detention oversight employing a variety of oversight mechanisms. Some of these have arisen from international law while others are established by domestic laws.

Two supra-national international oversight institutions have arisen through the United Nations Convention Against Torture (UNCAT) and the Optional Protocol to the UN Convention against Torture (OPCAT):

- UNCAT creates the Committee against Torture (CAT), which monitors implementation of UNCAT through four mechanisms: the submission of regular reports by state parties; the considering of individual complaints or communications from individuals claiming that their rights under the Convention have been violated the undertaking of inquiries; and the considering of inter-state complaints.
- OPCAT creates the Subcommittee on Prevention of Torture (SPT), which has a mandate to visit places where persons are deprived of their liberty in the states which are party to OPCAT. In addition, OPCAT requires that states that are party to OPCAT designate or establish an independent “national preventive mechanism” (NPM) for the prevention of torture at domestic level.

NPMs need not consist of a single institution, but must have the mandate to inspect places of detention, monitor the treatment of and conditions for detainees and make recommendations regarding the prevention of ill-treatment. NPMs must also publish an annual report.

African states which are party to OPCAT have designated existing National Human Rights Institutions (NHRIs) as their (NPM). The term “National Human Rights Institution” refers to independent state-funded institutions which promote and monitor the effective implementation of international human rights standards at national level and which comply with the Paris Principles. The Paris Principles do not explicitly require NHRIs to have a mandate to visit places of detention; however designation of an NHRI as a state’s NPM would require the NHRI to have such a mandate.

Regionally, a supra-national oversight institution in the form of the Special Rapporteur on Prisons and Conditions of Detention in Africa has arisen. It has the mandate to visit places of detention. The Committee for the Prevention of Torture in Africa, another regional body, is not strictly an oversight institution but seeks to support the development of national institutions.

At national level, there exist detention oversight institutions specifically mandated to oversee places of detention, such as South Africa’s Judicial Inspectorate of Correctional Services. There also exist rights institutions which have broad mandates, such NHRIs and Public Protectors (or Ombudspersons), whose mandates nevertheless may include responsibility for exerting oversight over places of detention. Broader mandates still, such as those of Parliament and the judiciary, may also include obligations to exert oversight over detention. All of these institutions may employ a range of mechanisms in carrying out detention oversight.

Monitoring of places of detention through visits is one of the most important methods employed by oversight institutions or institutions which have oversight functions. Other methods may include compulsory reporting systems (for example, on deaths or punishments in custody), and complaints receiving systems. Associated oversight powers accorded to oversight institutions may include the power to make public reports and to: conduct investigations, make recommendations, impose disciplinary proceedings, and refer cases of abuse for prosecution.

The extent to which oversight institutions are independent of the state and of the institutions over which they seek to exert oversight varies, as do the mechanisms of oversight and accountability with which they are empowered.

This report seeks to describe selected oversight institutions and the oversight mechanisms they have adopted in Africa, in order to better understand detention oversight in Africa. This report also seeks to survey what monitoring and oversight have uncovered regarding conditions of detention in Africa.

INTRODUCTION

Mechanisms of detention oversight may refer to any number of activities or approaches which would result in the institution of detention being held accountable to the overseeing body. Such actions may include public reporting, the referral of cases for criminal investigation and prosecution, reporting by prison authorities to external bodies, dialogue between relevant authorities, the resolution of individual complaints and/or monitoring of conditions in prisons through on-site visits. Visits to places of detention by independent persons or bodies are regarded as a form of oversight which includes a wide range of activities and initiatives aimed at monitoring the executive.¹ Ultimately, states need to examine critically the use of detention and imprisonment in the African context, for imprisonment is costly, not only at a monetary level, but also at a socio-economic level where unnecessary and excessive imprisonment can have lasting negative consequences for individuals, families and communities that extend well beyond the prison walls.

While few African countries have ratified Optional Protocol to the UN Convention against Torture (OPCAT), the domestic laws of many states include provisions mandating national human rights institutions, judges, magistrates and parliamentarians to visit places of detention. These domestic measures should be seen as supportive of international (e.g. Subcommittee for the Prevention of Torture) and regional mechanisms (e.g. Special Rapporteur on Prisons and Conditions of Detention in Africa). Given that there are nearly one million prisoners in Africa and an unknown number of people in police detention facilities, it is not possible for international and regional mechanisms to provide effective and comprehensive monitoring of prison conditions and the treatment of detained persons. It is imperative that domestic mechanisms be utilised where they are provided for in law and developed if they are absent. This report aims to review the various types of mechanism aimed at monitoring prison conditions through regular on-site visits, with specific reference to police detention facilities and prisons, existing and provided for under the domestic laws of a select number of African states. The different types described are:

- Mechanisms under OPCAT being the Subcommittee on Prevention of Torture (SPT) and national preventive mechanisms (NPMs)
- Regional mechanisms being the Special Rapporteur on Prisons and the Committee for the Prevention of Torture in Africa (CPTA)
- National Human Rights Institutions
- Office of the Ombudsman
- Non-governmental organisations
- Visits by members of the public (lay visitors)
- Designated oversight structures
- Members of Parliament
- Constitutional Court judges.

This report will describe the legislative and regulatory framework particular to each mechanism and will examine the observable impact of the mechanism. Assessing impact is not easy and this problem is further compounded by the fact that information that may be potentially relevant is frequently not available in the public domain. The report is therefore also a call for further research and more accurate reporting by states and visiting structures.

¹ Corder, H., Jagwanth, S. and Soltau, F. *Report On Parliamentary Oversight and Accountability*. Faculty of Law, University of Cape Town (1999) <http://www.pmg.org.za/bills/oversight&account.htm> Accessed 14 August 2013.



VISITING MECHANISMS UNDER THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

1. Background

The OPCAT is a United Nations (UN) optional protocol, complementary to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).² Entering into force in 2006, the OPCAT sets forth a framework for the practical implementation of the provisions of the UNCAT, notably the prohibition against torture and other forms of ill-treatment, within the national context of each state party. OPCAT provides for two mechanisms of oversight, namely the Subcommittee for the Prevention of Torture (SPT) and National Preventive Mechanism (NPMs). In addition to employing other measures to conduct oversight, both mechanisms allow for monitoring of detention through regular, on-site visits.³ Such visiting functions are discussed in this section with reference to Mauritius and Senegal.

To date, 11 African states have ratified the OPCAT, while eight are signatories.⁴

2. The Subcommittee for the Prevention of Torture

2.1 Legal framework and mandate

Becoming operational in 2007, the SPT presently consists of 25 members, all of whom are experts in the field of human rights. Article 11 of OPCAT sets out the SPT's core preventive mandate and outlines its two main functions, namely to monitor places of detention and to strengthen the NPM through training and technical assistance.⁵ The visiting function of the SPT is based on the premise that frequent and independent visits to places of detention is the most effective manner in which to prevent and eradicate torture and ill-treatment.⁶

Upon ratification of OPCAT, state parties agree to allow on-site visits by the SPT to any and all places of detention within its area of jurisdiction or under its effective control.⁷ The SPT is permitted unrestricted and regular access to the detention facilities it chooses to examine.⁸ The SPT may conduct confidential interviews and should be allowed access to any information it requires to fulfil its mandate.⁹ The SPT engages with states on a confidential basis and its reports and recommendations are published only with the express permission of the state party.

2 Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations by resolution A/RS/57/199 and entering into force on 22 June 2006.

3 Article 11 of OPCAT describes the SPT's functions to comprise mainly the monitoring of detention by carrying out visits to places of detention, to advise state parties to strengthen the national preventive mechanism and to make recommendations with regards hereto and to cooperate, generally, with all relevant international and regional bodies, to prevent torture and ill-treatment in the context of detention.

4 In order for an international convention or protocol to be legally binding, states must both sign and ratify the instrument. When a state signs a convention, it expresses an intention to become bound to the obligations of the treaty in the future. It involves a simple signing procedure and the state does not yet incur any legal obligation upon signature. A state officially becomes a party to the convention upon ratification, which is an active and deliberate acceptance by the state (usually the president with the support of the parliament) to be bound by the treaty. The procedure for ratification is more elaborate and the state must deposit an instrument of ratification, expressly consenting to the terms of the treaty and indicating valid reservations it may have, if applicable. To date, the following African states have ratified OPCAT: Benin, Burkina Faso, the Democratic Republic of Congo, Gabon, Liberia, Mali, Mauritius, Nigeria, Senegal, Togo and Tunisia. The following African states are signatories to OPCAT: Cameroon, Cape Verde, Chad, Congo, Ghana, Madagascar, South Africa and Zambia.

5 Association for the Prevention of Torture and the Inter-American Institute of Human Rights (2010) *Optional Protocol to the Convention Against Torture, Implementation Manual*, www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD/opcating.pdf Accessed 27 June 2013

6 Special Rapporteur on Prisons and Conditions of Detention in Africa (2012) *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, presented by Hon. Commissioner Med S.K. Kaggwa at the 52nd Ordinary session of African Commission of Human and Peoples' Rights, Ivory Coast, 9 – 22 October 2012, p. 16, <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> Accessed 26 August 2013

7 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010) *Guidelines on National Preventive Mechanisms*, CAT/OP/12/5, 9 December 2010, paragraph 24, http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc Accessed 26 August 2013

8 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010) *Guidelines on National Preventive Mechanisms*, CAT/OP/12/5, 9 December 2010, paragraph 25, http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc Accessed 26 August 2013

9 OPCAT, Articles 4 & 12(a)

2.2 Methods of work

Visits are planned in advance and follow a set routine. A delegation of the SPT meets with the relevant authorities and conducts announced and unannounced visits to different types of detention facility in various locations. It meets with the staff of detention facilities, detainees, civil society and relevant domestic oversight bodies. The SPT considers the legal framework, official records and statistics, and examines the existing NPM or may discuss the future establishment of an NPM with relevant authorities. At the end of the visit, the delegation meets again with the appropriate branches of government to discuss issues requiring immediate attention and to share its preliminary observations. Its final findings are presented in the form of an official, confidential report. The state has the opportunity to respond to the report within a certain timeframe. If the state agrees, the correspondence is published.¹⁰

The SPT's mandate is of a continuous nature and it purports to build relations with domestic authorities. The SPT submits an annual report to the Committee Against Torture (CAT), a treaty body created under the UNCAT with the objective of preventing torture and ill-treatment.¹¹ Should a state party refuse to cooperate with the SPT, it may make use of the CAT's political persuasive ability to apply pressure to the particular state to comply with certain recommendations. Specifically, Article 16(4) allows for the CAT to make a public statement on a state's refusal to cooperate or to publish the SPT's report.¹² These measures have not been applied to any African states.

2.3 The Subcommittee for the Prevention of Torture in Africa

To date, the SPT has visited four African states: Benin, Liberia, Mali and Mauritius. Benin and Mauritius have replied to the SPT's country visit reports, but only Benin has consented to publication thereof. In December 2012 the SPT conducted an NPM advisory visit to Senegal. The report is available, but it is not a comprehensive overview of the country's oversight mechanisms. The SPT's most recent visit to Africa was to Togo in June 2013, but no reports had been published at the time of writing. By drawing lots, it was decided that Mauritius would be the first ever country visited by the SPT.¹³

3. National Preventive Mechanisms

3.1 Legal Framework and mandate

As with the SPT, the mandate of the NPM is to prevent torture and other ill-treatment, but unlike the SPT which is periodically present in the state, the NPM should be incorporated within the state's constitutional and/or domestic legislative text.¹⁴ The NPM must be structured according to the prescriptions of OPCAT and it is imperative that the appropriate expertise, financial- and operational independence i.e. independence from all branches of Government, are maintained within the NPM.¹⁵ It should be empowered to conduct regular visits, to make recommendations to relevant authorities and to make submissions to draft legislation, with the aim of improving conditions of detention and preventing torture and ill-treatment.¹⁶ The designated body should be allowed free access to information and places of detention and should be allowed to meet and share information with the SPT.¹⁷ The reports of the NPM should be published and widely disseminated. It should ensure that it is presented to, and discussed by the national legislative assembly. Contrary to the SPT, the work of the NPM is not confidential.¹⁸

10 Information on the routine followed during the SPT's visits is retrieved from <http://www2.ohchr.org/english/bodies/cat/opcat/outline.htm> Accessed 26 June 2013

11 OPCAT, Article 16(3) requires the SPT to submit an annual report of its activities to the CAT.

12 See further Committee Against Torture (2008) *First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/40/2, 14 May 2008, p.31, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT.C.40.2.pdf> Accessed 26 August 2013

13 Committee Against Torture (2008) *First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/40/2, 14 May 2008, p.7 & 8, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT.C.40.2.pdf> Accessed 26 August 2013

14 Part IV of OPCAT requires states to set up an NPM within one year of ratification.

15 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010) *Guidelines on National Preventive Mechanisms*, CAT/OP/12/5, 9 December 2010, paragraphs 7, 8, 12 & 17, http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc Accessed 26 August 2013

16 Article 18 of OPCAT

17 Article 19 of OPCAT

18 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010) *Guidelines on National Preventive Mechanisms*, CAT/OP/12/5, 9 December 2010, paragraph 29, http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc Accessed 26 August 2013

3.2 Forms of National Preventive Mechanism

OPCAT does not prescribe a specific form of NPM and it is the choice of each state party whether to create a new special mechanism or to designate and adapt an existing body for the purposes of preventing torture and other ill-treatment.¹⁹ There is no accreditation process for the NPM and the body comes into being as soon as the state party notifies the SPT of its designation as such. On the African continent, only four states have designated NPM's: Mali (*Commission Nationale des Droits de l'Homme*), Mauritius (National Human Rights Commission), Nigeria (National Committee on Torture) and Senegal (*Observateur National des Lieux de Privation de Liberté*).²⁰ Benin, Burkina Faso, Liberia, South Africa, and Togo are reported to be in the process of establishing their respective NPMs.²¹ At the time of writing, none of the above states had submitted an annual report to the SPT.²² In March 2012, the SPT noted that the designated NPMs of Mali, Mauritius and Senegal had not yet commenced their functions as such,²³ while Nigeria designated an NPM internally, it only deposited the required communication with the SPT during 2012.²⁴ Since only four African states have established NPMs there are not many examples of working models.²⁵ Three of the four chose to adapt an existing body to fulfil the role of an NPM as per the OPCAT.

4. Assessment of the work of the SPT and NPM: Case studies

The value of the visit by the SPT will be assessed using the following indicators:

- The number of visits and types of detention facility visited;
- The observable impact of its findings and recommendations.

The NPMs' compliance with the following prescribed characteristics as per OPCAT will be assessed:²⁶

- Whether the country's legal framework contains a definition of torture as per UNCAT and whether torture is absolutely prohibited.²⁷
- Operational independence: The ability to carry out regular and unobstructed visits to places of detention and free access to any information it might need for the furtherance of its objectives. The allocation of sufficient resources to the NPM.
- The ability to make recommendations to the relevant authorities, to submit proposals pertaining to draft legislation which the authorities are obliged to consider and debate.
- The ability to maintain contact and share information with the SPT.

19 Information retrieved from the web site of the Association for the Prevention of Torture, <http://www.apt.ch/en/npm-models/> Accessed 28 June 2013

20 Information retrieved from <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 5 July 2013

21 Association for the Prevention of Torture (2012) *Background paper on the situation of the OPCAT in Africa*, p.2, http://www.achpr.org/files/news/2012/08/d51/background_paper_on_opcat_situation_in_africa_rig_10_august_2012.pdf Accessed 5 July 2013

22 Information retrieved from <http://www2.ohchr.org/english/bodies/cat/opcat/annualreports.htm> Accessed 5 July 2013

23 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2012) *Fifth Annual Report*, CAT/C/48/3, 19 March 2012, paragraphs 18 & 20 <http://www2.ohchr.org/english/bodies/cat/opcat/annual.htm> Accessed 6 July 2013

24 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2013) *Sixth Annual Report*, CAT/C/50/2, 23 April 2013, paragraph 25 www2.ohchr.org/english/bodies/cat/opcat/docs/CAT-C-50-2_en.pdf Accessed 5 July 2013

25 The dedicated NPMs are listed per country at <http://www.apt.ch/en/list-of-designated-npm-by-regions-and-countries/> Accessed 5 July 2013

26 Subcommittee for the Prevention of Torture (2012) *Analytical self-assessment tool for National Prevention Mechanisms*, CAT/OP/1, 6 February 2012, <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 4 October 2013

27 Subcommittee for the Prevention of Torture (2012) *Analytical self-assessment tool for National Prevention Mechanisms*, CAT/OP/1, 6 February 2012, paragraph 26, <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 4 October 2013

With regards to the appropriate degree of independence to be maintained by the NPM, it is relevant to note that the state should not appoint to it members who hold positions which could raise questions of conflicts of interest.²⁸ It must be ensured that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions.²⁹ Furthermore, the NPM should be free to plan the use of the resources allocated to it.³⁰

On a more practical level, the functionality of the NPM will be assessed at the hand of indicators such as whether the NPM has adopted a development strategy; the level of internal organisation; planning and guidelines for visits; the ability to enforce its recommendations, to follow-up on its work and, very importantly, whether the mechanism has the power to refer cases for public prosecution or disciplinary action. If possible, the quality of its reporting and observable effects of its recommendations will be assessed.

4.1 The Subcommittee for the Prevention of Torture and National Preventive Mechanism in Mauritius

4.1.1 Country information: Mauritius

Ratified UNCAT	9 December 1992
Ratified OPCAT	21 June 2005
National Preventive Mechanism	National Human Rights Commission
Number of prisons	11 (July 2013) ¹
Total number of prisoners	2 536 (July 2013)
National prison capacity	2 203 (2009) ²
Pre-trial detainees	33% (July 2013)
Women	136 (July 2013)

4.1.2 The SPT visit to Mauritius

The SPT visited Mauritius from 8 – 18 October 2007, sent its report on 19 May 2008 and received the Mauritian State's response on 19 December 2008. To date, the reports remain confidential. The SPT examined 14 police detention facilities, four prisons, two juvenile detention centres and one shelter for children and distressed women.³¹ It investigated the treatment of prisoners and discussed the existing safeguards against torture and other ill-treatment with relevant authorities.³²

Since the SPT's report is not available it is not possible to take direct examples of the recommendations and to assess the effects thereof. However, there are other sources of information, such as the press statement by the SPT released at the time of its mission, and records of external human rights organisations, which provide insight into events following the visit of the SPT. It is inferred from these reports that Mauritian detention facilities are generally in a better condition than those of other African states.

For example, a 2012 Human Rights report by the United States Department of State (US Department of State) noted that pre-trial detainees are typically held separately from convicted prisoners and that the conditions are deemed relatively good, meaning there are no reports of threats to life and health, food shortages, inadequate potable water, poor ventilation or extreme temperature. Recordkeeping is considered accurate and detainees are allowed access to visitors, religious observance and even yoga or meditation

28 Subcommittee for the Prevention Against Torture, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, paragraph 18 <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 3 October 2013

29 Subcommittee for the Prevention Against Torture, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, paragraph 26 <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 3 October 2013

30 Subcommittee for the Prevention Against Torture, Guidelines on National Preventive Mechanisms, CAT/OP/12/5, 9 December 2010, paragraph 34 <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> Accessed 3 October 2013

31 The complete list of detention facilities visited can be found at Committee Against Torture (2008) *First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/40/2, 14 May 2008, p. 24, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT.C.40.2.pdf> Accessed 26 August 2013

32 United Nations Press Release, United Nations Subcommittee on Prevention of Torture ends visit to Mauritius, 18 October 2007, <http://www.unhchr.ch/hurricane/hurricane.nsf/O/3035F318C56594A5C125737800707050?opendocument> Accessed 5 July 2013.

in some instances.³³ Mauritius has one open prison, the Richelieu Open Prison, which is classified as a minimum security prison holding only adult male sentenced prisoners. The facility is run as a rehabilitation centre rather than a prison and allows detainees to acquire agricultural and vocational skills.³⁴ However, the Beau Bassin Central Prison is reported to be overcrowded, unhygienic and have problematic access to health care. Although Mauritius has an overall high number of remand prisoners, the total number of prisoners is low in comparison to many other African states.

4.1.3 The NPM in Mauritius: an examination of the National Human Rights Commission

a) *Legal framework*

The definition of torture appears in section 78 of the Criminal Code,³⁵ while Chapter II of the Constitution of the Republic of Mauritius sets forth the fundamental rights and freedoms of the individual, with Article 7 specifically prohibiting torture and other forms of ill-treatment.³⁶

Mauritius designated the existing National Human Rights Commission (NHRC) to take on the role of NPM. The Mauritian NHRC is an accredited National Human Rights Institute (NHRI) with 'A-Status' at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.³⁷ The Protection of Human Rights (Amendment) Act, 1998 (Act No.19 of 2012) was amended in 2012 to incorporate the function of the NPM within the NHRC.³⁸ In addition to the amendment of existing laws, special legislation in the form of the National Preventive Mechanism Act, 2012 (Act No.21 of 2012) came into force in 2013. The latter established the NPM structure and acknowledges the authority of the SPT to discharge its functions under OPCAT in Mauritius.³⁹

The Protection of Human Rights Act, 1998 (Act No.19 of 1998) sets forth the mandate, functions and powers of the NHRC. The NHRC's approach is broad and covers all types of human rights violation. The main functions of the NHRC are, firstly, to enquire into individual complaints of human rights abuses and, secondly, to visit prisons, police cells and other places of detention.⁴⁰ In particular, Article 4(d) of the Protection of Human Rights Act 1998 authorises the NHRC to visit any police station, prison or other place of detention under the control of the Mauritian State, to study the living conditions of inmates and the treatment afforded to them.

The body consists of a chairman, who previously served as a judge, in addition to three members, all of whom are experts in the field of human rights. The NHRC is required to submit annual reports of its activities to the President and may submit intermittent special reports on urgent matters.⁴¹ The President is required to table reports of the NHRC before the national assembly.⁴² The NHRC has the discretion to refer matters to the Director of Public Prosecutions, if it appears an offence has been committed, or to an appropriate service commission or the officer in charge of a public body, if it appears that disciplinary action is warranted.⁴³

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- 33 US Department of State, Bureau of Democracy, Human Rights and Labour, *Mauritius: Human Rights Practices for 2012*, p.2 – 5, http://photos.state.gov/libraries/mauritius/882940/huma_risghts_report/Human%20Rights%20Report%202012%20Mauritius.pdf Accessed 6 July 2013; See further Dissel, A. (2006) *Rehabilitation and Reintegration in African Prisons*, HSRC Press, p.13 http://www.google.co.za/url?sa=t&rct=i&q=open%2Bprisons%2Bmauritius&source=web&cd=12&cad=ria&ved=0CD0QFjABOao&url=http%3A%2F%2Fwww.hsrbpress.ac.za%2Fdownloadpdf.php%3Fpdfile%3Dfiles%2FDPDF%2F2220%2F08_African_Prisons.pdf&ei=ZrTaUbvOJ7TY7Abg_YCYDq&usq=AFQjCnHw_SG-VH1Lxe4qRzGSdoS5mVz0Ca&bvm=bv.48705608,d.ZWU Accessed 6 July 2013
- 34 Free Library (2012) *Mauritius: Model Poultry Farm at Richelieu Open Prison Launched*, <http://www.thefreelibrary.com/Mauritius+%3A+Model+Poultry+Farm+at+Richelieu+Open+Prison+Launched.-a0304954516> Accessed 6 July 2013
- 35 Criminal Code of 29 December 1838 (amended by Bill No. XVI, 2003)
- 36 The Constitution of the Republic of Mauritius, Adopted on 12 March 1968, full text available at <http://www.accessfacility.org/sites/default/files/Constitution%20of%20the%20Republic%20of%20Mauritius.pdf> Accessed 6 July 2013
- 37 The function of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights is explained in more detail in Part C of this report. See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Chart of the status of National Institutions, Accreditation Status as of 11 February 2013*, for the table of accredited National Human Rights Institutions, http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf Accessed 2 July 2013
- 38 National Protection of Human Rights (Amendment) Act, 2012 (Act No.19 of 2012). The text is available at <http://www1.gov.mu/scourt/publegislation/showDocActReg.do?id=22342> <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92128/107137/F1008937610/MUS92128.pdf> Accessed 7 July 2013
- 39 National Preventive Mechanism Act, 2012 (Act No.21 of 2012). The Act entered into force on 24 January 2013. The text is available at <http://www1.gov.mu/scourt/publegislation/showDocActReg.do?id=22342> Accessed 7 July 2013
- 40 Section 4(1)(a) – (g) of The National Protection of Human Rights Act, 1998 (Act No.19 of 1998), <http://nhrc.gov.mu/English/Rules-Regulations-Policies/Pages/default.aspx> Accessed 2 October 2013
- 41 Section 4 of the National Protection of Human Rights Act, 1998 (Act No.19 of 1998). The text is available at <http://nhrc.gov.mu/English/Rules-Regulations-Policies/Pages/default.aspx> Accessed 7 July 2013
- 42 Section 11 of the National Protection of Human Rights Act, 1998 (Act No.19 of 1998)
- 43 Section 4(3) – 4(4) of the National Protection of Human Rights Act, 1998 (Act No.19 of 1998)

The legal framework for the NPM complies with the requirements of the OPCAT and the founding text is sufficient to enable the NHRC's independence and free access to detention facilities. It allows for the body to exercise preventive powers, as well as the ability to follow-up on its work.

b) The work of the National Human Rights Commission in Mauritius

Annual reports from 2001 – 2008 are available on the website of the NHRC. Its 2008 report mentions the visit of the SPT and also contains information about some of the visits conducted by the NHRC to various places of detention. It observed that remand prisoners are held in harsher conditions than sentenced prisoners.⁴⁴ Backlogs in the criminal justice system have caused five prisoners to await trial for a period of three years.⁴⁵ It noted that a 2008 ruling by the Privy Council directed that time spent on remand should be deducted from the final sentence.⁴⁶ It was recorded that prisons are not all overcrowded, but overcrowding exists in certain facilities. The number of persons convicted for drug-related crimes is high as substance abuse and drug trafficking is a problem in Mauritius.⁴⁷

Resources appear to be allocated to the NHRC in a strategic and planned manner. The budget for 2013 – 2015 is available, where actual expenses from 2011 and 2012 are used to estimate expenses and outcomes.⁴⁸

Unfortunately, an updated annual report of the NHRC could not be found, but a 2012 report by the US Department of State indicated that the Government permitted prison visits by independent observers, including the press, the NHRC, civil society, UN agencies and the European Union (EU).⁴⁹ No mention of the NHRC's express function as an NPM could be found in this report. It recorded that *prisoners filed 24 complaints of abuse with the NHRC, of which authorities dismissed 17 for lack of substantiation and seven remained under investigation*. It is unclear which authorities are referred to.

The Mauritius Prison Service published its most recent annual report in the form of a magazine, which contains photographs and other narrative information on the work of the Prison Service, as well as a series of interviews with various employees, NGOs and other service providers to prisons. Mention is made herein of the good working relation between civil society and the Mauritius Prisons Service. The State's intention to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners is expressed.⁵⁰ Through publications such as this, the Mauritius Prisons Service promotes transparency and creates a positive image of the penal system. The Mauritius Prison Service keeps thorough statistics on numbers of prisoners convicted per offence and this is available in the public domain.⁵¹ The strategic operational plan, budget and information on staffing for the period 2012 – 2015 for the Mauritius Prison Service is published on the government website which contains a list of the Prison Service's achievements and objectives.⁵²

Since the submission of the SPT report in 2008, the Mauritian Government has taken several concrete steps which are possibly in response to the concerns raised by the SPT. These actions include the establishment of a legal framework for an operational NPM and a police complaints mechanism within the NHRC.⁵³

44 National Human Rights Commission, *Annual Report for the year 2008*, p.53 – 61 & 75, <http://nhrc.gov.mu/English/Documents/nhrcreport2008.pdf> Accessed 7 July 2013

45 National Human Rights Commission, *Annual Report for the year 2008*, p. 70, <http://nhrc.gov.mu/English/Documents/nhrcreport2008.pdf> Accessed 7 July 2013

46 Callachand & Another v State of Mauritius (Mauritius) 2008 UKPC 49 (4 November 2008)

47 Statistics from 2008 showed that 25% of prisoners are convicted of drug-related crimes and substance abuse in Mauritius prisons is a major concern: See Collectif Urgence Toxida and the International Harm Reduction Association (2010) Briefing to the Committee on Economic, Social and Cultural Rights on the Consolidated Second-Fourth Reports of Mauritius on the Implementation of the International Covenant on Economic, Social and Cultural Rights, p. 9, http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IHRA_CUT_Mauritius44.pdf Accessed 7 July 2013

48 See Ministry of Finance and Economic Development, Programme-based Budget Estimates 2013 and indicative estimates 2014 & 2015, November 2012, http://mof.gov.mu/English/Documents/National%20Budget/Programme%20based%20budget/14_National_Human_Rights.pdf Accessed 2 October 2013

49 In July 2011 the EU-Mauritius Transfer Agreement was concluded, which provides for the transfer of suspected pirates to Mauritius for investigation, prosecution, trial and detention. The EU is funding the construction of a dedicated prison for pirates. For more information, see Delegation of the European Union to the Republic of Mauritius, for the Union of the Comoros and Republic of Seychelles, News Letter No. 54, *European Union and Mauritius join hands in the fight against piracy and for the promotion of maritime security*, 20 October 2011, <http://eudemaunews.blogspot.com/2011/09/signature-of-transfer-agreement.html> Accessed 12 July 2013

50 Mauritius Prisons Service Magazine No.3 2012, p. 46 & 53. Amongst others, an interview was published with the leader of an NGO, Kinouété, which provides counselling to detainees, with the aim of ensuring successful reintegration of prisoners upon release. The NGO also provides support to the families of the detainees. Mention is also made of visits and cooperation with international groups such as the ICRC and diplomatic missions. See p.138 – 140.

51 Information retrieved from the website of the Government of Mauritius, <http://prisons.gov.mu/English/statistics/Pages/default.aspx> Accessed 8 July 2013

52 Mauritius Prisons Service' strategic planning report is available at http://mof.gov.mu/English/Documents/National%20Budget/Programme%20based%20budget/28_Prison.pdf Accessed 8 July 2013

53 United Nations Office of the High Commissioner of Human Rights (2011) *Committee against Torture hears response of Delegation of Mauritius*, 20 May 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11044&LangID=E> Accessed 7 July 2013

In an express effort to reduce overcrowding, the Government undertook to improve the infrastructure of various facilities. It ordered the construction of a high-security prison for men at Melrose and a minimum-security open prison for women, to be completed during 2014.⁵⁴ The prison at Melrose will have the capacity to hold 800 persons and the structure will include eight workshops for vocational training and a farm.⁵⁵ It will reportedly be operational by the end of 2013.⁵⁶ Recently a contractor was procured to install closed circuit television (CCTV) systems within the Beau Bassin women's facility. In terms of an EU transfer agreement a contract was also awarded for the construction of a prison - at the Central Prison - for persons convicted of piracy.⁵⁷

Since 2008, the Mauritian Prison Service, in cooperation with the United Nations Office for Drugs and Crime (UNODC), provides a Methadone Substitute Therapy programme to prisoners addicted to heroin.⁵⁸

4.1.4 Conclusion

Although the Government does not wish to make the findings of the SPT known, there is a fair amount of information available in the public domain detailing the manner in which prisons in Mauritius are administrated. There appears to be a high level of transparency to the work of the Mauritius Prisons Service and an active intention on behalf of the State to ensure the proper treatment of detainees. It cannot be said with certainty to which extent the SPT's visit contributed to improvements within the penal system. However, it is clear that improvements are being made and it is certain that the NPM will have a valuable role to play once it becomes fully functional as a visiting mechanism.

4.2 The Subcommittee for the Prevention of Torture and National Preventive Mechanism in Senegal

4.2.1 Country information: Senegal

Ratified UNCAT	21 August 1986
Ratified OPCAT	18 October 2006
National Preventive Mechanism	<i>Observateur National des Lieux de Privation de Liberté</i> (ONLPL) National Observer of Places of Deprivation of Liberty
Number of prisons	38 (June 2013) ³
Total number of prisoners	8 428 (December 2012) ⁴
National prison capacity	7 090 (2008)
Pre-trial detainees	41.4% (December 2012)
Children	2.1% (December 2012)
Women	3.4% (December 2012)

54 Mauritius Prisons Service Magazine No.3 2012, p.52 ; See further Government of Mauritius, *Melrose High Security Prison to open in August*, 30 May 2013, <http://www.gov.mu/English/News/Pages/Melrose-High-Security-Prison-to-open-in-August.aspx> Accessed 6 July 2013.

55 Mauritius Prisons Service Magazine No.3 2012, p.52

56 'Mauritius: The new jail of Melrose scheduled for September' *Indian Ocean Times*, 15 May 2013, http://en.indian-ocean-times.com/Mauritius-The-new-jail-of-Melrose-scheduled-for-September_a1289.html Accessed 13 July 2013

57 Information retrieved from the website of the Government of Mauritius, <http://prisons.gov.mu/English/Pages/default.aspx>

58 National Human Rights Commission, *Annual Report for the year 2008*, released on 31 March 2009, p. 78, available at <http://nhrc.gov.mu/English/Documents/nhrcreport2008.pdf> Accessed 8 July 2013; And Mauritius Prisons Service (2012) *Budget Programme for 2012*, p. 2 & 3, http://mof.gov.mu/English/Documents/National%20Budget/Programme%20based%20budget/28_Prison.pdf Accessed 8 July 2013

4.2.2 The Subcommittee for the Prevention of Torture's visit to Senegal

The SPT visited Senegal from 10 – 14 December 2012 with the sole purpose of addressing the designated NPM, the National Observer of Places of Deprivation of Liberty (*Observateur National des Lieux de Privation de Liberté* (ONLPL)).

Without questioning the integrity of the NPM, the SPT raised concern about the degree of dependence on the Ministry of Justice for providing staff, administrative support and resources to the ONLPL. During the SPT's visit, two Magistrates were detached from the Ministry of Justice to serve as technical advisors.⁵⁹ This type of staffing could create a conflict of interest for the persons involved. The SPT recommended that sufficient resources be allocated to the ONLPL to recruit and remunerate its staff independently and to diversify the profile of persons appointed to the body, so as to exercise its mandate unhindered. Further concern was raised over the exclusion of detention facilities controlled by the Ministry of Armed Forces from the scope of the NPM's mandate.⁶⁰ On a practical level, the SPT observed that there is no real strategy or structure for enforcement of the ONLPL's recommendations.⁶¹

4.2.3 The NPM in Senegal: an examination of the National Observer of Places of Deprivation of Liberty

a) Legal framework

The definition of torture appears in section 295-1 of the Penal Code, however, it falls short of complying with the full definition as per article 1 of UNCAT.⁶² Senegalese law does not contain an express prohibition against torture, but Article 295 recognises the crime of torture and attempted torture.⁶³

The ONLPL was created by the National Observer of Places of Deprivation of Liberty Act, 2009 (Act No.13 of 2009) which authorises the body to visit, at any time, any place of detention within the jurisdictional area of the Republic of Senegal where persons are held on the orders of public authorities. It is mandated to make recommendations to the Government and to propose legislative changes with regards to detention.⁶⁴ The founding text allows the body to disregard any instructions by the authorities in charge of the detention facility, which supports its independence.⁶⁵ The founding text contains various clauses which support the independence of the body, for example, the ONLPL may refer matters for criminal prosecution or disciplinary action.⁶⁶

The National Observer of Places of Deprivation of Liberty Act 2009 entered into force on 16 June 2011 by Ministerial Decree No. 842 of 2011.⁶⁷ On 19 January 2012, Mr Diouf Tall (a former magistrate) was appointed to the post of National Observer by Decree No. 119 of 2012 and thus the body became functional.⁶⁸ The internal regulations of the ONLPL were adopted in November 2012 by resolution No. 1-2012 and a follow-up committee (*Comité National de Veille de l'ONLPL*) was created by resolution No.2 of 2012. A practical guide to conducting visits was adopted during November 2012.⁶⁹

59 Subcommittee for the Prevention of Torture (2013) *Rapport du Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants sur sa visite de conseil au mécanisme national de prévention du Sénégal*, paragraphs 14, 15 & 26, available in French at <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NPM/SenegalReport.doc> Accessed 14 July 2013

60 The list of places of detention provided to the SPT by the Senegalese authorities excluded places of detention under the control of the Ministry of Armed Forces. See Subcommittee for the Prevention of Torture (2013) *Rapport du Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants sur sa visite de conseil au mécanisme national de prévention du Sénégal*, paragraphs 15 & 36, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NPM/SenegalReport.doc> Accessed 14 July 2013

61 Subcommittee for the Prevention of Torture (2013) *Rapport du Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants sur sa visite de conseil au mécanisme national de prévention du Sénégal*, paragraph 18, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NPM/SenegalReport.doc> Accessed 14 July 2013

62 During its 2012 visit, the CAT recommended that the definition be revised so as to bring it in line with article 1 of UNCAT.

63 Association for the Prevention of Torture, Country File Senegal, 18 December 2012

64 *La loi sur l'observateur national des lieux de privation de liberté, 2009* (Act No.13 of 2009). Text available in French at <http://www.onlpl.sn/wp-content/uploads/2013/06/Loi-2009-13-du-2-mars.pdf> Accessed 12 July 2013

65 Article 6 of Act No.13 of 2009

66 Article 7 of Act No.13 of 2009

67 Ministry of Justice, Decree No. 2011 – 842. Text available in French at <http://www.onlpl.sn/wp-content/uploads/2013/06/dcret-dapplication-observateur.pdf> Accessed 15 July 2013

68 The decree is found in French at <http://www.onlpl.sn/wp-content/uploads/2013/06/Decret-nomination.jpg> Accessed 12 July 2013

69 Subcommittee for the Prevention of Torture (2013) *Rapport du Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants sur sa visite de conseil au mécanisme national de prévention du Sénégal*, paragraph 11, <http://www2.ohchr.org/english/bodies/cat/opcat/docs/NPM/SenegalReport.doc> Accessed 14 July 2013

b) *The work of the National Observer of Places of Deprivation of Liberty in Senegal*

In an effort to prepare for its work, the ONLPL visited the NPM of France, *Le contrôleur général des lieux de privation de liberté* during June 2012, met with experts such as Amnesty International and the Association for the Prevention of Torture, and held a public presentation as an introduction to its function and mandate. The main problems of Senegalese prisons were identified during these meetings as overcrowding and overuse of pre-trial detention and health concerns.⁷⁰ Subsequent to the SPT's visit, the ONLPL published a detailed agenda for monthly visits planned throughout 2013 and 2014.⁷¹

Together, the ONLPL and SPT carried out its first visit to three places of detention. No subsequent reports of the ONLPL could be found, but media reports indicated that the ONLPL is indeed operational and active in promoting its work.⁷²

4.2.4 Conclusion

The efforts made by the ONLPL to become acquainted with its role by meeting with experts and stakeholders, studying the model of the NPM of France, and setting an agenda for visits in advance are certainly commendable and indicative of its commitment. However, despite the availability of detailed guidelines, the legislative framework does not fully comply with the required standard, especially with regards to guaranteeing the body's independence. The selective interpretation of the scope of the ONLPL's mandate is extremely worrying, since detention facilities under the control of the Ministry of Armed Forces should be subject to oversight.

The fact that the body was created and actively commenced its functions is an excellent start to improving detention oversight in Senegal. Hopefully, the State will continue to show its good faith by granting the ONLPL the necessary means to fulfil its mandate, by addressing legislative shortcomings and by adopting an inclusive approach to monitoring all places of detention.

5. Conclusions on the Subcommittee for the Prevention of Torture and National Preventive Mechanisms

The SPT's visiting and advisory functions are inter-related, complementary and its approach is holistic insofar as it is focused as much on the regulatory framework as it is on practical elements relating to detention. The SPT has demonstrated its capacity and willingness to provide assistance and support to state parties throughout the world. The SPT has produced ample guidelines, recommendations and working models of NPMs which African states may draw on to align their legal frameworks and practices.

It is acknowledged that the effective implementation of laws is generally problematic throughout Africa, where most states are faced with challenges such as poverty, a lack of infrastructure, antiquated or inherited laws, few financial and human resources and good education systems, not to mention political instability and insecurity. Having mentioned some of the most common challenges, it is laudable that the states discussed here have made efforts to ratify the necessary international instruments and to incorporate an NPM within their domestic legal systems. The impact of the OPCAT is entirely dependent on the goodwill of the particular state and the intention to improve conditions of detention. In this regard, the governments of Mauritius and Senegal set an example for the rest of Africa and are leaders in drawing international attention to the situation of prisoners and the necessity of maintaining good practice. In general terms it can be concluded that across both countries that were examined visits by the SPT and interactions with institutions of state have had positive consequences.

70 Association for the Prevention of Torture (2012) *Identifying priorities for Senegalese NPM*, http://www.apt.ch/en/news_on_prevention/identifying-priorities-for-senegalese-npm/ Accessed 12 July 2013

71 Information retrieved from the website of the ONLPL, http://www.onlpl.sn/?page_id=180 and http://www.onlpl.sn/?page_id=183 Accessed 12 July 2013

72 For example, in June 2013 the ONLPL visited a detention facility at Tambacounda and declared its objective to be the eradication of torture from the penal system., "Zéro torture", objectif de l'Observateur national des lieux de privation de liberté", *Agence de Presse Senegalese*, 5 June 2013, http://www.aps.sn/articles.php?id_article=114158 Accessed 14 July 2013



REGIONAL VISITING MECHANISMS

6. Introduction

Regionally, there are various bodies responsible for promoting human rights and providing redress to victims of torture and other ill-treatment. These include: the African Commission on Human and Peoples' Rights (ACHPR), African Committee on the Rights and Welfare of the Child, and the African Court on Human and Peoples' Rights (African Court). In addition to the treaty bodies of the African Union, the following sub-regional forums are mandated to adjudicate cases of human rights violations originating from their respective jurisdictions: The Southern African Development Community (SADC) Tribunal;⁷³ the East African Community (EAC); and the Court of Justice and the Economic Community of West African States (ECOWAS) Community Court of Justice.⁷⁴

The efficiency of most of the above bodies is generally restricted by significant backlogs, limited resources, state parties' lack of knowledge and experience with the procedures of regional bodies and the absence of effective mechanisms to enforce the decisions of regional mechanisms. The ACHPR is the main regional forum which victims of torture and other serious human rights violations may approach for relief, where domestic justice systems are not available, ineffective or insufficient.⁷⁵

With regard to the prevention of torture and other ill-treatment in places of detention, the African Union confers this responsibility on two main preventive institutions, namely the Special Rapporteur on Prisons and Conditions of Detention in Africa (SRP) and the Committee for Prevention of Torture in Africa (CPTA).

7. The Special Rapporteur on Prisons and Conditions of Detention in Africa

7.1 Legal framework and mandate

The SRP is a Special Mechanism of the ACHPR. Five such Special Mechanisms exist to ensure the practical implementation of the provisions of the African Charter on Human and Peoples' Rights in relation to each mechanism's specific field of expertise.

The need for a specialist approach to conditions of detention in Africa was first discussed in 1996 at a seminar on prison conditions in Africa, held in Kampala. This discussion gave rise to the Kampala Declaration, which is the founding document of the office of the SRP.⁷⁶ In addition to the African Charter, the SRP is guided by various resolutions and declarations adopted by the ACHPR. The most relevant of these is the Ouagadougou Declaration, which lists the practicalities central to the protection of prisoners' rights, particularly the rights of pre-trial detainees.⁷⁷ Since the first SRP was appointed in 1997, five individuals have held this position. The current incumbent is Mr Med S.K. Kaggwa from Uganda.

The mandate of the SRP is to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter. The SRP's mandate extends to all types of places of detention, including police cells, pre-trial detention facilities, juvenile reform centres, psychiatric hospitals and immigration detention centres.⁷⁸

⁷³ The SADC Tribunal suspended its activities in 2010 and is presently not functional.

⁷⁴ Institute for Human Rights and Development in Africa and International Service for Human Rights (2012) *A Human Rights defenders' guide to the African Commission on Human and Peoples' Rights*, p. 23, http://www.ishr.ch/document-stuff/browse-documents/doc_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights Accessed 15 July 2013

⁷⁵ Niyizurugero. J. (2013) *The Committee for the Prevention of Torture in Africa: Facilitating justice and redress for victims of torture*, Pan-African Reparation Perspectives, Special Bulletin on Reparation for Victims of Torture in Africa Published by APDH, EIPR, CSVR, PRAWA and REDRESS, Issue 1, 26 June 2013, <http://www.redress.org/downloads/publications/130626-ENGLISH-FINAL.pdf> Accessed 26 July 2013

⁷⁶ *Kampala Declaration on Prison Conditions in Africa*, Adopted at the Kampala Seminar on prison conditions in Africa, September 1996

⁷⁷ *Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa*, Recommended by the participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso 18 to 20 September 2002, <http://www.achpr.org/instruments/ouagadougou-planofaction/>

⁷⁸ The SRP's mandate and methods of work were adopted at the 21st Ordinary Session of the African Commission in 1997. Information retrieved from <http://www.achpr.org/mechanisms/prisons-and-conditions-of-detention/about/> Accessed on 16 June 2013

7.2 Methods of work

By carrying out country visits, the SRP examines the legal framework and policies governing detention, as well as practices and physical conditions of detention. Its mandate is to make recommendations for improvement or to propose urgent action. Although the SRP does not function as an individual complaints mechanism, it may, at the request of the ACHPR, make recommendations to the latter, with regards to communications filed by individuals or other concerned parties. The SRP submits bi-annual activity reports to the ACHPR, which are published. Besides the confidentiality aspect, the reporting function of the SPT and SRP differs insofar as states parties are not required to submit periodic reports to the latter, nor does it have to respond formally to the SRP's findings.

The SRP deems transparency to be essential to upholding basic human rights in places of detention and considers regular and periodic visits to be the most evident and effective method for preventing torture and ensuring correct practices.⁷⁹ At the 52nd session of the ACHPR, the SRP reported that since its inception it had conducted visits to over 23 countries, at an average of two states per year, excluding follow-up visits.⁸⁰ Although the SRP's activity report of 2012 refers to more than 40 investigative country visits, some as recent as 2011, only 17 mission reports could be found on the official website; 2004 being the most recent.⁸¹

Visits typically follow a similar routine. The SRP meets with relevant government authorities and holds a press conference to announce its intended course of action, followed by visits to selected places of detention. At the particular facility visited, the SRP meets with the management, tours the grounds and conducts interviews with detainees and prison. Finally, the delegation communicates its preliminary observations and recommendations to relevant authorities. Hereafter a written report of its findings and recommendations is sent to the government and made public through the ACHPR.⁸²

7.3 Practical implementation of the Special Rapporteur on Prisons' mandate

As noted above, the SRP's most recent mission was carried out in 2004.⁸³ In 2008 the SRP visited Liberia in the capacity of a member of the Committee for the Prevention of Torture in Africa (CPTA). No mission report was made available since this was not a formal country visit by the SRP.

To obtain a better understanding of the manner and extent to which the SRP's mandate is practically implemented, the SRP's work in two states will be assessed. The following indicators are used to assess the scope and value of the SRP's country visit:

- The number and types of facility visited;
- Obstacles encountered in the exercise of its mandate;
- A number of observations and recommendations are selected to use as a benchmark to assess the impact of the visit. Subsequent reports or communication from the state, reports from other human rights organisations and the media are used to assess whether the selected recommendations have resulted in improvements.

79 Special Rapporteur on Prisons and Conditions of Detention in Africa (2012) *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, presented by Hon. Commissioner Med S.K. Kaggwa at the 52nd Ordinary session of African Commission of Human and Peoples' Rights, Ivory Coast, 9 – 22 October 2012, p. 16, <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> Accessed 26 August 2013

80 Special Rapporteur on Prisons and Conditions of Detention in Africa (2012) *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, presented by Hon. Commissioner Med S.K. Kaggwa at the 52nd Ordinary Session of African Commission of Human and Peoples' Rights, Ivory Coast, 9 – 22 October 2012, p. 16, <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> Accessed 26 August 2013

81 Information retrieved from <http://www.achpr.org/mechanisms/prisons-and-conditions-of-detention/> Accessed 16 June 2013

82 Special Rapporteur on Prisons and Conditions of Detention in Africa (2012) *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, presented by Hon. Commissioner Med S.K. Kaggwa at the 52nd Ordinary Session of African Commission of Human and Peoples' Rights, Ivory Coast, 9 – 22 October 2012, p. 16, <http://www.achpr.org/sessions/52nd/inter-session-activity-reports/prisons-and-conditions-of-detention/> Accessed 26 August 2013

83 The SRP visited Ethiopia and South Africa in 2004.

7.4 The work of the Special Rapporteur on Prisons in Namibia

7.4.1 Country information: Namibia

Ratified UNCAT	28 November 1994
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	13 (October 2011) ⁵
Total number of prisoners	4 314 (October 2011)
National prison capacity	4 475 (October 2011)
Pre-trial detainees	7.9% (2007)
Women	2.7% (2007)
Children	Unknown

7.4.2 The Special Rapporteur on Prisons' visit to Namibia

During the 2001 mission to Namibia, the SRP visited eight prisons, eight police stations and one juvenile rehabilitation centre.⁸⁴ The SRP was satisfied with the cooperation from the Namibian State, but it was not possible at the time to confirm the number of detainees in the country.⁸⁵

During 2009, the ACHPR conducted a promotional visit to Namibia. Although the focus was not on prisons and conditions of detention, the delegation met with the Deputy Commissioner of Prisons who reported on developments subsequent to recommendations of the SRP made in 2001. In the same year, Namibia submitted its third report to the ACHPR, covering the period 2002 – 2009, in which the State reported on progress made in response to the most pressing recommendations of 2001. In some instances, the replies from the State differed to statements made by the Deputy Commissioner of Prisons.

The following are some of the observations and recommendations selected from the 2001 report, specifically pertaining to detainees on remand and the State's subsequent reaction thereto:⁸⁶

- **Access to legal aid:** In a 2002 ruling by the Namibian Supreme Court the State's duty to provide legal aid to indigent litigants was confirmed.⁸⁷ The state-funded Legal Aid Directorate now provides free legal assistance in criminal cases and in some civil matters, such as divorce. In August 2012 the Legal Aid Directorate reported that it was involved in almost 80% of all criminal cases.⁸⁸ Unfortunately, the Legal Aid Directorate lacks the resources to intervene in all applications for aid it receives.
- **External monitoring:** Judges and parliamentarians (specifically the Parliamentary Committee on Safety) are mandated to monitor detention facilities, but at the time of the SRP's presence in Namibia were found to be ignorant of this duty.⁸⁹ In its 2010 report to the ACHPR, Namibia replied that judges and magistrates still do not exercise their functions as prison oversight mechanisms and that only the Ombudsman has assumed this role. This information is contrary to that provided by the Deputy

84 Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/l, p. 4, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

85 At the time of the visit, the delegation was informed by authorities that there were approximately 4 800 convicted prisoners and 4 000 on remand (of whom 259 were held in prison and the remainder in police stations). The number of persons in police stations seems disproportionately high. See Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/l, p.11, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

86 Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/l, p.12, 46 & 47, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

87 *Government of the Republic of Namibia and Others v Mwilima and all the Other Accused in the Treason Trail* 2002 NR 235 (SC). The Supreme Court of Namibia confirmed the duty of the State to provide legal aid by ordering the Namibian Government to provide the treason suspects with legal representation.

88 US Department of State, Bureau of Democracy, Human Rights and Labour (2012) *Namibia 2012: Human Rights Report*, <http://www.state.gov/documents/organisation/204361.pdf> Accessed 19 July 2013

89 Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/l, p.34, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

Commissioner of Prisons to the SRP during its promotional visit in 2009, who said that judges visit prisons each month.⁹⁰ In the absence of any detailed accounts from visiting justices, and considering the available reports from the Ombudsman, it is likely that the true position is reflected in the State's 2010 report.⁹¹

Although the SRP's report of 2001 makes no mention of torture, it is relevant to note that to date the High Court has dismissed eight civil claims against the Ministers of Home Affairs and Defence by applicants who claim to have been tortured at the time of their arrests. It is reported that 24 cases were settled out of court and 90 cases were pending.⁹² The Legal Assistance Centre and NamRights are two of the primary human rights NGOs in Namibia which help detainees to bring cases to court.⁹³

- **Parole board:** The SRP found the criteria for being released on parole too restrictive, resulting in non-use thereof.⁹⁴ Recently the Correctional Services Act, 2012 (Act No.9 of 2012) came into force, providing for the National Release Board.⁹⁵
- **Non-custodial sentencing:** The SRP recommended that magistrates be made aware of alternative sentencing methods and receive training on the subject.⁹⁶ Since 2001, this recommendation has been partly achieved. Magistrates are said to be trained annually on non-custodial sentencing, but a system is not yet in place to monitor such sentenced offenders.⁹⁷ With the help of foreign funding, in 2003 the Namibian Government started a pilot project for using community service as an alternative to custodial sentencing in four regions of Namibia. The project ran until 2008 during which time about 250 persons benefited.⁹⁸ In 2009 it was reported that the project's activities were halted due to a lack of funding.⁹⁹ It is not clear whether it had been reinstated. Given the scale and duration of the project, it is apparent that it did not alleviate prison overcrowding in a sustained manner.
- **Overcrowding:** The SRP raised concern about overcrowding in some facilities.¹⁰⁰ By 2009, both the national prison capacity and the prison population had increased. Overcrowding persisted in certain prisons. The recommendation to improve conditions in police cells was repeated by the ACHPR.¹⁰¹ Nationally, the Ombudsman recommended to the Ministry of Safety and Security that centres should be built specifically for those prisoners awaiting trial, but no evidence was found that this recommendation was followed.
- **Treatment of children:** The Correctional Service Act of 2012 expressly requires the separation of adults from children in prisons. A new institution was created to accommodate children and further improvement was made in that offenders were separated according to the security risks they posed.¹⁰²

90 African Commission on Human and Peoples Rights (2009) *Promotion Mission Report to the Republic of Namibia*, paragraph 32, <http://www.achpr.org/states/namibia/missions/promo-2009/> Accessed 19 July 2013

91 The Ombudsman reported to have carried out on-site visits to a number of detention sites in 2006 and 2008. This will be discussed in further detail under the review of the role of the Ombudsman under domestic mechanisms of oversight.

92 US Department of State, Bureau of Democracy, Human Rights and Labour, *Namibia 2012: Human Rights Report*, p. 10, <http://www.state.gov/documents/organisation/204361.pdf> Accessed 19 July 2013

93 US Department of State, Bureau of Democracy, Human Rights and Labour, *Namibia 2012: Human Rights Report*, p. 10, <http://www.state.gov/documents/organisation/204361.pdf> Accessed 19 July 2013. The Legal Assistance Centre's human rights and constitutional rights unit takes up cases of torture and unlawful detention and is most well known for its representation of the applicants in the Caprivi-treason trial, see <http://www.lac.org.na/projects/huricon/huriconcases.html>. For confirmation of representation of applicants bringing claims of torture and ill-treatment by Namrights, see US Department of State, Bureau of Democracy, Human Rights and Labour, *Namibia 2009: Human Rights Report*, p. 28&3, <http://www.state.gov/documents/organization/160136.pdf> Accessed 4 October 2013

94 Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/1, p.44, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

95 Correctional Services Act, 2012 (Act No.9 of 2012 (Namibia) Part XIII. Full text available at <http://www.lac.org.na/laws/2012/5008.pdf> Accessed 19 July 2013

96 Special Rapporteur on Prisons and Conditions of Detention in Africa (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/1, p.47, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 19 July 2013

97 Namibia: 3rd Periodic Report, 2002 – 2009, submitted to the African Commission on Human and Peoples' Rights on 1 August 2010, p.12, http://www.achpr.org/files/sessions/49th/state-reports/3rd-2002-2009/staterep345_namibia_2010_eng.pdf Accessed 13 July 2013

98 Nyoka, L. LLB dissertation, University of Namibia (2008) *A critical look on the law on community service order as an alternative to imprisonment and its impact on the criminal justice system in Namibia*, <http://www.wis.unam.na/theses/nyoka2008.pdf> Accessed 20 July 2013

99 It was funded at first by the French Government, then by the Finnish Embassy. See African Commission on Human and Peoples' Rights (2009) *Promotion Mission Report to the Republic of Namibia*, paragraph 126, <http://www.achpr.org/states/namibia/missions/promo-2009/> Accessed 19 July 2013

100 Special Rapporteur on Prisons and Conditions of Detention in Africa, (2001) *Prisons in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, DOC/OS(XXXHI)/324c/1, p.12, http://www.achpr.org/files/sessions/33rd/mission-reports/namibia/achpr33_misrep_specmec_priso_namibia_2001_eng.pdf Accessed 18 July 2013

101 African Commission on Human and Peoples' Rights (2009) *Promotion Mission Report to the Republic of Namibia*, paragraphs 199 & 212 (xxxix), <http://www.achpr.org/states/namibia/missions/promo-2009/> Accessed 19 July 2013

102 United Nations Office of the High Commission for Human Rights (2012) *Committee on the Rights of the Child examines report of Namibia*, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12556&LangID=E> Accessed 20 June 2013

7.4.3 Conclusion

According to the ACHPR, one of most significant steps of progress is the Namibian Prison Service's initiative to train Prison Service staff to reintegrate offenders after release.¹⁰³ Incidentally, this was one of the SRP's 2001 recommendations.

From the above assessment, it is concluded that the Namibian Government has indicated an intention to improve the situation of detainees. A number of the SRP's 2001 recommendations were implemented, although it cannot be said with certainty that the work of the SRP was the direct cause of such improvements and whether this was not due to other factors. The provision of legal aid appears to have been the result of litigation. An offer of foreign aid resulted in the pilot project on community service orders. The State's tardiness in bringing about legislative reform, more than ten years after the SRP's visit, combined with its failure to comply with at least nine of the mandatory recommendations made by the CAT in 1997,¹⁰⁴ creates the impression that perhaps the State does not strategically aim to comply with the recommendations of international treaty bodies, and that improvement is prompted by a combination of alternative factors.

7.5 The Special Rapporteur on Prisons' visit to Ethiopia

7.5.1 Country information: Ethiopia

Ratified UNCAT	14 March 1994
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	123 (2010)
Total number of prisoners	112 361 (2009 to 2010) ⁶
National prison capacity	Unknown
Pre-trial detainees	14% (2009 to 2010)
Women	3.5% (2009 to 2010)
Children	Unknown

Ethiopia was one of the last countries the SRP visited in 2004.¹⁰⁵ Nationally, the Ethiopian Human Rights Commission (EHRC) is the most active detention monitoring body. NGOs such as Justice for All Prison Fellowship Ethiopia and the International Committee of the Red Cross (ICRC) are other active monitoring mechanisms.¹⁰⁶ The EHRC is not an accredited NHRI with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).¹⁰⁷

7.5.2 The Special Rapporteur on Prisons' visit to Ethiopia

The SRP visited nine prisons, two police stations and two prison farms. The SRP was satisfied with cooperation from authorities and did not note any significant obstacles.

Contrary to expectations, the SRP found conditions in Ethiopian prisons to be generally satisfactory. The SRP observed that at one police station there were detainees allegedly beaten by police, but made no recommendations in this regard. It made no mention of torture, other ill-treatment or arbitrary arrest, and goes as far as to say:

¹⁰³ The Namibian Correctional Services Training College, which was established by the Ministry of Safety and Security in 2005, introduced new programmes for training and enhancing capacity-building of correctional officers. See 'Namibia: New Prison College for Omaruru' *New Era*, 3 April 2013, <http://allafrica.com/stories/201304030780> Accessed 20 June 2013

¹⁰⁴ 'Namibia remains a torture citadel,' *NamRights*, 26 June 2012 <http://www.nshr.org.na/index.php?module=News&func=display&sid=1826> Accessed on 20 June 2013

¹⁰⁵ The SRP also visited South Africa in 2004

¹⁰⁶ In its 2012 report, the EHRC noted the total number of detainees to be 88 610, of which 2 700 were women.

¹⁰⁷ The accreditation system under the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is discussed in the Part C of this paper.

In the midst of all these complaints, the prisoners are generally happy with the way they are being treated, and: -

*Generally, prisons in Ethiopia are in good condition. The relationship between the prisoners and the prison authorities is good. There is an impression that prisoners believe that the conditions under which they are living is the best the government can offer and as such are contented with their conditions.*¹⁰⁸

The following observations and recommendations made by the SRP in 2004 and the Ethiopian State's subsequent, observable reaction to date, will be used as indicators to assess the value of the visiting mechanism:

- **Serious overcrowding:** The SRP found overcrowding at the majority of the detention centres visited. It noted that most of the prisons were never built for that purpose and were simply converted into prisons. Thus, there is no indication of the official capacity of particular prisons.¹⁰⁹ Subsequent reports, some as recent as 2012, indicate that overcrowding persists and not much is being done in the way of alternative sentencing.¹¹⁰
- **Large number of remand prisoners:** The Ethiopian justice system requires appearance in court within 48 hours of arrest, but the investigating officer may request the court to extend this period any number of times, which results in some persons being detained for more than one month without being charged.¹¹¹
- **Extremely poor sanitation in police cells:** The SRP was concerned specifically with the lack of water, soap and ventilation in cells. At the time of the visit, pre-trial prisoners often had no access to baths and developed skin conditions.¹¹² In a 2013 report, Amnesty International recorded poor sanitation and persistent problems with access to water.¹¹³ This supports the ECHR's finding that sanitation generally remains problematic.¹¹⁴ Intervention by the ICRC improved access to water in some prisons.¹¹⁵
- **No blankets and mattresses:** Blankets and mattresses are not provided and detainees must arrange for their own bedding.¹¹⁶
- **Improve external oversight:** Discipline in Ethiopian prisons is self-administered by prisoners to a large extent.¹¹⁷ Each prison has an internal Discipline Committee made up of detainees, elected by their peers. If a rule is broken, the Prisoners' Justice Committee tries the person and if found guilty the Prisoners' Discipline Committee metes out the punishment (such as cleaning floors, toilets, etc.). The authorities are not directly involved in discipline, but will be called if the offence is serious.¹¹⁸ By way of another self-appointed committee, the prisoners are in charge to allocate cells to new prisoners. Oddly enough, the SRP did not express great concern with the fact that tasks such as the management of disciplinary measures and allocation of cells are left to prisoners, nor did it observe that this practice would contravene the United Nations Standard Minimum Rules.¹¹⁹ It merely directed that *prison officials should be more involved in monitoring the welfare of prisoners and not leave matters to the committees.*¹²⁰

108 Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p. 28, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013

109 Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p. 24, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013

110 Committee Against Torture (2010) *Consideration of reports submitted by States parties under Article 19 of the Convention: Concluding observations of the Committee against Torture, Ethiopia*, CAT/C/ETH/CO/1, paragraph 26, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.ETH.CO.1.pdf> Accessed 22 July 2013; See further the Ethiopian Human Rights Commission (2012) *Human Rights* <http://www.ehrc.org.et/LinkClick.aspx?fileticket=luE7TO6QzbQ%3d&tabid=117> Accessed 22 July 2013

111 Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p. 24, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013; The State's practice of keeping prisoners without charge is repeated in the US Department of State Report, Bureau of Democracy, *Human Rights and Labour, Ethiopia: 2004*, published on 28 February 2005, p.6 to 7

112 Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p. 29, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013

113 Amnesty International Report 2013: *The State of the World's Human Rights*, p.124, http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf Accessed 2 July 2013

114 Ethiopian Human Rights Commission (2012) *Human Rights Monitoring and Protection in Ethiopian Prisons, Primary Report*, p. iv & 109, <http://www.ehrc.org.et/LinkClick.aspx?fileticket=luE7TO6QzbQ%3d&tabid=117> Accessed 22 July 2013

115 International Community of the Red Cross, Ethiopia: Annual report 2012, p.2

116 From 2004 – 2012 the situation remains the same. Ethiopian Human Rights Commission, *Human Rights Monitoring and Protection in Ethiopian Prisons, Primary Report*, 2012, p. 117, <http://www.ehrc.org.et/LinkClick.aspx?fileticket=luE7TO6QzbQ%3d&tabid=117> Accessed 22 July 2013

117 This practice is in contravention of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

118 Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p. 15, 26 & 46, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013

119 Rule 28.

120 See the full discussion of conclusion and recommendations of the SRP in Special Rapporteur on Prisons and Conditions of Detention in Africa (2004) *Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia*, p.44 – 56, <http://www.achpr.org/states/ethiopia/missions/prisons-2004/> Accessed 22 July 2013

At the time of the SRP's visit, the EHRC did not exist, but other international organisations such as the ICRC, Prison Reform International and UN agencies were active in the country. The SRP recommended to the State that it draw on these for support in upholding human rights standards in prisons. However, in the same year and despite various successful interventions by the ICRC, Ethiopian authorities progressively withdrew the ICRC's access to federal places of detention. It obliged the organisation to suspend its activities in Somali Regional State in 2007.¹²¹ The ICRC resumed its activities in Ethiopian prisons in 2011 and carried out inspections to 20 regionally-run prisons in Afar, Tigray, Amhara and Oromia. It also monitored the welfare of 66 Eritrean prisoners of war captured during clashes between the Eritrean and Ethiopian defence forces. Its reports, which are confidential, were submitted to the relevant authorities.¹²² Most recently, the European Parliament Subcommittee for Human Rights was denied access to the Kality prison, which is known to hold political prisoners.¹²³

7.5.3 Conclusion

Without questioning the integrity of the SRP, it is curious to note that the findings of a number of independent human rights authorities contradict those of the SRP and to some extent, those of the EHRC.

In the same year of the SRP's visit, the US Department of State released a report which painted a substantially different picture. It noted that the physical abuse of detainees in police detention custody was a common occurrence and also highlighted other problems, such as unlawful killings by security forces, beatings, torture, and mistreatment of detainees – especially political prisoners and persons sympathetic to the opposition, and the detention of large numbers of people awaiting trial.¹²⁴

From its 2012 report, it is concluded that the EHRC enjoys public support and free access to prisons. It is noted with interest that during a visit of 114 places of detention, the existence of police brutality, torture or other forms of ill-treatment is not mentioned. In fact, the EHRC found that none of the allegations of arbitrary beatings, or the exercise of disciplinary treatment, or any other complaints of ill-treatment, fall within the scope of the definition of torture and other ill-treatment as per UNCAT. Both the SRP and the ECHR's reports are silent on this issue, despite evidence to the contrary:

- Human Rights Watch reports the use of underground or secret and makeshift prisons by the military in the Gambela region.¹²⁵
- During 2013 Amnesty International documented torture and other forms of ill-treatment of prisoners to be widespread, particularly during the interrogation stage. Confessions obtained under duress are admissible in court.¹²⁶
- The US Department of State's report of 2012 considers conditions in prison and pre-trial detention centres to be harsh and, in some cases, life threatening. According to information released by the Ministry of Health, nearly 62% of inmates in various jails across the country suffered from mental health problems as a result of solitary confinement, overcrowding and lack of adequate services.¹²⁷
- Human Rights Watch recorded in 2011 that political prisoners were rounded up and confined to the pre-trial detention facility at the Federal Police Crime Investigation Department, also known as Maekelawi, where torture is said to be common.¹²⁸ It noted: *No independent domestic or international organisation has access to all of Ethiopia's detention facilities; it is impossible to determine the number of political prisoners and others arbitrarily detained or their condition.*
- CAT expressed its concern over numerous, on-going and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military. It also raised concerns about the State's failure to afford safeguards to all detainees from the outset of their detention.¹²⁹

121 International Committee of the Red Cross, *Ethiopia: ICRC activities in 2010 benefit prisoners, separated families and disabled people*, 31 March 2011, <http://www.icrc.org/eng/resources/documents/update/2011/ethiopia-update-2011-04-07.htm> Accessed 24 July 2013

122 International Committee of the Red Cross, Ethiopia: Annual report 2012, <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-ethiopia.pdf>

123 'Ethiopia: European Human Rights Committee Denied Access to Ethiopian Prison,' *Voice of America*, 17 July 2013, <http://allafrica.com/stories/201307180193.html>

124 US Department of State Report, Bureau of Democracy, *Human Rights and Labour, Ethiopia: 2004*, <http://www.state.gov/j/drl/rls/hrrpt/2004/41603.htm> Accessed 20 July 2013

125 Human Rights Watch (2012) *Ethiopia: Army Commits Torture, Rape Gambella Atrocities Follow Attack on Commercial Farm; New 'Villagization' Abuses*, 28 August 2012, <http://www.hrw.org/news/2012/08/28/ethiopia-army-commits-torture-rape> Accessed 28 July 2013

126 Amnesty International Report 2013: *The State of the World's Human Rights*, p.124, http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf Accessed 2 July 2013

127 US Department of State, Bureau of Democracy, Human Rights and Labour, *Ethiopia 2012: Human Rights Report* available at <http://www.state.gov/documents/organization/204330.pdf> Accessed 22 July 2013

128 Human Rights Watch, *World Report 2012: Ethiopia*, <http://www.hrw.org/world-report-2012/ethiopia> Accessed 28 July 2013

129 Committee Against Torture (2004) *Consideration of reports submitted by States parties under Article 19 of the Convention: Concluding observations of the Committee against Torture, Ethiopia*, CAT/C/ETH/CO/1, paragraph 12, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.ETH.CO.1.pdf> Accessed 22 July 2013

Such observations are of a very serious nature and neither the SRP's report of 2004, nor the ECHR's report of 2012, speaks to these issues. Nor is any urgent action or measures proposed to prevent such violations from occurring. Despite the SRP's observation that 'there is a general expression of good political will in government, at both federal and regional level, to improve the conditions of persons deprived of their liberty', the State's lack of response to the request for further information on prison conditions and the situation of political prisoners was expressly noted by the ACHPR in 2010.¹³⁰

With regards to domestic oversight, the CAT observed that the State seems non-committal towards the recommendations made. A contradiction was noted between the State's reports and that of the ICRC with regards to access to ordinary detention centres.¹³¹

The majority of the SRP's recommendations to Ethiopia remain unfulfilled. Except for the establishment of a domestic oversight body in the form of the ECHR, none of the selected recommendations were implemented. The work of the EHRC could certainly be of value, if the necessary cooperation from the State could be achieved. However, there are certain issues which are ignored by the ECHR and if this is the result of undue influence by the State, any impact or legitimacy that the EHRC might have, will be jeopardised.

7.6 Conclusions on the Special Rapporteur on Prisons and Conditions of Detention

In both of the above examples, the SRP's visit did not have a direct or strong impact on the states' penal systems. In both cases, isolated improvements were made subsequent to the publication of the SRP's findings. In the case of Namibia, it appears that any positive changes were the result of a combination of factors and that explicit compliance with the recommendations of the SRP was not a priority. In the case of Ethiopia, there appears to be almost no change. Furthermore, it seems that the SRP's report fails to address many of the international community's most pressing concerns. Besides the above examples, the fact that the last country visit was in 2004 greatly undermines the value of the mechanism.

The most apparent limitations to the fulfilment of the SRP's mandate include funding,¹³² the lack of necessary will on the part of state parties, and the inability to deliver on its mandate.¹³³

At its inception, the office of the SRP was funded and supported administratively by an NGO, Penal Reform International. Now, the SRP's function is restricted by a lack of funding – especially to carry out comprehensive country visits. The ACHPR is funded by the African Union and its mandate has been restricted by budgetary constraints in past years.¹³⁴

The successful implementation of the recommendations made by the SRP is essentially the prerogative of the particular state party. The state is typically influenced into action by international pressure to comply with its international law commitments and/or its bona fide intention and goodwill to adopt a human rights-based approach to improve conditions in its places of detention.

Although visits by regional bodies draw attention to the treatment of detained persons and serve as a record of events and conditions, the successful implementation of the recommendations will essentially depend on the existence, extent and adherence to domestic legislation. The establishment and use of national oversight mechanisms is a necessity for the implementation of such recommendations, as the SRP on its own, does not have the authority or the means to monitor implementation of its recommendations on a continuous basis. Lastly, NGOs and civil society play an important role in ensuring that the recommendations are implemented although, typically due to limited resources, such groups may have a lesser impact on the national situation.

130 African Commission on Human and Peoples Rights (2010) *Consideration of reports submitted by States parties under Article 62 of the African Charter on Human and Peoples' Rights: Concluding observations of the initial, 1st, 2nd, 3rd and 4th reports of the Federal Democratic Republic of Ethiopia*, p.8

131 Committee Against Torture (2004) *Consideration of reports submitted by States parties under Article 19 of the Convention: Concluding observations of the Committee against Torture, Ethiopia*, CAT/C/ETH/CO/1, paragraphs 10 & 13, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.ETH.CO.1.pdf> Accessed 22 July 2013

132 The problem of funding was addressed by Mr Mumba Malila at the ACHPR's 40th Ordinary Session, 15th – 29th November 2006. See Special Rapporteur on Prisons and Conditions of Detention in Africa (2006) *Activity Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, <http://www.achpr.org/sessions/40th/intersession-activity-reports/prisons-and-conditions-of-detention/> accessed 1 August 2013

133 Hansungule, M. (2009) *African courts and the African Commission on Human and Peoples Rights*, Bosl, A. & Diescho, J. (eds), p. 251

134 Hansungule, M. (2009) *African courts and the African Commission on Human and Peoples Rights*, Bosl, A. & Diescho, J. (eds), p.257

8. The Committee for the Prevention of Torture in Africa

8.1 Background

The Committee for the Prevention of Torture in Africa (CPTA), originally known as the *Robben Island Guidelines Monitoring Committee*, was established in 2002 by the ACHPR at its 35th Ordinary Session. The Robben Island Guidelines (RIG) is a directive to states which sets out best practices for preventing torture and ill-treatment. It is not a treaty which is adopted or ratified and therefore is not an enforceable instrument. The objective of the RIG is to assist states to meet their national, regional and international obligations for the effective enforcement of the prohibition and prevention of torture.¹³⁵ The objective of the RIG has been described as follows:

*The RIG was developed to encourage support within the African region for the OPCAT and the concept of preventive visits to all places of detention it advocates. Therefore the origin of the RIG stems from the OPCAT and consequently there is a natural potential for synergy between the two instruments.*¹³⁶

The RIG provides for the establishment of the Follow-up Committee, comprising the African Commission, the Association for the Prevention of Torture and any prominent African experts as the Commission may determine.¹³⁷ The Follow-up Committee (officially known as the Robben Island Guidelines Monitoring Committee) came into being two years after the adoption of the RIG, in 2004. In 2009, the name of the body was changed to the CPTA - without amendment to its mandate.

8.2 The mandate and work of the Committee for the Prevention of Torture in Africa

Essentially, the CPTA is a promotional body and does not have the duty *per se* to function as a visiting mechanism. Thus far, it had indeed not acted as such, with the exception of a promotional visit to Mauritania in 2012, during which it visited three detention facilities in Nouakchott.¹³⁸ It made various observations and recommendations with regards to the prohibition of torture and the improvement of conditions of detention. These issues, along with slavery, were identified as areas of concern.¹³⁹

Due to a lack of funding, the body was inactive at the time of its inception. It held its first meeting at the University of Bristol in 2005, when it decided upon its internal rules and procedures. The next meeting took place in 2008 in Cape Town, at which its progress was reviewed and a plan of action decided upon.¹⁴⁰ The Committee has organised training seminars for law enforcement officials and various stakeholders in Nigeria (2008), Liberia (2009), Benin (2009) and Cameroon (2012). It organised a regional conference on the OPCAT in Dakar (2010), a seminar on the effective functioning of the yet-to-be-established Senegalese National Preventive Mechanism (2011), and a commemorative seminar as part of the 10th anniversary of the adoption of the Robben Island Guidelines in Johannesburg, South Africa (August 2012).¹⁴¹

¹³⁵ African Commission on Human and Peoples' Rights (2002) *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa: The Robben Island Guidelines*, p. 4

¹³⁶ University of Bristol (2012) *Human Rights Implementation Centre 10 Years of the Robben Island Guidelines and the Optional Protocol to the UN Convention against Torture (OPCAT) – a time for synergy*, [http://www.google.co.za/#q=University+of+Bristol+\(2012\)+Human+Rights+Implementation+Centre+10+Years+of+the+Robben+Island+Guidelines+and+the+Optional+Protocol+to+the+UN+Convention+against+Torture+\(OPCAT\)+%E2%80%93+a+time+for+synergy+&dq=University+of+Bristol+\(2012\)+Human+Rights+Implementation+Centre+10+Years+of+the+Robben+Island+Guidelines+and+the+Optional+Protocol+to+the+UN+Convention+against+Torture+\(OPCAT\)+%E2%80%93+a+time+for+synergy+&gs_l=serp...2199.2964.0.3291.1.1.0.0.0.0.0.0.0.0....1c.1.23.serp..1.0.0.nlKCG-dKkMI&bav=on.2.or.&fp=b3adec84e3304d6&biw=1024&bih=595](http://www.google.co.za/#q=University+of+Bristol+(2012)+Human+Rights+Implementation+Centre+10+Years+of+the+Robben+Island+Guidelines+and+the+Optional+Protocol+to+the+UN+Convention+against+Torture+(OPCAT)+%E2%80%93+a+time+for+synergy+&dq=University+of+Bristol+(2012)+Human+Rights+Implementation+Centre+10+Years+of+the+Robben+Island+Guidelines+and+the+Optional+Protocol+to+the+UN+Convention+against+Torture+(OPCAT)+%E2%80%93+a+time+for+synergy+&gs_l=serp...2199.2964.0.3291.1.1.0.0.0.0.0.0.0.0....1c.1.23.serp..1.0.0.nlKCG-dKkMI&bav=on.2.or.&fp=b3adec84e3304d6&biw=1024&bih=595) Accessed 1 August 2013

¹³⁷ African Commission on Human and Peoples' Rights (2002) *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa: The Robben Island Guidelines*, p.7

¹³⁸ African Commission on Human and Peoples' Rights, Report of the Promotion Mission of the Committee for the Prevention of Torture in Africa to the Islamic Republic of Mauritania, 26 March – 1 April 2012, paragraph 73, http://www.achpr.org/files/sessions/12th-ao/mission-reports/promotion_mission-2012/mission_report_mauritania_cpta_eng.pdf Accessed 5 October 2013

¹³⁹ African Commission on Human and Peoples' Rights, Report of the Promotion Mission of the Committee for the Prevention of Torture in Africa to the Islamic Republic of Mauritania, 26 March – 1 April 2012, p. 41 – 44 http://www.achpr.org/files/sessions/12th-ao/mission-reports/promotion_mission-2012/mission_report_mauritania_cpta_eng.pdf Accessed 5 October 2013

¹⁴⁰ Long, D. & Muntingh, L. (2010) 'The Special Rapporteur on Prisons and Conditions of Detention in Africa and the Committee for the Prevention of Torture in Africa: The Potential for Synergy or Inertia?' *SUR International Journal on Human Rights*, Vol. 7 No.13, http://www.surjournal.org/eng/conteudos/getArtigo13.php?artigo=13.artigo_05.htm Accessed 21 June 2013

¹⁴¹ Committee for the Prevention of Torture in Africa, Periodic Progress Report, Presented to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights, 9 – 23 April 2013, http://www.achpr.org/files/news/2013/04/d82/periodic_progress_report_of_the_committee_for_the_prevention_of_torture_in_africa_eng.pdf Accessed 1 August 2013, p.7

During its promotional missions, the CPTA endeavours to engage with such stakeholders as governments, civil society, NHRIs, and the judiciary. It has undertaken such missions to Uganda (2009), Benin (2009), Algeria (2010), the DRC (2011) and Mauritania (2012). It has attributed the promulgation of the legislation criminalising torture in the DRC and the ratification of OPCAT by Mauritania to its interventions.¹⁴²

8.3 Conclusion

Although the CPTA is not known to conduct regular visits to places of detention, the mandate is broad enough to include on-site visits, as is the case with Mauritania. The CPTA appears to be a strong advocate in the region to urge states to sign, ratify and implement the OPCAT and UCAT. As such it encourages states to develop domestic visiting mechanisms and to use existing structures.

¹⁴² Committee for the Prevention of Torture in Africa, Periodic Progress Report, Presented to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights, 9 – 23 April 2013, p. 6 http://www.achpr.org/files/news/2013/04/d82/periodic_progress_report_of_the_committee_for_the_prevention_of_torture_in_africa_eng.pdf Accessed 1 August 2013



DOMESTIC VISITING MECHANISMS

9. National Human Rights Institutions

A National Human Rights Institution (NHRI) is an administrative body established under the domestic laws of a particular country, with the main objective of protecting human rights. The NHRI usually functions in the form of a National Human Rights Commission or an ombudsman. A body qualifies as an NHRI upon complying with certain internationally recognised standards, known as the Paris Principles.¹⁴³ Compliance with these principles is assessed by the Subcommittee on Accreditation, a division of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).¹⁴⁴ The ICC is a subcommittee of the UN, which officially accredits the body as an NHRI by granting it ‘accredited status’ or ‘A-status.’¹⁴⁵ An NHRI may either have A, B or C-status with the ICC. B-status means the body is not fully compliant with the Paris Principles whilst C-status indicates non-compliance. A-status allows the body easier access to UN treaty bodies and other organs.¹⁴⁶ In Africa, there are 18 states whose NHRIs have A-status. Only Namibia makes use of an ombudsman as a form of NRHI.¹⁴⁷

Measuring the effectiveness of NHRIs is complex since they hold such broad mandates, but there are certain indicators which may be applied universally to NHRIs to measure their success as institutions. These include: the accessibility of its functions to the public; public respect for the functions of the body, which renders its actions legitimate; quality, skills diversity and independence of members. The body should be able to monitor compliance with its recommendations and should react to systematic violations of human rights. Its power of enforcement lies in the ability to deal with complaints speedily and satisfactorily, and the power to refer complaints to the courts.¹⁴⁸

Examples of NHRI in two African countries will be discussed below to describe the implementation of the NHRI’s mandate as a detention visiting mechanism and the observable effects thereof. These are the Zambian Human Rights Commission and the Ombudsman of Namibia.

9.1 The NHRI in Zambia: an examination of the Zambian Human Rights Commission

9.1.1 Country information: Zambia

Ratified UNCAT	7 October 1998
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	87 (April 2012)
Total number of prisoners	17 000 (April 2012) ⁷
National prison capacity	7 500 (2009)
Pre-trial detainees	29% (April 2012)
Women	3% (April 2012)
Children	3% (April 2012)

143 The Paris Principles are international rules which prescribe the characteristics and govern the status and functions of national institutions for the protection and promotion of human rights. The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris on 7 to 9 October 1991. They were adopted by the United Nations Human Rights Commission and by the UN General Assembly.

144 The ICC coordinates the relationship between NHRIs and the United Nations human rights system. It is unique as the only non-UN body whose internal accreditation system, based on compliance with the 1993 Paris Principles, grants access to UN committees.

145 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Working Group on General Observations (2012) *Development of a new general observation on assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms* (Draft), 1 May 2012, <http://nhri.ohchr.org/EN/ICC/BureauMeeting/052013/Item%206%20ICC%20Finance%20%20Administration/Assessing%20NHRIs%20as%20NPM%20-%20EN.DOCX> Accessed 25 June 2013

146 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Chart of the Status National Institutions, Accreditation Status as of 11 February 2013*, http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf

147 African states with fully accredited NHRIs include Burundi, Cameroon, Egypt, Ghana, Kenya, Malawi, Mauritania, Mauritius, Morocco, Namibia (ombudsman), Nigeria, Rwanda, Sierra Leone, South Africa, Tanzania, Togo, Uganda and Zambia.

148 United Nations Office of the High Commissioner for Human Rights, International Council on Human Rights (2005) *Assessing the Effectiveness of National Human Rights Institutions*

9.1.2 Legal framework and mandate

The Constitution of the Republic of Zambia and laws underlying the criminal justice system prohibit the use of torture and other forms of ill-treatment. It grants the right to appear in court within 24 hours of arrest and the right to a fair trial.¹⁴⁹

The Zambian Human Rights Commission (ZHRC) was founded by the Human Rights Commission Act, (Act No.39 of 1996). The ZHRC consists of seven Commissioners appointed by the President, and headed by a chairperson and vice chairperson.¹⁵⁰ The ZHRC has A-status with the ICC. In addition to the ZHRC, the following national office bearers have the power to carry out on-site inspections at places of detention:¹⁵¹ ministers; the Commission for Investigations;¹⁵² judges; religious bodies; and/or the probation officer or representatives of a prisoners' aid society. It is possible for a minister to appoint official visitors with the duty to inspect a particular prison at least every two months.

The ZHRC has a broad mandate to investigate allegations of human rights violations of any nature, as well as accounts of maladministration of justice. Article 9(d) of the Human Rights Commission Act 1996 specifically authorises it to visit places of detention or related facilities so as to assess and inspect conditions of detention. The ZHRC has the power to make various recommendations such as: the punishment of any officer found to have perpetrated a human rights abuse;¹⁵³ the release of a detainee; the payment of compensation or it may direct the complainant to seek redresses in a court of law.¹⁵⁴ The ZHRC submits its recommendations to the relevant authorities, who in turn, have to report to the ZHRC within 30 days of such submission on the actions it had undertaken.¹⁵⁵

The ZHRC is permitted unrestricted access to any place of detention, including police cells, with or without prior notice. The legal framework does not prescribe the number or frequency of visits it must carry out. From its reports it is not clear how visits are planned nor at which intervals these take place. Given the size of the country, the number of detention facilities and the dates of the most recent visits, it is concluded that on-site visits to any one institution will not be regularly or frequently carried out by the ZHRC.¹⁵⁶

The ZHRC published three prison visit reports: *The Lusaka Prisons Report (2004)*, *The Central Province Prison Report (2005)* and *The Northern Province Prisons Report (2009)*. In 2009 it carried out visits to three juvenile correctional facilities.¹⁵⁷ The publication of its annual reports for 2011 and 2012 has been delayed due to government bureaucracy.¹⁵⁸ The ZHRC can receive complaints from individuals, submitted either verbally or in writing.¹⁵⁹ However, it was observed that few complaints are actually made. In the exercise of its functions, the ZHRC may issue summons or orders requiring the attendance of any authority or request any subject matter.

149 The Constitution of Zambia Act, 28 May 1996, Cap 1. Full text is available at <http://www.zambialii.org/zm/legislation/consolidated-act/1> Accessed 26 July 2013

150 Section 5 of the Human Rights Commission Act, 1996 (Act No.39 of 1996) (The Laws of Zambia)

151 Prisons Act, 1965 (Act No.56 of 1965) (The Laws of Zambia) Chapter 97 (Vol 7) Part XIX Sections 123 – 132. Full text is available at http://zamlaws.zambia.co.zm/laws_view.php?chapter=97 Accessed 25 July 2013

152 The Commission for Investigations is a body similar to an ombudsman, but with less powers. It is charged with investigating cases of maladministration or abuse of authority. It has no independent visiting function. See Electoral Institute for Sustainable Democracy in Africa, <http://www.eisa.org.za/WEP/zamagency2.htm> Accessed 29 July 2013

153 Human Rights Commission Act, 1996 (Act No.39 of 1996) (Laws of Zambia) Section 10(2)(d)

154 Human Rights Commission Act, 1996 (Act No.39 of 1996) (Laws of Zambia) Section 10(4)(a) – (c)

155 Human Rights Commission Act, 1996 (Act No. 39 of 1996) (Laws of Zambia) Section 13(1) – (2)

156 The Zambian Prison Service governs a total of 87 facilities nationwide and its most recent prison report is dated 2008. See US Department of State, Bureau of Democracy, Human Rights and Labour, *Zambia 2012 Human Rights Report*, p.3, <http://www.state.gov/documents/organization/204393.pdf> Accessed 27 July 2013

157 Zambian Human Rights Commission, Office of the Commissioner for Children (2009) *Children's Correctional Facilities Tour Report*, http://www.hrc.org.zm/media/childrens_correctional_facilities_tour_report.pdf Accessed 28 July 2013

158 US Department of State, Bureau of Democracy, Human Rights and Labour, *Zambia 2012 Human Rights Report*, p. 16, <http://www.state.gov/documents/organization/204393.pdf> Accessed 28 July 2013

159 Human Rights Commission Act, 1996 (Act No.39 of 1996) (Laws of Zambia) Section 10(1)(b)

9.1.3 The work of the Zambian Human Rights Commission

Judging from extant literature, conditions of detention in Zambia are particularly harsh. Some of the main issues are discussed below, which will be used as a benchmark to assess the impact of the work of the ZHRC:

- **Severe overcrowding:** In 2005, the ZHRC recommended certain measures to reduce overcrowding, such as the pardoning of the aged and sick, granting of bail or parole, and the release of children.¹⁶⁰ In 2012, the Government acknowledged the persistence of severe overcrowding in its prisons, despite having renovated the Livingstone Central Prison and allocated funds for the construction of a modern maximum security prison in Mwembeshi. The State ordered the further construction of prisons in the Western, Northern and Eastern provinces, as part of the initiative to build prisons in all ten provinces.¹⁶¹ It was indicated that a number of prisoners were released by presidential pardon and by the National Parole Board, which contributed to reducing overcrowding.¹⁶² Yet in the same year the prison population was still nearly double the official capacity.¹⁶³ In April 2013 the media reported an allocation of substantial funds for improvement and decongestion of prisons.¹⁶⁴
- **Pre-trial detention:** In 2005, the ZHRC listed the frequent loss of dockets, court files, expired warrants of detention and judicial inefficiency as some of the reasons for the large number of remand prisoners. It recommended that the number of magistrates be increased, an inventory taken of prisoners with expired warrants or missing files and that the affected persons be granted access to the justice system.¹⁶⁵ The National Parole Board became operational in 2009.¹⁶⁶ In 2010 it was reported that police detention facilities remained largely unchanged and in some cases had even deteriorated. Most police stations had no separate capacity for women and children. At the Luwingu police station, women waiting to appear in court were kept in the corridors.¹⁶⁷ The average time that a person spent awaiting trial in a police cell has, however, decreased from 39 days in 2006 to eight days in 2011,¹⁶⁸ indicating that significant improvements in the administration of justice were achieved.
- **Prevalence of HIV/Aids and TB:** The ZHRC noted a lack of adequate medical care facilities in most of the prisons and police cells. In 2005 it found 119 inmates sharing shaving equipment in one prison. There was no proper ventilation and rooms were dark, which facilitated the spread of TB.¹⁶⁹ It recommended the provision of antiretroviral treatment and observed that soap and better hygiene would improve the behaviour and morale of detainees and staff.¹⁷⁰ In 2010, medical care in prisons in the North and North Western provinces had not improved except for the Solwezi State Prison where a clinic was built.¹⁷¹ In 2011, the State confirmed that it was taking steps to monitor and reduce the transmission of TB.¹⁷²
- **Inadequate sanitation:** The ZHRC found that inmates did not have access to water and sanitation supplies. Staff accommodation was also very poor at some prisons. In 2010, access to clean water and sanitation had improved in some places, but in general water supplies remained erratic.¹⁷³ At three institutions, the Zambian Prison Service had followed the ZHRC's recommendations and sunk boreholes and installed water tanks.¹⁷⁴

160 Zambian Human Rights Commission (2005) *Central Province Prisons Report*, p. 30 – 32, http://www.hrc.org.zm/media/central_province_prisons_report.pdf Accessed 30 July 2013

161 Human Rights Council, *Report of the Working Group of the Universal Periodic Review: Zambia*, A/HRC/22/13, 31 December 2012, paragraph 22, www2.ohchr.org/english/issues/defenders/docs/A.HRC.13.22.pdf Accessed 29 July 2013

162 Zambia (2012) *Zambia's responses to the list of issues from the Human Rights Committee relating to the Periodic Report on the International Covenant on Civil and Political Rights – Zambia*, paragraphs 22 & 23, http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/zambia_replies90.pdf Accessed 27 August 2013

163 US Department of State, Bureau of Democracy, Human Rights and Labour, *Zambia 2012 Human Rights Report*, p.3, <http://www.state.gov/documents/organization/204393.pdf> Accessed 28 July 2013

164 'Government allocates K7 billion for Prisons Service operations,' *The Lusaka Voice*, 6 April 2013, <http://lusakavoice.com/2013/04/06/zanis-copy-govt-allocates-k7-billion-for-prisons-service-operations/> Accessed 30 July 2013

165 Zambian Human Rights Commission (2005) *Central Province Prisons Report*, p. 7 & 30, http://www.hrc.org.zm/media/central_province_prisons_report.pdf Accessed 30 July 2013

166 Section 113A of Act 16 of the Penal Code 2003 provides for a National Parole Board, which became operational and released prisoner on parole for the first time in 2009. See Zambian Watchdog, *First beneficiaries of parole to be released Wednesday*, 20 July 2009, <http://www.zambianwatchdog.com/first-prisons-to-be-released-on-parole-wednesday/> Accessed 2 August 2013

167 Zambian Human Rights Commission (2010) *Annual Report*, p. 16, http://www.hrc.org.zm/media/hrc_annual_report_2010_low_resolution_pdf_copy.pdf Accessed 30 July 2013

168 Promoting Pre-trial Justice in Africa, Quarterly Newsletter 1, 21 October 2011, http://ppja.org/about-ppja/21-october-2011-ppja-email-newsletter/at_download/file Accessed 28 July 2013

169 Zambian Human Rights Commission (2005) *Central Province Prisons Report*, p.9,14, 28 & 31, http://www.hrc.org.zm/media/central_province_prisons_report.pdf Accessed 30 July 2013

170 Zambian Human Rights Commission (2005) *Central Province Prisons Report*, p. 31, http://www.hrc.org.zm/media/central_province_prisons_report.pdf Accessed 30 July 2013

171 Human Rights Commission (2010) *Annual Report*, p.16, http://www.hrc.org.zm/media/hrc_annual_report_2010_low_resolution_pdf_copy.pdf Accessed 30 July 2013

172 Zambia (2012) *Zambia's responses to the list of issues from the Human Rights Committee relating to the Periodic Report on the International Covenant on Civil and Political Rights – Zambia*, paragraphs 22 & 23, http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/zambia_replies90.pdf Accessed 27 August 2013

173 Zambian Human Rights Commission (2010) *Annual Report*, p. 13 – 15, http://www.hrc.org.zm/media/hrc_annual_report_2010_low_resolution_pdf_copy.pdf Accessed 30 July 2013

174 Zambian Human Rights Commission (2010) *Annual Report*, p.16, http://www.hrc.org.zm/media/hrc_annual_report_2010_low_resolution_pdf_copy.pdf Accessed 30 July 2013

- **Inadequate diet:** Some of the most common complaints received by the ZHRC relate to a shortage of food supplies and a monotonous diet. In December 2012, a case challenging poor prison conditions and the lack of adequate food provided to HIV-positive prisoners on treatment in the Lusaka Central Prison was brought in Zambia's High Court.¹⁷⁵ The matter was heard again in March 2013, but no reference could be found on the final outcome and it is unclear whether medical conditions improved as a result.¹⁷⁶
- **Under-resourced:** It was noted that the number of staff within the Prison Service did not increase substantially for about 40 years. In 1964 there were 1 800 personnel, while in 2004 there were 1 856 personnel,¹⁷⁷ whereas the prison population had increased significantly.

9.1.4 Conclusion

It is clear from the ZHRC's findings that Zambia has a long way to go for its penal system to comply with internationally accepted standards. Nonetheless the fact that the ZHRC has paid particular attention to conditions in prisons and published several reports on its findings is regarded as an important step forward in drawing attention to the plight of prisoners. The reports set good baseline data from which to proceed. The ZHRC is generally considered to exercise its mandate independently and without much interference,¹⁷⁸ despite observations that prison authorities are not always cooperative and may cause deliberate delays in granting access to information.¹⁷⁹ Accounts from interviews with detainees and prison staff indicate that the ZHRC is a well-respected body, which is known throughout the country and regarded as effective in preventing ill-treatment.¹⁸⁰

Essentially, the work of the ZHRC has not received the attention it is due and Zambian prisons are neglected when it comes to the allocation of resources. During the first quarter of 2012 Zambia's Vice-President, Guy Scott, visited the Mukobeko maximum security prison on the orders of the President. It was the first visit by a head of state to the facility since 1964. Scott was shocked at the conditions, commenting that "we have to find a solution because this is hell on earth".¹⁸¹ He declared the conditions to be inhuman and promised that the Government would try to improve the situation.¹⁸² The visit generated considerable media attention and the ZHRC was invited to comment.

Despite the mentioned challenges, the ZHRC continues to carry out its mandate. Through its reporting, the ZHRC successfully and openly raises concern about a broad range of issues. It is the most comprehensive source of records of detention conditions in Zambia. It makes valid observations and recommendations and some of these have led to improvements. Unfortunately, the ZHRC is limited by its ability to enforce its recommendations and its mandate does not allow for the initiation of legal action.¹⁸³

10. The Office of the Ombudsman

An Ombudsman is an individual appointed by government who acts as an independent intermediary between the state and the public, by investigating and addressing complaints of maladministration and rights violations. The mandate of an Ombudsman is usually broad and extends to all spheres of government and all types of rights abuses.

175 *Mwanza and Another v Attorney General*, Zambian High Court (Case not yet reported)

176 South African Litigation Centre, *A summary of Mwanza and Another v Attorney General*, 5 December 2012, <http://www.southernafricalitigationcentre.org/2012/12/05/zambia-high-court-hears-case-on-rights-of-hiv-positive-prisoners-update-from-the-courtroom/> Accessed 28 July 2013

177 Institute for Security Studies (2009) *The Criminal Justice System in Zambia*, Monograph No.159, p.147, <http://www.issafrica.org/topics/crime-and-criminal-justice/01-apr-2009-monograph-no-159-the-criminal-justice-system-in-zambia-enhancing-the-delivery-of-security-in-africa-african-human-security-initiative> Accessed 20 June 2013

178 US Department of State, Bureau of Democracy, Human Rights and Labour, Zambia 2012 *Human Rights Report*, p.16, <http://www.state.gov/documents/organization/204393.pdf> Accessed 28 July 2013

179 Muntingh, L. Open Society Initiative for Southern Africa (2011) *Pre-trial detention in Zambia*, Chapter 2: Methodology, p. 20

180 Zambia (2012) *Zambia's responses to the list of issues from the Human Rights Committee relating to the Periodic Report on the International Covenant on Civil and Political Rights – Zambia*, paragraphs 22 & 23, http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/zambia_replies90.pdf Accessed 27 August 2013

181 'Zambia's Scott shocked by state of prisons,' *News24*, 21 May 2012, <http://www.news24.com/Africa/News/Zambias-Scott-shocked-by-state-of-prison-20120521> Accessed 2 August 2013

182 'Mukobeko is hell on earth, says Scott,' *Zambia Post Online*, 8 April 2012, http://www.postzambia.com/post-read_article.php?articleId=26642 Accessed 2 August 2013

183 Committee Against Torture (2008) *Consideration of reports submitted by States Parties under Article 19 of the Convention, Concluding observations of the Committee against Torture, Zambia*, CAT/C/ZMB/CO/2, 26 May 2008, paragraphs 1,5, 8 & 15 <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ZMB-CO2.pdf> Accessed 27 August 2013

10.1 The Ombudsman in Namibia

10.1.1 Legal framework and mandate

The Office of the Ombudsman is founded by the Republic of Namibia and its terms of office are set out in the Ombudsman Act, 1990 (Act No.32 of 1990).¹⁸⁴ The Ombudsman, who is an independent person with an appropriate legal profile, is appointed by the President on the recommendation of the Judicial Service Commission.¹⁸⁵ Namibia's Ombudsman has A-status with the ICC.¹⁸⁶ The Ombudsman is authorised to investigate individual complaints of violations of fundamental rights, but also allegations of the abuse of power, poor service delivery and a range of complaints unrelated to human rights. It has the power to bring proceedings to court on behalf of a complainant and it may seek an interdict to enforce compliance with legislation. It may also challenge legislation as unreasonable or *ultra vires*. It is obliged to report annually to the National Assembly on the exercise of its powers.¹⁸⁷

The Ombudsman derives the power to conduct visits to places of detention from the Ombudsman Act 1990, which allows it to investigate alleged violations by administrative organs of state, such as the defence force, police and prison service.¹⁸⁸ It is allowed access to all buildings and premises governed by the Namibian State and free access to any information it might need to exercise its function.¹⁸⁹ The Prisons Act, 1998 (Act No. 17 of 1998) contains a list of judicial bodies, mandated to conduct on-site visits, however, the Ombudsman is not listed here.¹⁹⁰

10.1.2 The work of the Ombudsman in Namibia

As mentioned above, the Prisons Act 1998 mandates a number of office bearers to carry out inspections at places of detention in an *ex officio* capacity, including judges, magistrates, ministers and official visitors.¹⁹¹ It appears from Namibia's 2010 periodic review by the ACHPR that the appointed persons have thus far neglected to exercise their functions as prison oversight mechanisms.¹⁹² Solely the Ombudsman has actively assumed this role by conducting a comprehensive inspections of detention centres nationwide in 2006 and follow-up visits to 20 police cells in 2008.

Upon comparing the findings from the follow-up report with the initial report, the Ombudsman noted that pre-trial holding cells at police stations remained in a worse state than prisons. Amongst other things, overcrowding and the spread of TB were particularly problematic. Some cells were subsequently renovated, but at others no efforts were made to improve conditions.¹⁹³ In 2011, the Ombudsman commented that general prison conditions had risen to "acceptable." Although no formal reports were published, the Ombudsman appears to have been monitoring standards of detention since 2008 and had made submissions to the US Department of State on prisoners' diet, sanitation, access to healthcare services and access to adequate potable water.¹⁹⁴

10.1.3 Conclusion

The Ombudsman's initiatives to monitor detention facilities extend beyond its normal course of duties. Namibia's legal framework provides for specific visiting mechanisms other than the Ombudsman. Although the Ombudsman's work in this regard is highly commendable, it appears that it has assumed this role by default, since none of the other monitoring mechanisms actively fulfil this function.

184 Ombudsman Act, 1990 (Act No.32 of 1990). The text is available at <http://www.ombudsman.org.na/about-us/ombudsman-act> Accessed 13 July 2013

185 The Constitution of the Republic of Namibia (1990) Chapter 10, Articles 89 – 94, http://www.wipo.int/wipolex/en/text.jsp?file_id=22289 Accessed 13 July 2013

186 *International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Chart of the status of National Institutions, Accreditation Status as of 11 February 2013*, http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf

187 Section 5 of the Ombudsman Act, 1990 (Act No.32 of 1990). The text is available at <http://www.ombudsman.org.na/about-us/ombudsman-act> Accessed 13 July 2013

188 Section 3(1)(b) of the Ombudsman Act, 1990 (Act No.32 of 1990). The text is available at <http://www.ombudsman.org.na/about-us/ombudsman-act> Accessed 13 July 2013

189 Section 4(1)(b)(ii) – (ii) of the Ombudsman Act, 1990 (Act No.32 of 1990). The text is available at <http://www.ombudsman.org.na/about-us/ombudsman-act> Accessed 13 July 2013

190 Section 112 of the Prisons Act 1998 (No.17 of 1998)

191 Sections 112- 114 of the Prisons Act, 1998 (Act No.17 of 1998). The text is available at <http://www.saflii.org.za/na/other/NAGovGaz/1998/127.pdf> Accessed 13 July 2013

192 Namibia: 3rd Periodic Report, 2002 – 2009, submitted to the African Commission on Human and Peoples' Rights on 1 August 2010, http://www.achpr.org/files/sessions/49th/state-reports/3rd-2002-2009/staterep345_namibia_2010_eng.pdf Accessed 13 July 2013

193 Walters, J., Ombudsman of the Republic of Namibia (2008) *Follow-up report on conditions prevailing at police cells in Namibia*, <http://www.ombudsman.org.na/reports/special-reports> Accessed 13 July 2013

194 US Department of State, Bureau of Democracy, Human Rights and Labour, Namibia 2012: *Human Rights Report*, p.3, <http://www.state.gov/documents/organization/204361.pdf> Accessed 13 July 2013

10.2 The Ombudsman in Lesotho

10.2.1 Country information: Lesotho

Ratified UNCAT	12 November 2011
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	12
Total number of prisoners	2 564 (2012) ⁸
National prison capacity	2 936 (2012)
Pre-trial detainees	16.7% (2012)
Women	3.2% (2012)

10.2.2 Legal framework and mandate

Lesotho has not signed or ratified OPCAT and has no legislation criminalising torture. The Inspectorate of Police and the Police Complaints Authority monitor the performance of the police. The power to inspect prisons and make recommendations for their improvement lies with the Ombudsman.¹⁹⁵ For some time, Lesotho has been considering the establishment of a National Human Rights Commission, but it is not yet in place.

Section 134 (1) of the Constitution of the Kingdom of Lesotho establishes the Office of the Ombudsman, appointed by the King acting upon the advice of the Prime Minister.¹⁹⁶ The Ombudsman Act, (Act No.9 of 1996) empowers the Ombudsman not only to investigate alleged human rights abuses, but to inspect conditions in prisons and make recommendations for improvements.¹⁹⁷

The Ombudsman may investigate any action taken by public officers in the exercise of their administrative duties, upon receipt of a complaint from a member of the public.¹⁹⁸ The Ombudsman functions primarily as an individual complaints mechanism and may receive complaints against all branches of government including the Ministry of Justice and Correctional Services, the Ministry of Defence, the Police and National Security.¹⁹⁹ The mandate of the Ombudsman is broad and not only focused on the abuse of human rights, but extends to public service delivery.²⁰⁰ In the context of detention, the Ombudsman is mandated to enter and inspect police cells, military or prison cells, government hospitals, asylums or other places where persons are deprived of liberty.²⁰¹ It makes remedial recommendations, which, if not adhered to, may lead to a Special Report to Parliament. Beyond its reporting function, it does not seem to have the authority to refer matters for judicial review nor does it dispose of other powers of enforcement.²⁰² The Ombudsman is required to submit an annual report to Parliament.²⁰³

195 The Open Society Initiative for Southern Africa (2013) *Lesotho Justice Sector and the Rule of Law*, http://www.osisa.org/sites/default/files/afriamap_lesotho_justice.pdf Accessed 13 July 2013

196 The Constitution of Lesotho, 1993. Text at http://www.wipo.int/wipolex/en/text.jsp?file_id=216171 Accessed 13 July 2013. See the following website of the Government of Lesotho for a step-by-step explanation of the complaints procedure: <http://www.gov.ls/statutory/ombudsman.php>

197 Ombudsman Act, 1996 (Act No.9 of 1996)

198 The Constitution of Lesotho (1993) Section 135(1) http://www.wipo.int/wipolex/en/text.jsp?file_id=216171 Accessed 13 July 2013

199 Kapa, M., Electoral Institute for Sustainable Democracy in Africa (2009) *Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Office of the Ombudsman in Lesotho*, p.30

200 The Ombudsman's jurisdictional mandate covers five broad areas, namely, injustice and maladministration in the public service; corruption, violation of fundamental human rights and freedoms, and environmental protection. See Section 6 of the Ombudsman Act, 1996 (Act No.9 of 1996)

201 Section 10 of the Ombudsman Act, 1996 (Act No.9 of 1996)

202 Information retrieved from the website of the Ombudsman of Lesotho <http://www.gov.ls/statutory/ombudsman.php> Accessed 13 July 2013

203 Section 16 of the Ombudsman Act, 1996 (Act No.9 of 1996) and section 135(3)(b) of the Constitution of Lesotho, 1993

10.2.3 The work of the Ombudsman in Lesotho

The Ombudsman visited two prisons in 2003 and the most recently published survey of police cells is dated 2004. In 2004 the Ombudsman reported widespread allegations of human rights violations in prisons and recommended disciplinary action against a particular warder who was responsible for abusing prisoners. However, no action was taken with regards to the warder by the disciplinary authority. In 2006, it found that *police cells are not fit for* [occupation by] *human beings*, that the existence of HIV/Aids in prisons is ignored and that ill-treatment is common.²⁰⁴ In 2007, the Ombudsman's report of abuse led to an enquiry, but again, no action was taken against the implicated officers. In 2008, the Ombudsman noted isolated improvements, but continued to raise valid concerns over the lack of preventive measures to stop the spread of communicable diseases.²⁰⁵ The Minister acknowledged the Ombudsman's findings, as far as they related to the appalling conditions within the prisons. He attributed the tardy reactions of the State to budgetary constraints.²⁰⁶ The following evidence of the impact of the Ombudsman's work is recorded in a 2013 report of the Open Society Initiative for Southern Africa:

*Following the report [of the Ombudsman] some correctional institutions began to provide medical services, the quality of food improved, new uniforms were provided, and blankets and bedding were provided. In addition, the Chief Justice also assigned one of the Registrars of the High Court and of the Court of Appeal to check on the number of inmates whose cases were not making progress in the courts. After receiving a report from the Registrar, the Chief Justice reviewed the cases and the circumstances surrounding the delays, and then decided on the best course of action.*²⁰⁷

Reportedly, the Office of the Ombudsman did not receive any complaints from prisoners in 2012 and according to the Lesotho Correctional Services no investigations were conducted during that year. Prisoner complaints were therefore presumably not forwarded to the Ombudsman, or prisoners are unaware of the existence of an external body with which they may lodge complaints.²⁰⁸

10.2.4 Conclusion

The Ombudsman Office is active and appears to exercise its mandate in an independent, transparent and unrestricted manner. Its reporting is valuable to the documentation of the progress of reform in Lesotho. The lack of a dedicated detention oversight mechanism in Lesotho is deeply concerning. Especially since torture and ill-treatment of prisoners appear to be common and unresolved cases result in impunity. The main limitations of the Ombudsman's work include a lack of financial resources and the inaction of government in relation to its recommendations. Adding hereto is the fact that the Ombudsman's mandate is not focused on detention monitoring and it holds no power of enforcement.

11. Visits to places of detention by Non-Governmental Organisations

In countries where a dedicated oversight mechanism or visiting bodies are absent or weak, international and national non-governmental organisations (NGOs) play a valuable role not only by providing humanitarian assistance, but by identifying problems within the detention system, reporting and publishing their findings and engaging in dialogue with authorities to promote lawful practice. This report will briefly examine the role of national NGOs in two countries and their capacity for oversight through visits to detention facilities.

204 African Commission on Human and Peoples' Rights (2006) *Report of the Promotional Mission to the Kingdom of Lesotho*, paragraphs 94 -96, http://www.achpr.org/files/sessions/40th/mission-reports/promo-lesotho-2006/misrep_promo_lesotho_2006_eng.pdf Accessed 13 July 2013

205 Institute for Security Studies (2010) *The Security Sector in Southern Africa*, Monograph No. 174, Edited by Hendricks, C. and Musavengana, T., <http://www.issafrica.org/uploads/Mono174.pdf> Accessed 26 August 2013

206 African Commission on Human and Peoples' Rights, Report of the Promotional Mission to the Kingdom of Lesotho, April 2006, paragraph 36, http://www.achpr.org/files/sessions/40th/mission-reports/promo-lesotho-2006/misrep_promo_lesotho_2006_eng.pdf Accessed 13 July 2013

207 Pholo, M. (2013) A review by Afrimap and the Open Society Initiative for Southern Africa, *Lesotho: Justice sector and Rule of Law*, p.107, <http://www.afrimap.org/english/images/report/AfriMAP%20Lesotho%20Justice%20Main%20web-FINAL.pdf> Accessed 27 August 2013

208 US Department of State, Bureau of Democracy, Human Rights and Labour, *Lesotho 2012: Human Rights Report*, p.3, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> Accessed 17 August 2013

11.1 The work of the Paralegal Services Institute (PASI) in Malawi

11.1.1 Country information: Malawi

Ratified UNCAT	11 June 1996
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	30 ⁹
Total number of prisoners	12 236 (December 2012)
National prison capacity	5500 (December 2012)
Pre-trial detainees	15.9% (December 2012)
Women	0.8% (December 2012)
Children	4% (December 2011)

11.1.2 An assessment of the work of PASI

The Paralegal Advisory Service Institute (PASI) is a non-profit organisation providing trained paralegals to advise and assist individuals throughout the criminal justice processes. Its mandate and methods of work are outlined in a Memorandum of Understanding concluded with the State. The PASI-model has enjoyed considerable success and now stands to be adapted and applied in other countries across Africa.²⁰⁹ Over a period of ten years PASI has contributed to reducing the percentage of detainees held in pre-trial detention from around 60% to 12%.²¹⁰

PASI facilitates legal aid clinics in prisons, where basic criminal procedures are explained to pre-trial detainees to enable them to better understand the criminal justice process and defend themselves if necessary. PASI handles certain cases, for example, paralegals are allowed by the judiciary and police to assist a detainee in completing their bail application forms. Paralegals may meet directly with the police or prosecution authority to review cases. PASI is recognised as a legitimate partner to law enforcement authorities.²¹¹ PASI recently contributed to an audit on the situation of pre-trial prisoners. Data was collected from the judiciary, the Malawi Police Service, the Malawi Prison Service and the Ministry of Justice on both the legal status of awaiting trial detainees and issues pertaining to conditions of detention in Malawi.²¹²

While PASI is not expressly mandated to visit prisons or inspect its conditions, it inevitably gains access to prisons during the course of its work. However, PASI is not in the position to comment on poor conditions, since this might ruin its working relationship with authorities.

209 Countries to adapt this model include Tanzania, Benin, Kenya, Uganda and Niger

210 Open Society (2013) *The Global Campaign for Pre-Trial Justice, Improving pre-trial justice in Malawi*, <http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-malawi-20130220.pdf> Accessed 15 July 2013

211 Maru, V., 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', *The Yale Journal of International Law*, Vol. 31: 427, <http://www.namati.org/research-publications/> Accessed 15 July 2013

212 Open Society Initiative for Southern Africa (2011) *Pre-trial detention in Malawi: Understanding case flow management and conditions of incarceration*, <http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-malawi-20130220.pdf> Accessed 15 July 2013

11.1.3 Conclusion

As with many African states, the prison system in Malawi faces a host of serious problems. Amongst the major problems are antiquated laws,²¹³ serious overpopulation, poor conditions of detention, a high prevalence of HIV/Aids and TB, frequent incidents of torture and ill-treatment; dilapidated and inadequate infrastructure; limited access to legal aid and a lack of proper oversight.²¹⁴

Attention was brought to the poor prison conditions in the 2009 case of *Gable Masangano v Attorney-General*. The Court did not accept the Government's argument that a lack of resources was the major reason for failure to comply with minimum standards and ordered the Government to improve conditions within 18 months.²¹⁵ Further attention was drawn by President Joyce Banda, who recently announced that the State will allocate funds to construct a new maximum security prison in Lilongwe, which would hold 4 000 people, in an attempt to alleviate overcrowding.²¹⁶

From the above it is concluded that the work of PASI has been especially effective in improving detention conditions in Malawi. This is mostly due to reducing the number of pre-trial detainees, preventing the expiration of detention warrants, speeding up the judicial process and thus alleviating overcrowding. It does not function as a visiting body as such and its scope to denounce poor government practices is limited. Thus, in the absence of a strong and legitimate national oversight mechanism, it is the combined efforts of the existing monitoring bodies, the community, the human rights commission and civil society which stand to bring forth reform of the penal system.

11.2 The work of Prison Watch Sierra Leone

11.2.1 Country information: Sierra Leone

Ratified UNCAT	25 April 2001
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	16 (November 2011) ⁰
Total number of prisoners	2 537 (November 2011)
National prison capacity	1 975 (2009)
Pre-trial detainees	57.3% (November 2011)
Women	2 (November 2011)
Children	Unknown

213 The Prison Act is dated 1966

214 Open Society Initiative for Southern Africa (2011) *Pre-trial detention in Malawi: Understanding case flow management and conditions of incarceration*, p.46 – 50, <http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-malawi-20130220.pdf> Accessed 15 July 2013

215 *Gable Masangano v Attorney General, Ministry of Home Affairs, and Malawi Prison Service* (2009) MWHC 31 <http://www.malawilii.org/mw/judgment/high-court-general-division/2009/31> Accessed 16 July 2013

216 'Malawi constructs K180 million worth prison', *Capital radio*, 24 June 2013, <http://www.capitalradiomalawi.com/index.php/component/k2/item/2457-malawi-constructs-k180-million-worth-prison> Accessed 16 July 2013

11.2.2 An assessment of the work of Prison Watch Sierra Leone

There is no system in place for the continuous monitoring of places of detention in Sierra Leone, nor for receiving individual complaints by detainees.²¹⁷ Presently, prisons and other places of detention are monitored by the Sierra Leone Human Rights Commission (SLHRC) and various civil society organisations, the most visible of these being Timap for Justice (a paralegal service provider) and Prison Watch Sierra Leone (PWSL).²¹⁸ The focus here will be PWSL.

PWSL is an NGO and pressure group with the objective of improving the criminal justice and detention system in Sierra Leone. Active since 1996, its functions include visiting detention centres, supporting the families of detainees, advocating against arbitrary arrest, the death penalty and unlawful detention.²¹⁹ It is not entirely clear whether it functions in terms of a Memorandum of Understanding or an internal mandate. Whatever the case, the success of its functions is largely dependent on the acceptance and cooperation of the relevant authorities.

The PWSL published annual reports in 2006 and 2009, a special report on women and children in detention in 2009, and a report dedicated to children in detention in 2013. In the reports, human rights abuses are denounced and recommendations made. The PWSL monitors prisons and police cells and other places of detention throughout the country. According to its 2008/09 annual report, it paid monthly visits to all prisons, while every police station was visited fortnightly.²²⁰ It may investigate allegations of torture and monitor other forms of human rights violations or abuse in any type of facility. It monitors hearings and court attendance of all prisoners.²²¹

11.2.3 Conclusion

In addition to the Sierra Leone Human Rights Commission which became functional in 2007, the PWSL is the main body that undertakes regular visits to prisons. Its observations and recommendations are considered legitimate within the community, the justice system and amongst international human rights bodies.²²² In its 2009 report, the PWSL acknowledged its greatest challenge was the lack of cooperation from prison authorities and an apparent lack of political will to attend to prison reform.²²³

12. Visits by members of the public

The national laws of a number of African states allow for prison visits by lay visitors. This means that access to prisons is granted to members of the public so as to provide insight into the practices of the prison authorities, the conditions of detention and, to some extent, award responsibility to the community in which the prison is located, for the well-being of the prisoners. The lay visitors' schemes in Botswana and South Africa are discussed below.

217 US Department of State, Bureau of Democracy, Human Rights and Labour: Sierra Leone 2012, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> Accessed 5 October 2013

218 Association for the Prevention of Torture, *Country Report for Sierra Leone*, updated March 2013 http://www.apt.ch/en/opcat_pages/opcat-situation-65/ Accessed 19 June 2013

219 Prison Watch Sierra Leone, *Annual Report 2008/09*, p.5 – 6, <http://www.prisonwatch.westhostsite.com/wp-content/uploads/2010/05/Annual-Report-2008-2009.pdf> Accessed 19 June 2013

220 Prison Watch Sierra Leone, *Annual Report 2008/09*, <http://www.prisonwatch.westhostsite.com/wp-content/uploads/2010/05/Annual-Report-2008-2009.pdf> Accessed 19 June 2013

221 Information retrieved from the website of Prison Watch Sierra Leone <http://www.prisonwatchsl.org/> Accessed 19 June 2013

222 With regards to prisoner's rights, the US Department of State's 2012 report relies mostly on information received from PWSL. The Sierra Leone Human Rights Commission is established by the Human Rights Commission of Sierra Leone Act 2004. Its mandate is to 'access all government offices, facilities and places of detention, including prisons, police cells, remand homes and probation facilities, in order to investigate a human rights matter initiated by the Commission or brought to the attention of the Commission as well as access to any non-classified information in government documents.'

223 Prison Watch Sierra Leone, *Annual Report 2008/09* <http://www.prisonwatch.westhostsite.com/wp-content/uploads/2010/05/Annual-Report-2008-2009.pdf> Accessed 19 June 2013

12.1 The Prison Visiting Committee of Botswana

12.1.1 Country information

Ratified UNCAT	8 September 2000
Ratified OPCAT	No
National Preventive Mechanism	No
Number of prisons	23 (Including one immigration detention centre)
Total number of prisoners	4 241 (December 2012) ¹¹
National prison capacity	4 337 (December 2012)
Pre-trial detainees	24.9% (December 2012)
Children	156 (December 2012)
Women	141 (December 2012)

12.1.2 Legal framework

The external mechanisms of prison monitoring in Botswana comprise official visitors (including judges and magistrates) an ombudsman and religious ministers.²²⁴ In addition hereto, the law provides for a system of visits to prisons by members of the public in the form of the Prison Visitors Committee (PVC). It must be noted that this applies to prisons only and not to other types of detention facility.

In terms of the Botswana Prisons Act, (Act No. 28 of 1979) the functions of the PVC is to visit, at intervals of at least once every three months, the prison to which they are appointed. A PVC must be appointed for each prison by the Minister of Defence, Justice and Security.²²⁵ The PVC has unrestricted access, either collectively or individually, to every part of the prison it is appointed to. The PVC is mandated to make recommendations regarding the management of prisons, the treatment of detainees, good order and discipline. Members of the PVC may enquire into complaints or requests from prisoners, but must first consult the officer in charge.²²⁶ Except for the Gaborone PVC, no information could be found on whether PVCs are appointed to each of Botswana's prisons.²²⁷

12.1.3 An assessment of the work of the PVCs in Botswana

In an address to Parliament in 2012, the Minister of Defence, Justice and Security said that prison audits were carried out quarterly and annually at all 23 prisons in 2011 and 2012. The visits were reportedly carried out by the national headquarters, divisional command offices and PVCs.²²⁸

Reportedly, the PVCs carry out regular visits at the required intervals and the Government is aware of major problems in detention centres.²²⁹ According to the 2012 Human Rights report of the US Department of State, officers of the courts, including magistrates and judges, regularly conducted visits to prisons to monitor prison conditions. Government-appointed welfare and oversight committees visited prisons on 19 occasions during the year. Access was reportedly allowed to international and local NGOs and representatives of the Office of the UN High Commissioner for Refugees, which visited the Centre for Illegal Immigrants in Francistown during the year,

224 Hettinga, B., Mandlate, A. and Muntingh, L. (2011) *Survey of detention oversight mechanisms provided for in the laws of the SADC countries*. Civil Society Prison Reform Initiative, p.5, http://ppja.org/regional-information/southern-africa/Survey%20of%20detention%20oversight%20mechanisms%20provided%20for%20in%20the%20laws%20of%20SADC%20countries.pdf/at_download/file Accessed 16 June 2013

225 Botswana's Prisons Act, 1979 (Act No.28 of 1979) Chapter 21:03 Section 134 <http://www.elaws.gov.bw/default.php?UID=602> Accessed 19 June 2013

226 Botswana's Prisons Act, 1979 (Act No.28 of 1979) Chapter 21:03 Section 135(1) <http://www.elaws.gov.bw/default.php?UID=602> Accessed 19 June 2013

227 A media report of 2000 indicated that the Gaborone Prison Visiting Committee (GPVC) saw the four main prisons in Gaborone, where it found severe overcrowding, incidences of torture, death, and smuggling. The GPVC found the conditions to be extremely poor, but the full text of the report is not available. 'Gaborone prisons are appalling,' BBC, 27 January 2000, <http://news.bbc.co.uk/2/hi/africa/621231.stm> Accessed 21 June 2013

228 'Prison audits done quarterly, annually,' *BOPA News*, 7 August 2012, <http://www.ohdailynews.gov.bw/cgi-bin/news.cgi?d=20120807> Accessed 21 June 2013

229 Jackson, L. (undated) *Crime and Society: A comparative criminology tour of the world*, <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/botswana.html> Accessed 20 June 2013; See further Ditshwanelo, The Botswana Centre for Human Rights (2008) *Examination of the Report of Botswana by the UN Human Rights Committee*, www.ditshwanelo.org.bw/images/ditshwanelo.doc Accessed 30 June 2013

but no specific mention was made of the work of the PVCs and no reports of the PVCs were made public.²³⁰

Following a visit, a PVC should record its findings and recommendations in a book to be kept by the officer in charge of the facility. It is the duty of this officer to submit a copy of the entries made to Botswana's Minister of Defence, Justice and Security and the Commissioner of Prisons.²³¹ There is no other reporting duty directly imposed on the PVC.

12.1.4 Conclusion

From a practical point of view, the appointment of a PVC to each prison and the requirement to carry out quarterly inspections are ideal for ensuring proper monitoring. However, a PVC's work is clearly limited by certain provisions and omissions from the legal framework. Firstly, PVCs are appointed by the Minister of Defence, Justice and Security (previously this service fell under the Ministry of Labour and Home Affairs) which raises questions about potential conflict of interest and independence. The second weaknesses lies in the fact that there is no clear reporting duty on PVCs, nor are PVC findings made public and the duty to keep and share the recommendations made on-site is not held by an independent party. Lastly, there appear to be no plan or procedures in place for practical implementation of the PVCs' recommendations and it is unclear how the Government intends to measure the success of the PVCs' work.²³²

12.2 Independent Correctional Centre Visitors in South Africa

12.2.1 Country information: South Africa

Ratification of UNCAT	10 December 1998
Ratification of OPCAT	20 September 2006
Number of prisons	243 (2013) ²
Total number of prisoners	153 000 (May 2013)
National prison capacity	118 968 (April 2012)
Pre-trial detainees	28.2% (April 2012)
Women	2.4% (February 2012)
Children	0.4% (March 2012)

12.2.2 Legal framework

The legal framework in South Africa creates a number of domestic prison oversight mechanisms, the most prominent of which are the Judicial Inspectorate for Correctional Services (JICS), visiting justices and the Parliamentary Portfolio Committee on Correctional Services. It also provides for visits by appointed Independent Correctional Centre Visitors (ICCVs). The ICCVs in a particular management area may form Visitors' Committees, which provide structure and support to the individual visitors.²³³ A Visitors' Committee engages with the relevant area manager around issues that cannot be resolved at prison level.

The JICS is responsible for appointing ICCV who are mandated to conduct regular visits to prisons and, primarily, to deal with individual complaints.²³⁴ The JICS is also in charge of appointing Visitors' Committees.²³⁵ The ICCV's mandate is to deal with individual complaints of prisoners by carrying out regular visits, interviewing prisoners, recording complaints and discussing them

230 US Department of State, 2012 *Country Reports on Human Rights Practices - Botswana*, 19 April 2013, available at <http://www.refworld.org/docid/517e6e5e11.html> Accessed 3 August 2013

231 Botswana's Prisons Act, 1979 (Act No.28 of 1979) Chapter 21:03 Sections 136(1) – (2), <http://www.elaws.gov.bw/default.php?UID=602> Accessed 19 June 2013

232 Hettinga, B., Mandlate, A. and Muntingh, L. (2011) *Survey of detention oversight mechanisms provided for in the laws of the SADC countries*, Civil Society Prison Reform Initiative, p.5 to 6, http://ppia.org/regional-information/southern-africa/Survey%20of%20detention%20oversight%20mechanisms%20provided%20for%20in%20the%20laws%20of%20SADC%20countries.pdf/at_download/file Accessed 16 June 2013

233 Section 94 of the Correctional Services Act, 1998 (Act No.111 of 1998)

234 Section 93 of the Correctional Services Act, 1998 (Act No.111 of 1998)

235 Section 94 (1) of the Correctional Services Act, 1998 (Act No.111 of 1998)

with the head of prison in an attempt to resolve issues internally.²³⁶ It is allowed undeterred access to the prison's premises and any information held by it. An ICCV may refer unresolved disputes firstly to the Visitors' Committee and then to the Inspecting Judge.²³⁷ ICCVs are required to submit quarterly reports to the Inspecting Judge.²³⁸

12.3 An assessment of the work of the ICCVs

ICCVs are members of the public, employed for a two-year period, to pay regular visits to prisons, interview detainees and record complaints in an official register. The main objective of the ICCVs is to resolve complaints received directly from prisoners. In 2011/12, 309 persons were appointed as ICCVs throughout South Africa.²³⁹ In the same period, a staggering number of 424 717 individual complaints were received.²⁴⁰ Complaints range from issues related to communication with families (55 995), health care (34 202), transfers (44 202), and prison conditions (25 419) right through to inhuman treatment (7 188).²⁴¹ Complaints that cannot be resolved by ICCVs are discussed with the head of a particular centre, with the aim of resolving it internally, or referred to the relevant Visitors' Committee. Cases that remain unresolved at this level may be referred to the Office of the Inspecting Judge. During the period under review only 20 cases were referred to the Office of the Inspecting Judge. The small number of referrals was considered an anomaly and the dedicated Complaints Unit was appointed to deal with the challenges related hereto.²⁴² The ICCVs are reported to be a reliable and immediate source of information. Due to their direct approach, they are effective in bringing about improvement to prison conditions.²⁴³

12.4 Conclusion

Through the ICCV system, a continued presence of the community is established within prisons, which grants insight into areas which were previously ignored by the public.²⁴⁴ The focus of the Independent Visitors is entirely on meeting the individual prisoner, receiving his or her complaint, with the aim of eventual resolution. The reporting duty is exercised in a transparent and open manner. The concept of holding an external body accountable for prison oversight is considered an effective way of dealing with individual complaints and to ensure good practice by the Department of Correctional Services' officials.

13. The Judicial Inspectorate for Correctional Services in South Africa

13.1 Legal framework

Chapter IX of the Correctional Services Act (Act No.111 of 1998), establishes the Judicial Inspectorate for Prisons (the name was subsequently changed to the Judicial Inspectorate for Correctional Services), which is a somewhat unique hybrid for resolving complaints through visits. Section 85(2) of the Correctional Services Act, 1998 describes the objective of the JICS as follows:

The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons.

The JICS is headed by the Office of the Inspecting Judge, who is appointed by the President, and must have held, or continue to hold, the position of a judge of the High Court. Mr Vuka Tshabalala is the present incumbent. The JICS was established in 1998 and the office became operational in 2000.²⁴⁵

236 Section 93(1)(a) – (d) of the Correctional Services Act, 1998 (Act No.111 of 1998)

237 Section 93(4)– (5) of the Correctional Services Act, 1998 (Act No.111 of 1998)

238 Section 93(7) of the Correctional Services Act, 1998 (Act No.111 of 1998)

239 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, Annual report 2011/12 (South Africa) p.42, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

240 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, Annual report 2011/12 (South Africa) p.42, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

241 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, Annual report 2011/12 (South Africa) p.43, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

242 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, Annual report 2011/12 (South Africa) p.43, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013; The Complaints Unit is functional since September 2011.

243 Jagwanth, S. (2005) *A review of the Judicial Inspectorate of Prisons of South Africa*, p.53, <http://www.saflii.org/za/journals/LDD/2005/4.pdf> Accessed 18 August 2013

244 Gallinetti, J. (2004) *Report on the evaluation of the Independent Prison Visitors (IPV) system*, CSPRI Research Report No. 5, Bellville, Community Law Centre, p. 84

245 Muntingh, L. (2007) *Prisons in South Africa's Constitutional Democracy*, The Centre for the Study of Violence and Reconciliation, p.10, <http://www.csvr.org.za/docs/correctional/prisonsinsa.pdf> Accessed 19 August 2013

13.2 An assessment of the work of the JICS in South Africa

The JICS functions as a complaints mechanism insofar as it may receive complaints from the National Council for Correctional Services, the Minister of Correctional Services, the Commissioner and the Visitors' Committees. It does not receive complaints directly from detainees, but investigates individual complaints referred to it. It may also investigate matters on its own volition.

The JICS must submit a report to the Minister of Correctional Services after each inspection, in addition to an annual report, which is submitted to the Minister of Correctional Services, the President and tabled for discussion at Parliament.²⁴⁶ Detailed annual reports of the JICS (1997 to 2012) are available to the public. Quarterly reports are also submitted to Parliament and these are also accessible to the public. During 2011 – 2012 the JICS announced that it aims to inspect each detention centre in South Africa over a three year period. In the year under review it conducted a total of 72 inspections.²⁴⁷ It recorded 71 complaints of serious assault by officials, which may qualify as torture under the (then) Torture Bill.²⁴⁸ The JICS expressed the intention to strengthen community involvement in prison oversight and during the period under review, increase the number of ICCV posts, as well as the number of Visitors' Committees. It also created Community Liaison posts at regional level.²⁴⁹

During the first quarter of 2013, the Office of the Inspecting Judge received a total of three hundred and forty eight (348) complaints, which is a great improvement to the previous year. These are complaints that could not be resolved at management area level by the ICCV and Visitors' Committees, or were of an urgent or serious nature. It was noted: *Complaints for the quarter under review almost doubled from previous quarters, with complaints regarding transfers (82), parole (65), member-on-inmate assaults (42), appeals (21), health care and conditions (17) the most prevalent. With the lack of human capacity, most of these complaints receive insufficient consideration as it is impossible to hone into the issues arising from them. Twenty six (26) deaths from unnatural causes, one hundred and twenty two (122) natural deaths and four (4) vulnerable deaths were reported to the Directorate.*²⁵⁰

13.3 Conclusion

The JICS mechanism is considered a successful model of external detention oversight; judicial control of the prison oversight system is deemed key to a rights-based approach in South Africa.²⁵¹ In the past, some concerns were raised about the financial and operational independence of the JICS.²⁵² During the 2009/10 annual reporting period, the Portfolio Committee for Correctional Services suggested that the JICS gain financial independence from the Department of Correctional Services. However, this would mean a considerable amendment to the structure and the proposal was not implemented.²⁵³ There are indications that the Portfolio Committee might pursue the matter further. Evidenced from interviews conducted with detainees, the work of the JICS is generally valued and seen to contribute significantly to addressing hardship faced by prisoners.²⁵⁴

14. Visits by Members of Parliament in South Africa

The domestic laws of several African countries reviewed here, including Namibia, Malawi, Botswana, as well as Uganda and Benin, provide for members of parliament to monitor detention facilities. However, in many instances, this function is not well organised or structured adequately to make a sustained impact. The Portfolio Committee for Correctional Services in South Africa conducts regular visits to prisons and uses a standardised tool to monitor conditions and treatment of detainees, which makes it an effective visiting mechanism.

246 Section 90 of the Correctional Services Act 1998 (Act No.111 of 1998)

247 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, *Annual report 2011/12* (South Africa) p.32, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

248 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, *Annual report 2011/12* (South Africa) p.40, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

249 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, *Annual report 2011/12* (South Africa) p.75, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

250 Office of the Inspecting Judge, *Judicial Inspectorate for Correctional Services, Quarterly Report, for the period 1 January to 31 March 2013*, p. 2, <http://judicialinsp.dcs.gov.za/docs/JICS%20Quarterly%20Report%20JAN-MARCH%202013-.docx> Accessed 27 August 2013

251 Muntingh, L. (2007) *Prisons in South Africa's Constitutional Democracy*, The Centre for the Study of Violence and Reconciliation, p.9, <http://www.csvr.org.za/docs/correctional/prisonsinsa.pdf> Accessed 19 August 2013

252 Jagwanth, S. (2005) *A review of the Judicial Inspectorate of Prisons of South Africa*, p.53, <http://www.saflii.org/za/journals/LDD/2005/4.pdf> Accessed 18 August 2013

253 Office of the Inspecting Judge, Judicial Inspectorate for Correctional Services, *Annual report 2011/12*, (South Africa) p.14, <http://www.dcs.gov.za/Publications/AnnualReports.aspx> Accessed 27 August 2013

254 Jagwanth, S. (2005) *A review of the Judicial Inspectorate of Prisons of South Africa*, p.62, <http://www.saflii.org/za/journals/LDD/2005/4.pdf> Accessed 18 August 2013

14.1 Legal framework and mandate

The Rules of the National Assembly set forth the functions and powers of portfolio committees in general and forms the basis of the legal framework governing portfolio committees.²⁵⁵ Section 99(3) (a) of the Correctional Services Act, (Act No. 111 of 1998), mandates Members of the Parliamentary Portfolio Committee on Correctional Services, the relevant committee of the National Council of Provinces and members of the National Council on Correctional Services (an advisory body to the Minister of Correctional Services), to visit any prison at any time. Members are allowed unrestricted access, including access to any documentation or records it might need for the exercise of its function.²⁵⁶ The Portfolio Committee's mandate was recently extended insofar as the Inspecting Judge should submit its reports of each inspection not only to the Minister, but also to the Portfolio Committee.²⁵⁷

14.2 The work of the Portfolio Committee in South Africa

The Portfolio Committee is active and works in close cooperation with the JICS. The Portfolio Committee reportedly undertakes quarterly visits to correctional centres to inspect conditions and interview officials, as well as detainees.²⁵⁸ It is visible within the media and is frequently cited on matters concerning prison reform.²⁵⁹

14.3 Conclusion

From some of the examples in other African states, it is clear that visits to places of detention by political leaders, heads of states and the drafters of national policy are extremely valuable. Often, parliamentarians are oblivious to the actual situations within the communities that they serve, especially when it comes to socially-excluded groups such as prisoners. In South Africa Members of Parliament are well placed and have the necessary resources to their avail to advocate for change in a publicly visible manner. Through its media presence and debate at the National Assembly, the Portfolio Committee is positioned to hold the relevant authorities accountable to take ownership of their departments.

15. Oversight by Constitutional Court Judges in South Africa

15.1 Legal framework

Section 99 of the Correctional Services Act, 1998 mandates magistrates, judges of the High Court, Supreme Court of Appeal and Constitutional Court to monitor prisons. Visiting justices *must be allowed access to any part of a prison and any documentary record and may interview any prisoner and bring any matter to the attention of the Commissioner, the Minister, the National Council or the Inspecting Judge.*²⁶⁰

15.2 The work of the Constitutional Court Judges in South Africa

Although so mandated by the Correctional Services Act, 1998, the Constitutional Court justices only commenced their function as prison visitors in 2010. A number of prisons were allocated to each of the 11 judges to visit during the year. Reports of the visits are submitted to the Portfolio Committee, the Minister of Correctional Services, the National Commissioner for Correctional Services and the Inspecting Judge of Prisons.²⁶¹ Various reports, compiled by eight judges between 2010 and 2012, are available on the website of the Constitutional Court. Justice Edwin Cameron has actively promoted the system of regular prison visits by judges, which he describes as an *extraordinary statutory window into our prison system that the [Correctional Services] Act affords*. At a 2012 event hosted by the

255 Rules of the National Assembly, section 201 <http://www.pmg.org.za/parlinfo/narules> Accessed 5 October 2013

256 Correctional Services Act, 1998 (Act No.111 of 1998) <http://www.dcs.gov.za/Publications/Legislation/Correctional%20Services%20Act%20No%20111%20of%201998.pdf>

257 Correctional Services Amendment Act, 2008 (Act No. 25 of 2008): Amendment of Section 90 of the original Correctional Services Act, 1998 (Act No.111 of 1998)

258 Smith, V. (2012) Chair Person of the Portfolio Committee. South African Government News Agency, *Portfolio committee impressed with Zonderwater prison*, 8 June 2012, <http://www.sanews.gov.za/features/portfolio-committee-impressed-zonderwater-prison>

259 For example, it recently published a press release in which it calls for an increase in resources to the Judicial Inspectorate of Correctional Services. See Judicial Inspectorate of Correctional Services, *South Africa: Correctional Services Committee Calls for More Resources for Judicial Inspectorate Services (JICS) Offices*, 2 August 2013, <http://allafrica.com/stories/201308051372.html> Accessed 19 August 2013

260 Section 99(2) of the Correctional Services Act, 1998 (Act No. 111 of 1998)

261 Information retrieved from the website of the Constitutional Court of South Africa <http://www.constitutionalcourt.org.za/site/PrisonVisits/PrisonVisits.htm> Accessed 19 August 2013

Wits Justice Project at the Constitution Hill Women's Prison, Cameron said that since the initiation of the system in 2010, Constitutional Court judges had visited at least 37 prisons. He had personally visited seven or eight and described the experience to be extraordinary, unsettling and very troubling, especially the overcrowding.²⁶² The reports vary in the extent of their detail and address issues such as overcrowding, administration, access to medical care, diet, sleeping facilities, foreign prisoners, gangsterism and prisoners' complaints.²⁶³

In addition to the visiting function of individual justices, the Constitutional Court may ultimately shed light on the conditions in prisons, as in the case of *Lee v Minister of Correctional Services*.²⁶⁴ In this case, a detainee at Pollsmoor Prison (Cape Town) contracted TB whilst on remand from 1999 to 2004. The Court found there to be a legal duty on the responsible authorities to provide adequate health care services to prisoners, consistent with their constitutional right to human dignity.²⁶⁵

15.3 Conclusion

The value and quality of the work of the Judges of the Constitutional Court, in addition to their undisputed independence and status, is viewed with great esteem, both in South Africa and internationally. Seen collectively, South Africa's Constitution and Constitutional Court is a model of a progressive and liberal human rights regime. The observations, opinions and recommendations of the Justices are highly regarded and respected, thus rendering their insight into the South African prison system extremely valuable. The work of the justices carries considerable weight, which is needed to bring the appropriate attention to the issues. In their capacity as prison monitors, the justices set an example for judges and magistrates of the lower courts.

In addition to the part justices play in ensuring external oversight, prison inspections make a valuable contribution to magistrates and judges' understanding of the effect on detainees' lives of repeated postponements, unreasonable delays in the criminal justice system or the granting of unaffordable bail.²⁶⁶

The justices' role might be limited when it comes to the follow-up and enforcement of their recommendations. Also, the exercise of this function is not in the normal course of their work and time allocated to this activity is dependent on the initiative taken by each individual judge. Despite the challenges, it is concluded that *ex officio*, the Constitutional Court Justices are the most powerful advocates for the humane treatment of prisoners.

15.4 Conclusions on South Africa

South Africa has the most comprehensive system of prison visiting bodies of all the countries reviewed in this report. However, South Africa also has the highest number of prisons and prisoners in Africa. The visiting mechanisms created under the Correctional Services Act, 1998 are fully operational and succeed in improving the accountability of relevant authorities. Despite the functioning state of these mechanisms, conditions within correctional centres, especially in police cells, are nowhere near ideal and South African detention centres have similar problems to their African counterparts, such as overcrowding, violence, the spread of communicable diseases and extensive periods of remand. The criminal justice system is heavily congested and unable to cope with the large case-load. The efforts of mechanisms such as the JICS, the Portfolio Committee and the Constitutional Court Justices are extremely promising and encouraged so as to reach the objective of eventual alignment of the detention system with the basic protection mechanisms afforded under international law.

262 Raphaely, C. (2012) *Awaiting-trial prisoners held in grim conditions*, 23 August 2012, <http://www.bdlive.co.za/opinion/2012/08/23/awaiting-trial-prisoners-held-in-grim-conditions> Accessed 19 August 2013

263 Reports viewed: Cameron, E., (2012) *Visit to Lindela Repatriation Centre, Krugersdorp*, <http://www.constitutionalcourt.org.za/site/PrisonVisits/Cameron/Prisons-Lindela-Report-Monday-29-October-2012-FINAL.pdf> Accessed 19 August 2013; Moseneke (2010) *Prison Visit: Pretoria C-Max Correctional Centre*, 25 May 2010, <http://www.constitutionalcourt.org.za/site/PrisonVisits/Moseneke/ReportonvisittoPretoriaC-MaxMay2010.pdf> Accessed 19 August 2013; Jafa (2011) *Report on visit to Heidelberg Correctional Centre*, 15 June 2011, <http://www.constitutionalcourt.org.za/site/PrisonVisits/Jafta/Heidelberg-Correctional-Centre-report.pdf> Accessed 19 August 2013

264 *Lee v Minister of Correctional Services* CCT 20/2012. Judgment is available at <http://ppja.org/countries/south-africa/sa-constitutional-court-finds-government-liable-for-prisoner-contracting-tb/LeevMinister-for-Correctional-Services-CCT20-12.pdf/view> Accessed 19 August 2013

265 Civil Society Prison Reform Initiative, Promoting Pre-trial Justice in Africa (undated) SA *Constitutional Court finds Government liable for prisoner contracting TB in pre-trial detention* <http://ppja.org/countries/south-africa/sa-constitutional-court-finds-government-liable-for-prisoner-contracting-tb> Accessed 27 August 2013

266 Raphaely, C. (2012) *Awaiting-trial prisoners held in grim conditions*, 23 August 2012, <http://www.bdlive.co.za/opinion/2012/08/23/awaiting-trial-prisoners-held-in-grim-conditions> Accessed 19 August 2013

16. Conclusion

The various detention visiting mechanisms reviewed in this report reflect the recognition of the principle that visits to places of detention remains the most effective way to prevent torture and other ill-treatment. By visiting places of detention, attention is drawn to practices and policies that are not compatible with domestic law as well as internationally accepted standards. The situation in many African prisons is dire, if not frequently life-threatening. By drawing the attention of decision-makers to poor conditions of detention and other practices that may amount to torture and other ill-treatment, transparency is fostered.

This report reviewed a range of visiting mechanisms currently operational in Africa as provided for through treaties and domestic law or agreements. This demonstrates that there is indeed room for diversity and that such diversity is an important development in strengthening oversight over detention systems. While there may be shortcomings in their respective mandates, it is also the case that they make valuable contributions to advancing transparency and accountability in prison and detention systems.

In compiling this report it became evident that there are significant lacunae in the available data and more specifically in reliable research findings. Confidential reports, such as those by the SPT, are useful in building trust between a government and a visiting mechanism. However, it is more desirable that such reports be made public so that effective monitoring of recommendations is made possible. Visiting mechanisms are therefore encouraged to make public their findings, positive and negative, so that human rights observers and the general public are better informed about the treatment of people deprived of their liberty.

Successful monitoring of places of detention requires regular visits using a structured monitoring tool to ensure that concerns are addressed and that recommendations are implemented. It should always be remembered that a visit is not an end in itself but forms the basis for dialogue aimed at problem-solving between the visiting mechanism and the authorities. It is for this reason that there should be regular follow-up visits to ensure that recommendations are carried out and changes made are sustained.

In most jurisdictions judges, magistrates and members of parliament are mandated to visit places of detention and are encouraged to do so on a regular basis. They are also influential persons in the workings of government and it is especially members of parliament who influence budgetary allocations to places of detention. In many African states, prison systems have been operating for decades under static if not shrinking budgets and this has had severe consequences for the health and well-being of prisoners. Moreover, the saying 'what happens in prison does not stay in prison' is particularly true in the case of health care. Prisons are vectors for communicable diseases such as TB and HIV/Aids and good prison health care is therefore good community health care.

Visits by independent person to places of detention are integral to a prison system that aspires to meet human rights standards. Whilst there may be initial resistance and suspicion, it ultimately contributes to a more transparent and accountable system with officials who treat people with dignity.

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