



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Report on the visit made by the Subcommittee on
Prevention of Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment for the
purpose of providing advisory assistance to the
national preventive mechanism of Senegal**

Report for the national preventive mechanism^{*,}**

* In accordance with the decision taken by the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, this report was sent confidentially to the national preventive mechanism on 6 May 2013. The national preventive mechanism gave notification of its decision to publish the report on 14 June 2013, in accordance with article 16, paragraph 2, of the Optional Protocol.

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I. Introduction

1. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Optional Protocol”), members of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Subcommittee”) visited the Republic of Senegal from 10 to 14 December 2012.
2. The Subcommittee was represented by the following members: Olivier Obrecht (head of delegation), Malcolm Evans, Aisha Shujune Muhammad and Aneta Stanchevska.
3. The Subcommittee was assisted by two human rights specialists and a security officer from the Office of the United Nations High Commissioner for Human Rights (OHCHR), and by local interpreters.
4. The purpose of the visit was to provide advisory services and technical assistance to the national mechanism for the prevention of torture of Senegal, in accordance with article 11 (b) of the Optional Protocol.
5. This report sets out a series of recommendations for the National Observatory of Places of Deprivation of Liberty (“the Observatory”), which is the national prevention mechanism in Senegal. These recommendations are made in line with the Subcommittee’s duty to offer training and technical assistance with a view to capacity-building and to advise and assist national preventive mechanisms in evaluating their needs and identifying measures for providing greater protection for persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol.
6. This report is being sent to the national preventive mechanism on a confidential basis; it will be up to the national preventive mechanism to decide whether or not to make it public. **The Subcommittee does, however, recommend that the national preventive mechanism make the report public and requests that it be notified of the mechanism’s decision in that regard.**
7. The Subcommittee will send the Government a separate confidential report, in which it will make recommendations to the State party.
8. The Subcommittee wishes to express its gratitude to the National Observatory of Places of Deprivation of Liberty for its cooperation and the facilitation of the visit.

II. Conduct of the advisory visit

9. The advisory visit was planned jointly by the Subcommittee and the national preventive mechanism. Several private meetings were held with the Observatory to discuss matters regarding its establishment, its operation, its methods of work, its independence, arrangements for visits and the recommendations made following those visits. The Subcommittee and the Observatory also made joint visits to places of deprivation of liberty so that the Subcommittee could see the Observatory at work.
10. In addition to the meetings and visits carried out with the Observatory, the Subcommittee met representatives of the Senegalese Government and civil society organizations, the Chief of the OHCHR West Africa Regional Office in Dakar and the United Nations Resident Coordinator in Senegal.

III. Recommendations for the national preventive mechanism

11. The Subcommittee takes note of the work done by the Director of the Observatory, Mr. Diouf Tall, since his appointment on 19 January 2012 under Decree No. 2012-119. The Subcommittee wishes to draw attention to the adoption in November 2012 of the Observatory's rules of procedure, by decision No. 1-2012, and the creation of the National Monitoring Committee of the Observatory, by decision No. 2-2012 establishing various organizational and structural procedures. The Subcommittee also notes the adoption of the Guidance on Visits, on 26 November 2012.

12. The Subcommittee commends the Director's efforts to forge links with potential partners in Senegal of relevance to his mandate on prevention of torture, at a seminar held on 5 and 6 December 2012 in Dakar.

13. The Subcommittee takes note of the steps taken by the Director to contact other national preventive mechanisms, and in particular his visit to the French preventive mechanism, the Inspector-General of Places of Deprivation of Liberty, from 25 to 29 June 2012, and the Director's involvement in the exchanges on ratification of the Optional Protocol by the countries of the West Africa region, from 24 to 26 September 2012 in Dakar.

A. Recommendations regarding the legal framework of the national preventive mechanism

14. Without wishing to call in question the independence of the current Director, the Subcommittee finds that various components of the legislative framework of the national preventive mechanism make it impossible to guarantee the independence of the institution in accordance with the provisions of article 18 of the Optional Protocol.

15. The Subcommittee notes in particular: (a) the placing of the Observatory in the Ministry of Justice under "Other offices" (Decree No. 2012-1223 of 5 November 2012); (b) the procedure for appointing the Director of the Observatory, namely following nomination by the Ministry of Justice, as provided by Decree No. 2011-842 of 16 June 2011 on the application of Act No. 2009-13 establishing the National Observatory; (c) the Government's practice of placing State officials at the disposal of the Observatory, as provided under article 3 of the same Decree. The Subcommittee also notes that the powers of the Observatory are interpreted narrowly to exclude places of deprivation of liberty that are under the jurisdiction of the Armed Forces.

16. The Subcommittee has communicated these concerns in the visit report addressed to the Senegalese Government.

17. **The Subcommittee urges the Observatory, in accordance with article 8 of Act No. 2009-13 of 2 March 2009 mandating it to make recommendations of a legislative nature, to make a case for the reinforcement of the legal framework of the institution. In that context, the Observatory should recommend that: (a) the National Observatory of Places of Deprivation of Liberty should be separate from the executive branch; (b) the Observatory should be able to select, recruit and remunerate its own staff; (c) the procedure for appointing the Director should be open, inclusive and participatory; and (d) the powers and mandate of the national preventive mechanism should be duly brought into line with the provisions of articles 4 and 20 of the Optional Protocol.**

B. Recommendations relating to institutional issues

18. The Subcommittee's concerns relate chiefly to the lack of any strategy or workplan to discharge the Observatory's mandate, the precarity of the financial resources at the Observatory's disposal, the inadequate staffing structure, the delay in getting visits to places of deprivation of liberty under way, and the lack of visibility.

19. In establishing the mandate of a national preventive mechanism, proper attention needs to be paid to its various functions as defined in article 19 of the Optional Protocol: to regularly examine the treatment of persons in places of detention, to make recommendations with the aim of improving their conditions and prevent torture and ill-treatment, and to submit proposals concerning legislation and regulations.

20. The Subcommittee encourages the Observatory to make an assessment of the lacunae in respect of prevention of torture, and notably as regards the legislative framework and the monitoring of the situation in places of deprivation of liberty, and to devise a strategy for responding to that assessment in accordance with its mandate. This strategy should provide guidelines for action and cooperation that will permit the most rational use of resources possible and avoid any overlap with the work of other players such as the National Human Rights Commission and civil society organizations. In that regard, the Subcommittee recalls that one of the basic principles in setting up a national preventive mechanism is that it should complement rather than replace existing systems of oversight.¹

21. In addition, the strategy should set forth criteria for deciding the priority to give to the places of deprivation of liberty slated for periodic inspections, taking into account the nature and size of the institutions, the seriousness of any human rights problems that may have been brought to the Observatory's attention, and the institutions' accessibility to other oversight mechanisms.

22. On the basis of this strategy, the Observatory should draw up a programme of work and cooperation that gradually takes in all places of deprivation of liberty and places where persons deprived of liberty could be being held, in accordance with articles 4 and 29 of the Optional Protocol, taking care not to exclude any given kind of institution or any geographical area.

23. As regards recommendations on legislation and regulations, the Observatory could give priority to the legislative and regulatory issues identified in the visits carried out with the Subcommittee, and the recommendations of the United Nations Committee against Torture (CAT/C/SEN/CO/3).

24. The Subcommittee has communicated to the Senegalese Government its disquiet at the absence of any stable, adequate budget allocated to the national preventive mechanism, which prevents it from functioning properly. Thus, while it notes the budget proposal for 300 million CFA francs put forward by the Observatory for 2013, the Subcommittee regrets that it has not been possible for it to obtain an idea of the costs relating to the discharge of the Observatory's mandate, since the proposal goes into detail only on staff pay.

25. The Subcommittee recommends that the national preventive mechanism prepare a detailed budget of the expenditure necessary for the implementation of the programme of work referred to above. The budget should distinguish between the costs relating to the establishment of the Observatory, the fixed institutional overheads and the variable operating expenditures for such items as visits to places of

¹ CAT/OP/12/5.

deprivation of liberty. The Observatory should also use the means at its disposal, for example the Monitoring Committee, one of whose members is a member of parliament, to make the case, on the basis of the detailed budget, for a more substantial budget allocation than the 2012 one.

26. The technical staff of the national preventive mechanism at the time of the visit comprised two judges on secondment from the Ministry of Justice. Leaving aside the concern expressed above regarding the risk such a practice poses to the independence of the national preventive mechanism, the Subcommittee also finds the understaffing and the narrow range of expertise worrisome. The Subcommittee is aware that the Observatory's rules of procedure allow for outside assistance to be called in in order to fill such gaps and that its staffing difficulties are related to the budget constraints.

27. While emphasizing the need to keep the organizational structure as light as possible in the interests of institutional sustainability, the Subcommittee recommends that the national preventive mechanism diversify the profile of its technical staff and explore creative ways of strengthening the human resources at its disposal by, for example, setting up internship programmes, or partnerships with universities and civil society.

28. The Subcommittee is pleased that the Observatory was able to make its first visits to places of deprivation of liberty during the Subcommittee's visit to Senegal, and that it intends to submit a report with comments and relevant recommendations.

29. The delegation recommends that the Observatory make follow-up visits to the institutions it visited with the Subcommittee, to observe the implementation of the recommendations. The Subcommittee also encourages the Observatory to continue to make visits, regardless of the resources placed at its disposal, starting with institutions in the Dakar region, where visits will not incur great expense.

30. The Subcommittee takes note of the Observatory's work on communication since it was set up and the ongoing development of its communication strategy. Nevertheless, the Subcommittee notes that the Observatory's main interlocutors, such as prison directors and persons deprived of liberty, are still not aware of its existence.

31. The Subcommittee recommends that the Observatory continue working to raise its profile and make its mandate and work known to the general public. The Observatory's communication strategy should include provision for simple, accessible procedures through which the general public can provide it with relevant information. The Subcommittee also recommends that the strategy include involvement of the Observatory in any Government action relevant to its mandate, strengthening of its ties with national partners and involvement in training programmes for judges, the police and gendarmes, prison officers, health workers and the Armed Forces.

32. The Observatory should take steps to ensure that its annual reports can be submitted and debated in Parliament as well as being submitted to the President of the Republic.

C. Methodological recommendations

33. The Subcommittee wishes to emphasize from the outset that the brevity of the visits conducted jointly with the national preventive mechanism precluded the application of the various methodologies for visits to places of deprivation of liberty. Consequently, the Subcommittee's comments relate to both the methodologies observed and those the Observatory ought to consider applying, whether or not they are included in the Observatory's Guidance on Visits to Places of Deprivation of Liberty. The Subcommittee

recommends that, where appropriate, the recommendations are taken into account when revising relevant institutional texts such as the rules of procedure and the Guidance on Visits.

34. *Preparations for visits.* The Subcommittee notes that the Guidance on Visits prepared by the Observatory deals specifically with the methodologies to be applied when visiting prisons.

35. The Observatory should prepare methodologies for visits to places of deprivation of liberty of other kinds covered by the mandate of the national preventive mechanism, such as police and gendarmerie stations and health institutions. As regards visits to police and gendarmerie stations, the main points to look out for are the procedures for questioning and record-keeping and the handling of arrests and arrival at the place of detention.

36. The Observatory has informed the Subcommittee that the various ministries have provided it with lists of places of deprivation of liberty for which they are responsible; this excludes those run by the Ministry of the Armed Forces.

37. The Subcommittee recommends that the Observatory set up a database of places of deprivation of liberty in Senegal in which to place the information in its possession. The database should include the information mentioned in paragraph 2.1 of the Guidance on Visits, and also the physical features of each institution, such as the layout and furnishing of the blocks, as well as the measurements of buildings, yards and cells. The information gathered during successive visits should be fed into the database.

38. In the Subcommittee's view, unannounced or short-notice visits give a much more realistic idea of conditions in a place of deprivation of liberty.

39. The Subcommittee recommends that the Observatory include in the Guidance on Visits the possibility of making unannounced visits and that it keep the schedule of visits confidential.

40. *During visits.* At Reubeuss prison, because of the time available, it was not possible to have a full tour of the premises on top of the interviews with the prison administration at the start and end of the visit. In other words, the visit did not go beyond what was observable and there was no time, for example, to have private meetings with prisoners or prison staff, or to take a proper look at the records.

41. The Subcommittee emphasizes that a full visit to a prison such as Reubeuss takes several days. The visiting team should conduct the visit following a programme worked out in advance and reflecting the purpose of the visit. The Subcommittee also recommends that the Observatory make use of other techniques than interviews for gathering information, including passive observation or deploying the visiting team in groups stationed at various points around the premises.

42. The Subcommittee confirms the importance of the various points mentioned by the Observatory in paragraph 3.1 of the Guidance on Visits; they should be raised in the interview with the official in charge of the place of detention at the start of the visit.

43. The Subcommittee nevertheless emphasizes the importance of keeping this interview as brief as possible so as to be able to pay more attention to the conditions of detention. Furthermore, an interview of this kind with the official in charge may not be needed in the follow-up visits. Sensitive areas to be inspected more thoroughly can be identified during the general tour of the institution. Lastly, the Subcommittee considers that private interviews with members of staff should not be conducted only at their request (Guidance on Visits, para. 3.3.4).

44. **In addition to the points mentioned in paragraph 3.2.2 of the Guidance on Visits, the Observatory should look at other less tangible factors that affect conditions of detention, such as the relations between prison staff and prisoners, the existence of formal and informal hierarchies among detainees and the criteria for access to highly prized areas, where detainees have better conditions. Information of this kind can be gathered by means of interviews organized after the general tour of the premises and without the presence of prison staff.**
45. The Guidance on Visits provides for an introduction of the visiting team to be made during the interview with the official in charge, but there is no provision for a similar introduction to be made during the interviews with the persons deprived of liberty.
46. **The Subcommittee recommends that the visiting team introduce itself to the detainees during its interviews with them and explain the mandate of the national preventive mechanism — with particular emphasis on the prevention component — and the purpose of the interviews. It is essential to obtain the detainee’s consent and to explain that the interview is confidential and voluntary and may be halted at any moment at their request.**
47. **The Subcommittee recommends that the national preventive mechanism prepare leaflets for persons deprived of their liberty and for their families, explaining its mandate and its methods of work and giving contact details. The leaflet should also explain what informed consent is and state that reprisals of any kind should be brought to its attention.**
48. The methodology of the national preventive mechanism provides for an individual interview with a detainee only where their situation seems abnormal by comparison with that of other detainees.
49. **Inasmuch as the purpose of visits by the national preventive mechanism is to make recommendations regarding systemic problems, not to identify individual problem cases, the Subcommittee is of the opinion that an individual interview should not be used only where the situation is abnormal, but also as a means of gathering information on the general conditions of detention. With due respect for the security regulations in force in any given institution, the Subcommittee draws the attention of the Observatory to the fact that it is possible to conduct interviews with detainees inside cells and without surveillance.**
50. The Subcommittee notes with interest that the national preventive mechanism recognizes that group interviews do not permit discussion of the most sensitive topics. The Subcommittee also wishes to draw attention to the risks that group interviews may pose to certain detainees, e.g., reprisals, and to the fact that the situation can rapidly get out of hand.
51. **The Subcommittee recommends that the Observatory give some thought to what situations may appropriately be addressed in group interviews and list in the Guidance on Visits those subjects that can be raised in such interviews (Guidance on Visits, para. 3.3.3).**
52. While noting the provision made in the legislation to protect against reprisals, including the protection of the identity of persons who have contacted or cooperated with the Observatory and the protection of State officials from disciplinary measures, the Subcommittee notes that no specific measures are mentioned in the methodology developed by the Observatory.
53. **The Subcommittee recommends that the Observatory develop a methodology for protecting persons who have contacted or cooperated with the Observatory from reprisals, taking account of the Senegalese context. The Subcommittee points out that**

it is possible, among other things, to call on partner organizations to follow up the situation, to keep in touch with detainees' families, and to remind staff at the places of deprivation of liberty visited that intimidation and reprisals of any kind against persons who have cooperated with the Observatory — and indeed against any person deprived of liberty — is a violation of the law.

54. With regard to paragraph 3.3.5 of the Observatory's Guidance on Visits, **the Subcommittee is of the opinion that the final interview with the official in charge of the institution visited should be devoted to a presentation of the most important observations and its recommendations, if any – particularly recommendations that can be implemented immediately.** The Subcommittee considers that during the final interview it is essential to be open with the official in charge with regard to the main problems identified, except in respect of individual cases where it is thought that the physical and psychological integrity of detainees would be compromised by the mere fact that the official in charge was directly involved (such situations should be referred to the authorities supervising the official in question).

55. *Follow-up to visits.* **The Subcommittee recommends that the national preventive mechanism prepare visit reports as speedily as possible to help the officials in charge of the institutions visited make the connection between the visit and the report. As to content, apart from general information on the visit and the problems noted, the report should include information that enables readers, including those who are not familiar with the institutions visited, to form a realistic picture of the situations. Thus reports should describe the places visited giving details of, for example, the dimensions of cells, the lighting, the toilet facilities and the ventilation.**

56. **In its reports, the national preventive mechanism should make practical recommendations and propose verifiable corrective measures that can be followed up. The recommendations should emphasize prevention and set out the root causes of the problems found in the places of detention.** For example, in the case of overcrowding in Reubeuss prison, the national preventive mechanism should make recommendations to unblock the judicial system in Senegal. In addition, given that proper registration of deprivation of liberty is one of the fundamental guarantees against ill-treatment, the national preventive mechanism should make recommendations regarding the setting up of a central, standardized and, if possible, computerized register system permitting the effective monitoring of any individual's detention.

57. **The recommendations of the national preventive mechanism should be based on international human rights standards, and in particular the relevant United Nations standards on prevention of torture and other ill-treatment, as provided for in the Optional Protocol.**

IV. Final recommendations

58. In the view of the Subcommittee, the strong mandate of the National Observatory of Places of Deprivation of Liberty gives the Observatory enormous potential as a national preventive mechanism. Accordingly, the Subcommittee encourages it to review its working methods on a regular basis and avail itself of training courses in order to strengthen its ability to discharge its responsibilities under the Optional Protocol.

59. The Subcommittee encourages the Observatory to seek the assistance of the Office of the United Nations High Commissioner for Human Rights in following up these recommendations. Specifically, the Subcommittee encourages the Observatory to consider holding a national workshop to adopt a programme for the implementation of the recommendations made by the Subcommittee following this advisory visit.

60. The Subcommittee encourages the Observatory to transmit its annual reports to it and reaffirms its readiness to do all it can to help achieve the shared aim of prevention of torture and ill-treatment and ensure that commitments translate into action.

Annexes

I. List of places of deprivation of liberty visited jointly by the Subcommittee and the National Observatory of Places of Deprivation of Liberty

Reubeuss Remand Prison and Detention Centre, Dakar

Dakar Central Police Station

Reubeuss Police Station (2nd district), Dakar

II. List of senior officials and other persons with whom the Subcommittee met

Ministry of Foreign Affairs and Senegalese Abroad

Mr. Al Khalil I. Seek, Director, Legal Affairs

Mr. NDongo Dieng, Counsellor, Foreign Affairs

Ms. Faye Ramatoulaye Ba, Chief, Litigation Division

Ministry of Justice

Mr. Mouhammadou Moustafa Seye, Director, Human Rights

Mr. Ousmane Faye, Prison Administration Board

Ministry of Health and Welfare

Mr. Seydou Boubaka Badiane, Professor of Medicine, Technical Adviser

Dr. Bineta Sène, Focal Point, Prevention of Violence and Accidents

Ministry of the Interior

Ms. Ibrahima Faye, Chief of Police, Criminal Investigation Department

Office of the Advocate-General

Ms. Bousso Diaw Fall, Dakar Appeal Court

National Preventive Mechanism

Mr. Boubou Diouf Tall, Director, National Observatory of Places of Deprivation of Liberty

Mr. Thieyacine Fall, General Secretary

Mr. Raymond Henri Maurice Mariam Diouf, Deputy Director

National Human Rights Institution

Mr. Sidy Diop, member, Senegalese Human Rights Committee

Mr. Adoulaye Mar, Permanent Secretary

United Nations system

Ms. Bintou Djibo, United Nations Resident Coordinator in Senegal; Resident Representative, United Nations Development Programme (UNDP), Senegal

Mr. Benjamin Houton, OHCHR West Africa Regional Office

Civil society

Christian Action for the Abolition of Torture (ACAT)

Organisation Nationale des Droits de l'Homme (ONDH)

Amnesty International Senegal (AIS)

Rencontre Africaine de Défense des Droits de l'Homme (RADDHO)

Ligue Sénégalaise des Droits de l'Homme (LSDH)