

TORTURE PREVENTION NETWORK: TOPICS FOR PLANNED ACTION

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1. Introduction

Efforts to ensure better protection for the rights to decent treatment and, accordingly, the rights not to be a victim of torture and other cruel, inhuman or degrading treatments, through international human rights law, are being pursued using various standards and institutions, both governmental and civil-society-based, at the local, regional and worldwide levels. These standards and institutions are inevitably changing in a *gradual and complementary way* in order to achieve this goal. And in this constant quest being undertaken by humanity and its institutions we cannot ignore the inadequacy of efforts to date, given the continued and spreading use of torture and other inhuman treatments throughout the world.

Taking into account the building of the new system for prevention of torture under the UN Convention Optional Protocol against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (OPCAT), through periodic visits to all places of detention, is creating tension, conflict and consensus generated by new actors and new dialectics. In this process, complementarity between the work of international organizations, both regional and worldwide, and that of local institutions and organizations must be strengthened.

An analysis of what has been done in recent years to eradicate or reduce torture and other inhuman treatments reveals that the new paradigm made up of a large mass of international standards and bodies created within the United Nations, which have in different ways sparked the reform of domestic constitutions, basic codes and procedural legislation, has not been adequate. Among other problems, the fundamental institutions of the rule of law that bear responsibility in this area for ruling the law have been incapable of halting the use of torture. I am referring in particular to institutions in the law enforcement, judicial (*judges, prosecutors and defence counsel*) and penitentiary fields.

Against this background, the long struggle waged by numerous actors to achieve OPCAT's coming into force calls for each of us, within the context of our various responsibilities, to think and act in the most effective possible way, both individually and collectively, and to report our actions.

I intend to begin this article, therefore, by identifying the conceptual guidelines that run through OPCAT within a dynamic approach to the national preventive mechanisms (NPMs) in particular. I shall then analyse the mandate of the Subcommittee on Prevention of Torture (SPT) and review the issues about the desirability of creating a specific network for the prevention of torture. Thus, I suggest some thoughts about strategic planning in the context of the international human rights bodies.

2. The Three Themes

A new system for periodic visits to all places of detention cannot be put force practice effect without taking into account the mistakes made and obstacles faced by international human rights bodies, both worldwide and regional. In particular, the implications of the non-fulfilment of the repeated recommendations made by such bodies, which undermines their effectiveness, must be addressed. There is provision for this in the core elements of the well-developed text of OPCAT, the result of many years of deliberation. Hence I propose that we should look at what we might call the dynamic elements for the construction of this new system to prevent torture: such a preventive system must be *independent* in order to gather and generate relevant *information* while operating in *inter-institutional*

mode.

2.1. Independence

The two prevention institutions created by OPCAT - the SPT and the NPMs - must be structured so as to ensure their independence, mainly through the mechanisms for appointment and removal. They must respect basic rules of transparent and open elections while fostering stability and allocating material and human resources so as to ensure optimal functioning for the enhanced protection of persons deprived of their freedom against torture and other inhuman treatments.

There will be several points of tension in these structures for building a new preventive system. Sociological analysis of law enforcement, judicial and penitentiary institutions, for example, reveals that their culture, structure and procedures fall well short of humanist standards. There are great differences between formal, official functions and those that are actually carried out, with corresponding violations of human rights through actions, omissions or willingness to turn a blind eye.

We may also point out the strong impact that the leadership of such institutions has when it is in the hands of persons who are truly committed to human rights, as demonstrated through their lives and work. An example is the new Supreme Court of Argentina and the direct effect of its decisions in terms of pulling down the barriers of impunity represented by the “due obedience” and “clean slate” laws.

I also wish to point out that proper selection of members of the bodies within the new system for prison visits is essential; seeking candidates suitable for the performance of their tasks. In addition to an appropriate structure, it is necessary to include persons with multidisciplinary and cross-disciplinary knowledge. By the latter, I mean persons with knowledge of the world behind prison bars, and not necessarily formal knowledge (for example, former prisoners and their relatives, and not just lawyers). Geographical and gender diversity would likewise help to achieve the desired ends.

To this, it must be added what the SPT stated in its first annual report¹ as part of its guidelines for the ongoing development of national preventive mechanisms, many of which are relevant to the subject of independence.

Subcommittee for the Prevention of Torture: guidelines for the ongoing development of national preventive mechanisms:

- (i) The mandate and powers of the national preventive mechanism should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of freedom, in accordance with the Optional Protocol, shall be reflected in that text;
- (ii) The national preventive mechanism should be established by a public, inclusive and transparent process, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the national preventive mechanism, its issue should be open for debate, involving civil society;
- (iii) The independence of the national preventive mechanism, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position that could raise questions of conflict of interest;
- (iv) Selection of members should be based on stated criteria related to the experience and expertise required to carry out national preventive mechanism work effectively and impartially;
- (v) National preventive mechanism membership should be gender-balanced and have adequate representation of ethnic, minority and indigenous groups;
- (vi) The State shall take the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge. Training

1 First annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/40/2), 25 April 2008.

- should be provided to national preventive mechanisms;
- (vii) Adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18, paragraph 3, of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources;
 - (viii) The work programme of national preventive mechanisms should cover all potential and actual places of deprivation of freedom;
 - (ix) The scheduling of national preventive mechanism visits should ensure effective monitoring of such places with regard to safeguards against ill-treatment;
 - (x) Working methods of national preventive mechanisms should be developed and reviewed with a view to effective identification of good practice and gaps in protection;
 - (xi) States should encourage national preventive mechanisms to report on visits with feedback on good practice and gaps in protection to the institutions concerned, and address recommendations to the responsible authorities on improvements in practice, policy and law;
 - (xii) National preventive mechanisms and the authorities should establish an ongoing dialogue based on the recommendations for changes arising from the visits and the actions taken to respond to such recommendations, in accordance with article 22 of the Optional Protocol;
 - (xiii) The annual report of national preventive mechanisms shall be published in accordance with article 23 of the Optional Protocol;
 - (xiv) The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods increasingly refined and improved.
 - (xv) 2.2. Information

Independence with such built-in features, stemming from and focused on human rights, will help to create substantial databases related to the prevention of torture and other inhuman treatments. A body that is independent in terms of culture, know-how and experience will set up bases with the essential major indicators. Good information leads to a diagnosis that is indispensable for planning and supporting effective action in this area.

We could say, “Show me your appointment book and I’ll see how independent you are”. The attitudes that encourage transparency and indicate timely and appropriate decision-making on the part of each of the responsible bodies will help to give visibility to progress and regression and show where responsibility lies. The opposite attitudes will foster opacity and concealment of all or part of the phenomena of the use of torture.

It should be added that bodies which are so designed and are devoted to shedding light on human rights violations, have a tendency to be subjected to harassment, obstruction and disruption. These human rights violations are prove to be canceled or denied in various ways. Hence the need for effective independence that prevents the body’s structure and operations from being affected by removals, budgetary cut-backs, dismissals from duty and similar manoeuvres. The idea has thus evolved from the original one of strictly confidential visits to one involving the mandatory publication and circulation of the annual reports of the NPMs and aims at the same for the SPT, while preserving the restricted nature of certain information in order to protect those concerned.

The abundant and important information available in several local, regional and worldwide databases needs to be compiled and systematized to facilitate its appropriate use in formulating recommendations to prevent torture and other inhuman treatments and also for follow-up activities. For all these reasons, it is advisable to have structures and know-how, both in the SPT and in the NPMs, to carry out this collection, production and systematization of suitable information and its strategic use.

2.3. An inter-institutional approach

Experience shows that weaknesses continue to exist in the current arrangements for visits to places of detention, due to several reasons. Among the main factors it should be pointed out:

- (a) Shortage of human and material resources;

- (b) Lack of clarity in objectives and appropriate training;
- (c) Duplication and gaps of various types.

In order to overcome these limitations, what is needed is appropriate *coordination* carried out rigorously enough. We can learn important lessons about coordination from other areas (for example, security) so as to avoid making the same mistakes. To start with, it is not clear who should be involved and what the shared objectives are. In addition, there is much lack of continuity among coordination bodies, which are often used as instruments for whitewashing or falsely demonstrating that everything is all right.

We can see that multisectoral efforts range from a methodology in which everyone operates in an isolated way to inter-institutional integration in which everyone brings in something new - in other words, new practices are created. Between these two extremes, however, we see hybrid situations that are not clear cut. This is because of the lack of appropriate institutional machinery and operating regulations in which all the sectors preserve their identity while integrating clearly their mandates and avoiding the above-mentioned duplications and gaps.

Coordination is necessary in order to strengthen capacities through cooperation. Confusion of roles results in duplication, which is strategically and tactically inadmissible where there is a widespread shortage of resources, while simultaneously undermining proper accountability. By way of a rule, let us say that we need to seek an appropriate *interdependence*.

Here follows few more recommendatios:

2.3.1. Formalized coordination relations

While a degree of informality facilitates the free flow of information, it can also jeopardize confidentiality on certain subjects. At the same time, an informal approach may be adopted on the pretext of “getting things done”, thereby bypassing controls and hence reducing transparency. This approach ultimately leads to self-deception, sometimes for the purpose of hanging on to power; it creates false expectations and erodes trust, and thus, it is a bad approach for fostering and strengthening inter-institutional relations.

Carrying out the activities mandated by OPCAT at various levels, in various spheres and among various participants needs the establishment of relations of trust, which must be sustained through constant, conscientious and continuous effort. This I believe this is essential as it defuses tensions, avoids confusion in roles and breaks down stereotypes caused by a lack of real understanding of other institutions or their staff.

Regard this, anticipating somewhat the next point, we must promote and create, among other things, training opportunities for those who will be responsible for coordinating networks for carrying out periodic visits to places of detention with a view to overcoming misunderstandings and mistrust. The SPT has taken part in multisectoral meetings to build bridges among participants, for example during missions concerning the NPMs in Peru, Bolivia, Paraguay and Brazil, with the invaluable support of the Association for the Prevention of Torture.

2.3.2. Accountability

Proper inter-institutional work will facilitate accountability since now it is not clear who is responsible for what and to whom. Accountability directly affects the legitimacy of bodies which are guided by this regulation. In the case of the NPMs, this can be ensured, among other means, through an appropriate mechanism for appointing their members as well as the efficient administration of their resources.

2.3.3. Procedures and models

In the search for efficiency and effectiveness, we sometimes concentrate exclusively on the best institutional model, disregarding the external or contextual aspects that affect relations of cooperation (for example, brainstorming and discussions) and trust.

If we concentrate exclusively on the best model for NPMs (the same applies to the SPT, *mutatis mutandis*) in terms of efficiency and effectiveness in carrying out their respective tasks and functions, we run the risk of ignoring the transparency necessary for the development of relations of trust between the State and civil society. We must not disregard aspects that may be unquantifiable yet are key to the creation of common ground between the State and civil society, promoting relations of cooperation, reciprocity and interdependence rather than competition and isolation.

We must even add that the search for effective theoretical models must not lead to “paper NPMs”, a common phenomenon in judicial, law enforcement and imprisonment institutions, where in practice, the actual or possible functions diverge from the formal or official ones. This will mean greater political costs and a new loss of confidence due to the generation of false expectations.

3. The Subcommittee on Prevention of Torture (SPT)

The task of preventing torture and other cruel, inhuman or degrading treatments or punishments by enhancing protection of persons deprived of their freedom in concert with State parties necessitates the building of a new system for periodic visits to be carried out by international, regional and national bodies. The role of the SPT,² at this groundbreaking stage, with all the strengths, weaknesses, opportunities and risks that it represents, is to carry out its functions in a *balanced way* regarding the three conceptual cores of its mandate as laid down in article 11 of OPCAT, which states:

The Subcommittee on Prevention shall:

- (a) **Visit** the places referred to in article 4 and make recommendations to State parties concerning the protection of persons deprived of their freedom against torture and other cruel, inhuman or degrading treatments or punishments;
- (b) In regard to the **national preventive mechanisms**:
 - (i) Advise and assist State parties, when necessary, in the creation of their producers;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance in order to a view to strengthen their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their freedom against torture and other cruel, inhuman or degrading treatments or punishments;
 - (iv) Make recommendations and observations to the States parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatments or punishments;
- (c) **Cooperate**, for the prevention of torture in general, with the corresponding United Nations bodies and mechanisms as well as with the **international, regional and national** institutions or **organizations** working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.³

2 Current membership: Vicechairman Mr. Mario Luís Coriolano (Argentina), Mr. Emilio Ginés Santidrian (Spain), Ms. Marija Definis Gojanovic (Croatia), Mr. Zdenek Hajek (Czech Republic), Mr. Zbigniew Lasocik (Poland), Vicechairman Mr. Hans Draminsky Petersen (Denmark), Mr. Malcolm Evans (United Kingdom), President Mr. Víctor Manuel Rodríguez Rescia (Costa Rica), Mr. Miguel Sarre Iguiniz (Mexico), Mr. Wilder Tayler Souto (Uruguay).

3 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 11 (emphasis added by the author).

Taking into account the guidelines, we can observe that, unlike other international organizations that carry out their work through the examination of reports from States and also, in some cases, through the handling of individual cases and possible visits, the Subcommittee will make recommendations and observations to State parties concerning *public policies for the prevention of torture and other inhuman treatments*. We must fulfil this function in a complementary way, and our activities must be guided by proper planning of the new system of periodic visits including and necessarily getting feedback from a network of NPMs and other international, regional and local organizations fighting torture.

This torture prevention network must be supported and sustained by the broad and intensive efforts of civil-society organizations and some State sectors which have traditionally done such work in isolation, even at very hard times. It does not mean cleaning the slate and starting again or continuing this way. The aim is to strengthen the current work being carried out by many persons and institutions to fight torture.

The mandate to carry out visits while interacting not only with States parties and the NPMs but also with various institutions, organizations and individuals chosen by the SPT because of their relevant information, as well as the freedom to choose places that are to be visited, offer a desirable new starting point. The aim is to launch a new system of independent periodic visits involving an inter-institutional approach and the provision of important information in order to make recommendations and observations designed to strengthen the protection of persons deprived of freedom against torture and other inhuman treatment.

The greater the visibility and awareness of the problems that can be generated by the various participants, the better the opportunities for achieving changes will be for preventing violations. The core of the mandate of the SPT, like that of the other international, regional and local actors (both from civil society and from the State), contains the necessary foundations to enable new efforts without undermining existing ones. This should help to strengthen the rule of law which calls for new institutions oriented and created from and for human rights, synonymo of rule of law.

4. Torture Prevention Network

The social movements that arose in connection with the struggles waged by groups associated with feminism, environmentalism, trade unionism and anti-discrimination, among others, provide examples, with distinctive regional features, of how to bring together very diverse sectors. At the same time, there has been a new approach to the relations between the new social movements and the State: on one hand, civil society has been invited to become involved in the drafting and implementation of government policies, and on the other, the State has gained certain influence in the way the appointment work of civil society are organized.

In general, we can say that the will of State parties, expressed through their ratification of OPCAT, and the strengthening of the human rights movement will be a formula enabling us to work together to build a new system of periodic visits to effectively prevent torture. OPCAT⁴ clearly refers to the need for *relations of cooperation* in such fields as advice and assistance by the SPT to State parties in the establishment of NPMs in order, where necessary, to make recommendations and observations with a view to strengthening the capacity and the mandate of the NPMs.

At the same time, work must be done to improve the *conceptualization* of specific prevention efforts in relation to torture and other inhuman treatments; it should be done in an authentic way. Extrapolation from other fields, reductionism, or falling into the trap of false antagonisms within this field, especially with regard to civil security, should be avoided.

The levels of analysis of torture and other inhuman treatments throughout the historical-political,

4 I am referring specifically to art. 2, para. 4, art. 11 (b) (i) and art. 11 (b) (iv) of OPCAT.

social-institutional and psychologico-social aspects lead us to revise the much repeated indications and recommendations focused on reformist type aspects that emphasize improvements of a structural and functional type (for instance in building matters, doctors and lawyers assistance, etc.) but neglect the underlying cultural or ideological aspects or those which give rise to structures and routines. Hence, we must move towards strategies for integral transformation involving both aspects - structural and ideological-cultural - while encouraging public debates on the subject.

Facing the challenge of articulating this new prevention network, we must avoid both the false optimism of believing that consensus will not be troublesome, and the sterile pessimism of emphasizing that the State, represented by any of its components, will always look for ways of continuing to apply torture. Both positions are subjective and prejudiced and, in my view, improperly juxtaposing conflict and consensus.

Instead, we must highlight, support and promote the semble processes of building torture prevention networks that have been generated by OPCAT in various areas. We can also identify and reject situations that involve more exclusion and opacity than inclusiveness and transparency, essential features for the new institutional framework that OPCAT is calling on us to build.

The development of NPMs of mixed origin made up of State and civil society, generates the relational dynamics already mentioned with respect to social movements. Having greater civil responsibility in handling public affairs involves certain risks concerning discipline and control which are leading civil society to wonder whether or not they should become involved in NPMs. Here, the SPT should encourage channels for dialogue and cooperation with the features we have been describing and with long-term benefits since they promote relations of trust and reciprocity without ignoring areas of tension.

We will strengthen all the sectors involved in the prevention of torture through a cooperation network that is well designed, straightforward and open, with specific contributions to be made without loss of identity. The methodology for building inter-institutional relations is a key issue. There is no single formula for creating an ideal NPM, and this will have to be determined for each specific context - applying the slogan of the new social movements in the environmental field, "thinking globally and acting locally" - . However, care should be taken to avoid rhetorics that leads to complexities in the implementation. Solitary or isolated efforts, which may be attractive in the short term because of their lower costs, mean the weakening of the struggle for preventing torture.

It seems to me that we should engage in the construction keeping in mind achievements and failures, progress and draw backs. This includes dismantling authoritarian and violent institutions, or their authoritarian past behaviours, creating new practices compatible with the culture of human rights.

5. Inter-Institutional Strategic Planning

Lastly, by way of a proposal, I should like to raise a number of ideas on how to achieve the greatest possible impact in the articulation and operativeness of the network composed of various United Nations regional international protection bodies together with local institutions - State and civil-society bodies - in the light of the different mandates of the bodies involved in fighting torture.

In addition to the network of NPMs and a multiplicity of local actors, we have a situation where the SPT must closely cooperate - in the areas of planning, action and follow-up - with the United Nations treaty bodies (Committee against Torture, Human Rights Committee, CEDAW Committee, Committee on the Rights of the Child, etc.) and with the various special procedures (Special Rapporteur on torture, Working Group on Arbitrary Detention, Special Rapporteur on summary executions, etc.), as expressly laid down in article 11 (c) of OPCAT. It is also necessary to cooperate with other international bodies (such as the International Committee of the Red Cross) and regional bodies (Inter-American Commission on Human Rights, European Committee for the Prevention of Torture, African

Commission on Human and Peoples' Rights, etc.). Similarly, close ties must be sought with institutions and agencies working in important thematic areas, such as health, and protection of vulnerable population groups - for example, against slavery or trafficking in women, to cite one example among many.

The diagnosis of the situation regarding torture, and action to combat it, which would underpin rational planning of this prevention network, could be formed as follows. Firstly, by categorizing the Member States of the United Nations in terms of whether they have ratified or signed OPCAT. Secondly, we take account of the range of activities by the various United Nations bodies and special procedures (country reports; complaints in individual cases; field visits and advocacy), supplemented by the activities of the regional human rights agencies. Thirdly, we classify the situations in each region, and country by country, on the basis of the extent of the use of torture and other inhuman treatments. Fourthly, by taking into account the existence and effectiveness of local institutions in the area, especially NPMs. The SPT will thus be able to design and carry out a set of different activities in accordance with an annual or periodic plan.

Such planning would call for basic measures of institutional engineering, such as the construction of a forum for coordination among secretariats (or if possible through the construction of a single secretariat) which, together with an inter-committee working group and special procedures, would collect and systematize all the information related to the four points mentioned above. In this way, it would be possible to create a dynamics of joint work in the evaluation, design and implementation of such action plans, which would be periodically assessed and redesigned. And in that way to make strategic use of the vast and valuable information which already exists, but is dispersed.

On this basis, the SPT will be able to better perform its tasks in a rational, strategic and planned manner. In particular, it will decide on the implementation of:

- (a) Missions to State parties to visit places of detention and make or follow up recommendations - of greater or lesser duration and greater or lesser urgency;
- (b) Missions to States parties to provide advice and support for the establishment or upgrading of an NPM;
- (c) Advocacy to foster the signing or ratification of OPCAT. It will be also possible to for promotion of the activation choose of other United Nations and regional procedures (for example, complaints in individual cases) and to report on the need to call for support from the various assistance or cooperation funds for the implementation of recommendations to prevent torture and improve conditions in detention.

In this way, the SPT will be able to achieve greater impact in the prevention of torture and other inhuman treatments, gaining through its achievements the place it deserves as a global reference in the field of *prevention* of torture.