



## **REPORT:**

# **Roundtable Discussion on the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). April 2006**

## **1. Introduction**

The South African Human Rights Commission (SAHRC) in cooperation with the Swiss-based Association for the Prevention of Torture co-hosted a Roundtable Discussion on the “Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)”. This was a follow up to a visit by the APT to South Africa, in October 2005, as part of its worldwide campaign for the ratification of the OPCAT. During this previous visit, the APT met with various stakeholders including senior government officials, national human rights non-governmental bodies and all other stakeholders to assess progress made towards the ratification of the OPCAT in South Africa. A meeting was also held between the SAHRC and the APT wherein an agreement was made to convene this Roundtable, as a means to opening a national dialogue on the OPCAT and also to establish a clear plan of action around a process to be employed that will lead to the signing, ratification as well as implementation of the Optional Protocol.

More specifically, the objectives of the Roundtable Discussion, which took place on April 25, 2006 at the South African Offices in Parktown, Johannesburg, South Africa, were to:

- Share information on the OPCAT among relevant governmental, institutional and non-governmental stakeholders
- Assess the process of ratification of the OPCAT by the South Africa government
- Examine the implications in South Africa of the OPCAT ratification, and
- Consider and reflect on the future implementation of the Protocol in South Africa

The Roundtable Discussion brought about 70 participants comprising of local and international delegates, including state institutions, parliamentary bodies, Chapter 9 institutions, diplomats, academics, civil society, judiciary and other interested members of the public.

## **2. Roundtable Discussion Themes and Debates**

Torture and other cruel, inhuman or degrading forms of treatment or punishment remain a global human rights problem and thus a matter of concern to the international

community. Reports are routinely published by relevant United Nations (UN) bodies, international human rights institutions and non-governmental organisations about the torture of people in various places such as Iraq, the occupied territories of Palestine, Guantanamo Bay, the Basque Country and the rebel held areas of Northern Uganda, among others. In South Africa, for example, allegations of torture in prisons and other places of detentions have been reported in both print and electronic media.

Whereas the existence of war or armed conflict nurtures an environment that easily lends itself to exploitation by States to engage in or condone acts of torture, this act of gross violation of human rights also takes place within States where individuals have been deprived off their liberty for political, legal, administrative or other non-conflict related reasons. The reports of alleged torture of non-nationals in South African prisons and places of detention are cases in point.

The international community has, in recognising that torture constitutes a serious violation of the fundamental right to dignity, bodily integrity and security of the person, adopted a series of instruments that prohibit this practice. One of those is the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention or the UNCAT). It was adopted by the General Assembly of the UN on 10 December 1984 and entered into force on 26 June 1987.<sup>1</sup> This Convention prohibits torture in all its forms, irrespective of the purpose for which it may be used, or the situation that may face a State such as war, threats of war, internal instability or public emergency. The Convention also establishes a body, the SubCommittee Against Torture, which among others receives complaints (communications) from Member States or individuals about acts of torture.

Approximately twenty years after the adoption of the UNCAT, the General Assembly of the United Nations adopted, by resolution, the Optional Protocol to the Convention Against Torture (the OPCAT, the Protocol). The key objective of the OPCAT among others is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. This is in recognition of the fact that the more open and transparent places of detention are, the less abuse will take place since many places of detention are by definition closed to the outside world and persons deprived of their liberties are vulnerable to all forms of ill-treatment.<sup>2</sup> Furthermore, respect for their fundamental rights depends exclusively upon the authorities in charge of the places of detention and they are dependant upon others for the satisfaction of their basic needs.<sup>3</sup>

In that respect, the OPCAT establishes an external control mechanism in the form of a Sub-Committee on the Prevention of Torture<sup>4</sup>, which will be mandated to visit all places of detention centres and prisons where people may, or have been deprived of their liberty. In addition, the OPCAT obliges States Parties to set up or maintain at the domestic level,

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<sup>1</sup> See the Convention at <http://www.unhchr.org>, or <http://www.apr.ch/un/conventions.shtml>

<sup>2</sup> “Optional Protocol to the United National Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention”. A publication of the Inter-American Institute for Human Rights and the Association for the Prevention of Torture, p 26

<sup>3</sup> Ibid p26

<sup>4</sup> Article 2 of OPCAT.

one or more visiting bodies for the prevention of torture to be known as the National Preventive Mechanism.<sup>5</sup>

At the time of this meeting, 17 States worldwide had ratified the Protocol and 50 had signed the instrument, thereby signalling their intention to ratify or accede to it. Within the African continent, only four (4) States had signed the Protocol, while three (3) have ratified the instrument. South Africa is a State Party to the Torture Convention and given the country's internationally acclaimed commitment to the protection of fundamental rights and freedoms and its active support for the adoption of the OPCAT in 2002 it is assumed that South Africa will be favourable to sign and ratify the OPCAT.

The Roundtable Discussion was divided into three sessions. The first session, which was facilitated by the CEO of the SAHRC, Adv Tseliso Thipanyane received two presentations, - one on the "Overview of the OPCAT and the Ratification Process by the Secretary General of the APT, Mr Mark Thomson. This was followed by a presentation by Mr John Makhubela from the Department of Justice on the "Status of the Ratification Process by the South African Government". The session was preceded by an opening address from the Chairperson of the SAHRC, Commissioner Jody Kollapen who welcomed delegates present at the meeting. The Chairperson provided a brief background on the collaboration between the SAHRC and the APT. In his opening remarks, the Chairperson also noted the importance and relevance of the ratification and implementation of the OPCAT for South Africa by recalling an alleged rape of a patient by a male staff member that took place at a psychiatric hospital. Currently psychiatric institutions fall outside the mandate of visiting bodies such as the Judicial Inspectorate of Prisons (JIOP). The implementation of the Optional Protocol will ensure that such institutions are not immune from accountability and transparency to the public.

The second session consisted of panel discussions on "Implications and Implementation of the OPCAT in South Africa" facilitated by Mark Thomson. The following six presentations were made:

- Implications of South Africa's Ratification of the OPCAT
- Reflections on Future Implementation of the OPCAT in South Africa
- Regional Reflections on the Ratification of the OPCAT
- Role of Civil Society in the Ratification & Implementation of the OPCAT
- Role of the International Sub-Committee of Prevention
- Assessment of Potential National Preventive Measures (NPMs)

A commentary by Professor Lovell Fernandez (University of Western Cape) concluded this session, which led to an open floor discussion wherein participants had opportunities to debate and input on some of the presentations made.

The third session facilitated by the Acting Deputy CEO of the SAHRC, Mr Andre Keet drew up a plan of action and proposed strategies for taking the ratification process forward from the meeting.

The core debates that emerged from these sessions and in wider discussions are detailed below.

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<sup>5</sup> Ibid, Article 3.

## **2.1 Overview of the OPCAT and the Ratification Process**

The Optional Protocol to the Convention Against Torture is a new tool or mechanism established by the International Community for the prevention and elimination of torture and all other forms of degrading, inhumane and degrading treatment. The OPCAT was adopted on December 18, 2002 and it became open for ratification in January 2003. Senegal was the first country to sign the protocol.

In addition to the establishment of the Sub-Committee on the Prevention of Torture at an international level, the OPCAT provides for the establishment of independent national visiting bodies. These bodies will conduct visits to all places of detention such as prisons, police stations; migration centres; juvenile centres; psychiatric institutions etc. Countries that have ratified the OPCAT are required to set up these bodies within a year of ratification.

The OPCAT has a two-pillar system. Firstly, the system established by the OPCAT places emphasis on preventing violations rather than reacting to them once they have occurred. This preventive approach is based on regular and periodic unannounced visits to any place of detention by experts, in order to prevent abuse. Until now, there was no system allowing for such visits, which contributed to lack of transparency of the conditions, and treatment of people in detention. The OPCAT gives the Subcommittee on Prevention and national visiting mechanisms the mandate to be able to access any form of detention where people cannot leave at will. In addition, the OPCAT requires that these international and national bodies have access to all information on the treatment and conditions of prisons and places of detention, as well as allow private interviews with detainees.

The second pillar of the OPCAT is related to cooperation or collaboration with State Parties to prevent and eliminate torture. This means, instead of publicly examining States' compliance with their obligations and possibly condemning certain actions or inactions, the OPCAT promotes more constructive and less adversarial ways of ensuring compliance with international obligations. In that respect, the OPCAT will seek long-term sustainable means of collaborating with State authorities to ensure elimination on a long-term basis.

At the time of the Roundtable Discussions, only 18 countries had ratified the OPCAT. Three of those are in Africa, i.e. Mauritius, Mali and Liberia. Since then on May 23 May 2006, two more countries ratified the Optional Protocol, namely Honduras and Bolivia. This brought the total of States Parties up to the necessary 20 ratifications to bring it into force on June 22, 2006. At the time of the Roundtable Discussion, 50 countries had signed the OPCAT. In Africa, these included, among others, Benin, Burkina Faso, Gabon, Guinea, Madagascar, Senegal, Sierra Leone and Togo.

## **2.2 Status of the Ratification Process by the South African Government**

Mr John Makhubela from the Department of Justice gave an update on the ratification process of the OPCAT in South Africa. Ratification of the OPCAT is viewed

within the broader context of constitutional democracy. South Africa is committed to promoting and protecting human rights and the OPCAT will assist in advancing this commitment. Regarding the status of the OPCAT in South Africa, the Presidency has given the Minister of Foreign Affairs the green light to go ahead with the motions towards ratifying the instrument. The Minister is currently considering the Optional Protocol. During discussions and deliberations, it was recommended that the Minister should be approached to expedite this process, as it has been a while since the instrument was referred to her office. In addition, it was requested that the Department of Justice should speed up the process to promulgate the legislation on torture since it has also been pending for a while.

### **2.3 Implications of South Africa's Ratification of the OPCAT**

This presentation, made by Mr Gideon Morris, Director of the Judicial Inspectorate of Prisons (JIOP), focused on the implications that the ratification and implementation of the OPCAT would have on prisons and specifically, the work of the JIOP. The presentation focused on prisons because the majority of people in detention in South Africa are detained in prisons. These include awaiting trial or unsentenced people and those detained in privately operated prisons.

An examination of the objectives of the OPCAT highlighted important similarities with the objectives of the JIOP. For example, JIOP is mandated to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions in prisons. The work of the JIOP is supported by a system of Independent Prison Visitors (IPVs). These are people appointed by the Inspecting Judge to regularly visit prisons; interview prisoners and deal with complaints by prisoners. The work of the JIOP thus far, has confirmed what the OPCAT is trying to promote that a system of visits by an independent body to places of detention can be an effective measure to prevent torture and other inhumane, cruel and degrading treatment and punishment.

With regard to the establishment of National Preventive Measures, these already exist in South Africa. The JIOP is one such body whose primary objective is to conduct prison visits through IPVs. For example, in 2005, IPVs recorded 10'524 visits to 238 prisons countrywide.

A further examination between the powers of the JIOP and those of the National Preventive Measures to be established under the OPCAT illustrated another overlap. For example, the OPCAT requires NPMs to have, among others, access to information concerning the number of persons deprived of their liberty and access to all places of detention and their facilities. The JIOP has similar powers, although only limited to prisons.

During discussions and deliberations, it came to light that although majority of people in detention in South Africa are kept in prisons, there are many more who are kept in police cells, immigrations centres, juvenile places of safety, psychiatric institutions, etc. These fall outside of the mandate of the JIOP as its work is only limited to prisons. A mechanism such as the NPMs proposed under the OPCAT

would fill this gap and ensure that people kept in those detention facilities also receive attention.

A recommendation flowing from the presentation related to the idea that should the government ratify and implement the OPCAT, the obligation to establish the NPMs may be approached in the following three ways: the statutory mandate of the JIOP may be expanded to include other places of detention; the JIOP may combine with other bodies to carry the work of the NPM; or the mandate and operational systems of the JIOP may be duplicated in other bodies who would then monitor police stations, immigration centres etc.

## **2.4 Reflections on Future Implementation of the OPCAT in South Africa**

Mr JB Sibanyoni, a Member of Parliament and member of the Portfolio Committee of Justice and Constitutional Development led the discussions. A brief reflection on the state of readiness of South Africa to ratify and implement the OPCAT was provided. State Law Advisors in the Department of Foreign Affairs have scrutinised the Optional Protocol and are of the opinion that its provisions are not in conflict with South Africa's domestic laws and policies. In that regard, South Africa is ready to ratify the OPCAT.

With regard to NPMs, there already exist mechanisms such as the JIOP, SAHRC and other Chapter 9 institutions that may be used to discharge such mandate. This is another indication of the state readiness of the country to ratify and implement the Optional Protocol.

The presentation also highlighted the challenge of overcrowding in South African prisons, which would need priority attention of the national and international prevention bodies.

## **2.5 Regional Reflections on the Ratification of the OPCAT**

The discussions, led by Ms Bea Abrahams of Faze 2 focused on the armed conflict in Sierra Leone as a case study to illustrate the importance and relevance for the African continent to ratify and implement the torture instruments (UNCAT and the OPCAT). In recent years, Africa has been plagued by violent and destructive conflicts and widespread human rights violations. For example, many people in various parts of the continent have experienced arbitrary arrests and detentions without trial. Torture, for example, is often perpetuated by state agencies such as the security forces; the army; police; and other non-state actors who often operate in a climate of impunity. Many African countries such as Togo, Nigeria, Cameroon and the DRC have been subjected to public sanctions due to incidences of torture.

Sierra Leone is one such country in Africa which experienced one of the most brutal violent conflicts and where various forms of torture were perpetrated against civilians. The country introduced forms of human rights violations that until then, were not publicly known, but were known to be happening in conflict situations.

Some of these included the abduction of women and young girls as sex slaves; amputation of limbs; drugging of women and young children; forced displacements.

Even though there is cessation of hostilities and some measures have been put in place to stop further violations of human rights, the situation has not altered significantly for the people on the ground. For instance, the abuse by state security forces still continue, including the abduction and rape of young women and girls. In addition, conditions in prisons remain poor. For example, the maximum-security prison currently accommodates three times the population it was originally designed to accommodate. This has created conditions for further violations of human rights in these facilities.

There is a general sense of impunity, as those who perpetrated gross violations of human rights have not been brought to book. Thus far the Special Criminal Court for Sierra Leone has indicted only 13 people, which means the majority are still free and possibly living side by side with their victims. This may build a situation of mistrust by citizens in the justice system

There is also a high level of mental illness due to the psychological effects of the war. Those who are mentally ill are often tied by chains to trees and rocks and are outside of formal mental institutions.

The above are some of the issues to be taken into consideration when talking of the ratification of the OPCAT in Africa and generally in countries elsewhere in the world that are emerging from violent and destructive conflicts. There is a need to go beyond lobbying government for the ratification. Civil society need to be made aware so that when transitional arrangements are made, issues of amnesty, impunity and accountability are also taken into account. Until such issues are addressed, the main perpetrators of human rights may remain outside the formal realms of the institutions that are the object of the scrutiny of the visiting mechanisms of the OPCAT.

There is also a need to create awareness within civil society because only then can the National Preventive Measures of the OPCAT be given effect.

## **2.6 Role of Civil Society in the Ratification & Implementation of the OPCAT**

Carnita Ernest, from the Centre for the Study of Violence and Reconciliation in Cape Town, reflected on the work of civil society organisations to eliminate and prevent torture. Civil society have viewed torture from a variety of perspectives such as police abuse of power; rights of refugees and asylum seekers; engagement with the truth and Reconciliation Commission in South Africa in relation to victims of human rights violations; broader criminal justice reform and most recently, work with ex-combatants. Role of Civil society is crucial in terms of monitoring, advocacy, accountability and broader awareness- raising related to torture.

In South Africa, the public profile of torture has diminished significantly. For example, the media and public institutions do not engage with such issues

anymore. The number of civil society organisations that focus on torture has also dropped as well as resources has diminished. This may be attributed to the argument that there is limited torture happening in the country at the moment. However, no study or research has been made to support this perception and no statistics are available on how many incidences of torture are reported.

With regard to the ratification process of the OPCAT in SA, there is a need for a broader public awareness campaign on the issue. Ratification of the OPCAT will provide a space for the public to start engaging with torture in the country and also to build understanding of what torture entails. This will also provide an opportunity to start engaging institutions of the state around their duties and obligations with regard to torture. Certain departments, such as Correctional Services, Justice and Constitutional Development, Health and so forth, may need to take a lead in pushing for the implementation and ratification of the OPCAT.

There may also be a need to evaluate the effectiveness of the different monitoring mechanisms available in South Africa around detention facilities, activities of police etc. For example, there is the development of the anti-torture policy which has been transferred into standing orders for Police; there is also the Independent Complaints Directorate (ICD) which has undertaken monitoring and visits to detention sites; there are also community police forums that monitor and visit police cells; some NGOs have also conducted visits to monitor detention facilities. These mechanisms may need to be evaluated to assess whether and how they have managed to implement their programmes and strategies and the success of such.

In addition, there may also be a need for research to be conducted on what is the status of occurrences of torture in South Africa. Currently there are no statistics and relevant information on torture. Hopefully this will help to break the silence on torture.

With regard to the role of professional organisations in promoting awareness and setting up monitoring mechanisms for torture, there is a need to build the capacity of such organisations. For example, judicial officers may need to be trained on the evaluation of cases of torture. Paralegals may need to be trained to also identify cases of torture. Health professionals may need to be capacitated to identify and document torture and on their ethical obligations around torture. Media may also need to cover stories of allegations of torture to raise the profile of torture. Universities may also need to include torture in their curriculum as a way of encouraging research and raising more awareness and advocacy.

At a regional level, there may be a need for regional mechanisms such as using the African Commission on Human and People's Rights, the Special Rapporteur on Prisons and Conditions of Detention to lobby for the ratification of the OPCAT. In addition, there is need to mobilise organisations across the continent that work on these issues so that there is a more concerted civil society voice.

## **2.7 Role of the International Sub-Committee of Prevention**

Ms Dorit Ree Iversen from the Rehabilitation and Research Centre for Torture Victims in Copenhagen, Denmark, provided an overview of the International Sub-Committee of Prevention (SPT), which will be established under Article 2 of the OPCAT. The Sub-Committee will have the mandate to visit all places of detention in jurisdiction of States Parties and provide assistance and advice to both States Parties and NPMs. This body will be established not longer than (six) 6 months after the entry into force of the OPCAT. Initially, the Sub-Committee will comprise of 10 members. However upon the 50<sup>th</sup> ratification, the membership will be extended to 25 members. The members will be elected for a period of four years and will be chosen by States Parties.

The mandate of the SPT has three main characteristics, namely: to visit all places of detention; to assist and advice States Parties and NPMS; and to integrate with existing mechanisms.

Regarding visits to places of detention, the SPT is mandated to carry out regular and follow up visits to any place of detention within the jurisdiction and control of States Parties, where people are, or may be deprived of their liberties. Regular and unannounced visits to places of detention undertaken in a spirit of cooperation constitute an effective manner to prevent torture and ill-treatment. In that respect, States Parties shall be notified of the intention of the SPT to visit. In addition, logistical arrangements will need to be made such as translators; drivers; obtaining of visas, etc. The notice will provide an opportunity for the State Party to arrange for these logistics. This is also in spirit of cooperation as one of the objectives of the OPCAT is to partner with States Parties to prevent and eliminate torture.

During visits, the Sub-Committee is guaranteed the following powers:

- Unrestricted access to all laces of detention, installations and facilities;
- The opportunity to conduct private interviews with persons of its choice; and
- The liberty to choose the places it wants to visit

The advisory function of the SPT is related to, among others, assisting the States Parties with the establishment and functioning of National Preventive Measures (NPMs). In addition, the SPT may make recommendations and observations to States Parties with a view to strengthen the capacity and mandate of the NPMs to allow them to function effectively. The advisory function of the SPT is not only limited to States Parties as it can work directly with NPMs. For example, the SPT may offer training and technical assistance directly to NPMs with a view to strengthening their capacity. In addition, the SPT may advise and assist NPMs in the evaluation of needs and means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

With regard to integration, it is expected that since there are already many actors involved in the prevention and elimination of torture, the subcommittee should work with those actors to execute its mandate. In that respect, the SPT will cooperate with actors within the UN system, especially the Office of the High Commissioner for

Human Rights (OHCHR); national, regional and international NGOs working on issues related to torture; existing international and regional visiting mechanisms such as those under the International Committee of the Red Cross; and existing domestic visiting mechanism such as the JIOP.

## **2.8 Assessment of Potential National Preventive Mechanisms (NPMs)**

Mr Jean-Baptiste Niyizurugero of the APT introduced the discussion by first clarifying why this new mechanism to prevent torture should be called an “optional protocol” - The State Parties that have ratified the primary torture convention are under no obligation to ratify its protocol. The Protocol’s provisions are not automatically binding on States Parties to the Convention. But once it is ratified, the Protocol becomes binding like any other international instrument. This was one of the compromises reached during the early negotiations for the adoption of the OPCAT.

With regard to the establishment of the NPMs, States are given the flexibility in terms of how these are created in the provisions of the Optional Protocol. For example, they may set up a completely new mechanism, or maintain already existing mechanisms or designate an existing one that does not have the mandate of visiting places of detention. In setting up these mechanisms, it is important that there is consultation with national role-players so that the process can benefit from variety of existing experiences and bodies.

There are a number of key issues to be taken into consideration when establishing these national mechanisms. These relate, among others, to functional independence, which may include the national independence of the state itself. In addition, the mechanism should be able to appoint its own independent personnel.

The NPMs are given the same mandate as the UN Sub-Committee on Prevention of Torture (SPT), to conduct regular visits to places of detention and to make recommendations to improve the treatment of persons held in detention facilities and the conditions of detention. In addition, they may submit proposal and observations concerning existing draft legislation related to torture and thereby giving them an opportunity to shape domestic policies and procedures to strengthen the protection of people deprived of liberty.

In order to effectively discharge their mandates, NPMs are guaranteed the following under the OPCAT: independence; capabilities and professional knowledge to carry out their mandate; and necessary resources to function effectively.

Like the SPT, the NPMs are further guaranteed the following:

- Access to information concerning the number of persons deprived of their liberty, as well as the number of places and locations;
- Access to information referring to the treatment of those persons, as well as their conditions of detention;
- Access to all places of detention and their facilities;
- An opportunity to have private interviews with persons of their choice;
- The liberty to choose the places to be visited.

With regard to the composition of the NPMs, it is important that the mechanism is comprised of people from multidisciplinary fields such as health; law; social sciences; human rights experts, police, etc

The process of setting up these mechanisms is a crucial element in the proper effectiveness of the NPMs. South Africa already has existing mechanisms and it is for the national actors to assess which mechanism or combination of mechanisms and organisations will be most relevant for the implementation of the OPCAT in South Africa

## **2.9 Commentary**

Professor Lowell Fernandez, from the University of the Western Cape and a member of the Civil Society Prison Reform Initiative, gave a brief commentary on some of the issues that emerged from the discussions.

Comments have been pointing to the need for South Africa to get along with the process to ratify the Optional protocol. South Africa has a reputation for having played a very important role on the international arena with the signing up of international treaties and also galvanising the rest of the African continent to sign international statutes.

The previous Minister of Justice had committed to create a crime of torture and to have the crime of assault to deal with such matters. A Bill has been published which has taken the definition of torture from the Torture Convention even though it is related to the crime of assault. It is currently out for public comments.

At the time of the Roundtable Discussion, the Torture Convention was the only international instrument available that created a legal obligation on states to prevent torture. It is important to galvanise the public and to make them aware that torture indeed takes place and what happens, for example at airport transitions rooms, children's homes, etc.

It is also important to involve members of the public as the establishment of the NPMs are going to rely on their active participation.

Regarding NPMs, South Africa already has a rich matrix of civil society organisations that are involved in monitoring legislation and practices; however, an adjusted JIOP would appear to be best suited to discharge the core work of the NPM mandate. Other NGOs such as Treatment Action may need to be involved.

Torture also is perpetuated by non-state actors and therefore the definition of torture may need to be expanded to include acts of gangsters, etc. Therefore SA needs to lobby and expedite both the process of ratifying OPCAT, as well as incorporating the crime of torture into South African law.

## **2.10 Action Plan and Way Forward**

Mr Andre Keet, the Acting Deputy CEO of the SAHRC, led the session. A number of recommendations were suggested based on the discussions during the meeting. The following are key recommendations for the SAHRC and APT to consider:

- SAHRC should carry out an audit or evaluation of all places of detention. This may include examining current legal framework and identifying gaps in the entire system to prevent and eliminate torture. The audit may be linked to the research project on torture in South Africa that is currently designed by the Centre for the Study of Violence and Reconciliation (CSV).
- The establishment of an Adhoc Committee on Torture with a mandate to lobby for the ratification of the OPCAT and the criminalisation of torture in national law. The Committee should be comprised of, among others, members of the legislature, civil society organisations, government and Chapter 9 institutions. The Committee will also lobby for the restructuring of current agencies to act as NPMs, rather than creating new ones. SAHRC should consider convening this Adhoc Committee and possibly providing resources in order to discharge its mandate. The APT expressed willingness to assist with the work of the Adhoc Committee.
- Information dissemination of the UNCAT and OPCAT to all other role players including in neighbouring countries should take place to raise awareness of these two anti-torture instruments.
- The question of the detention of asylum seekers should be addressed and strategies designed to deal with their plight.

### **3 Conclusion**

In his closing remarks, the Chairperson of the SAHRC, Commissioner Jody Kollapen, noted that, “12 years into democracy it can be easy to be seductively relaxed and forget to look at issues of torture, inhuman, degrading and cruel treatment or punishment”. This was in recognition of the fact that torture and other such degrading and inhuman treatment are still taking place in many detention centres in South Africa, however not much is known about them. It was also an acknowledgment of the urgency for the ratification and implementation of the Optional Protocol in South Africa.

The Roundtable Discussion on the OPCAT was an insightful and informative event. The meeting was well attended by all key stakeholders who work on issues of torture. The deliberations were exhaustive and the contributions of speakers and presenters shed a lot of light to a multitude of questions and concerns, with regard to torture in South Africa, and the ratification process of the OPCAT mechanism.

The SAHRC thanked all present and in particular, the APT for graciously co-sponsoring the event.