

APT Global Forum on the OPCAT

Keynote speech

By

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inhuman or degrading treatment or punishment

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Good morning, Ladies and Gentlemen,

It is my pleasure to be here today and I thank the organizers of the event for inviting me in my capacity as the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Torture occurs because national legal frameworks are deficient and do not properly codify torture as a crime with appropriate sanctions. Torture persists because national criminal systems lack the essential procedural safeguards to prevent its occurrence, to effectively investigate allegations and to bring perpetrators to justice. Torture remains entrenched because of a climate of tolerance of excessive use of force by law enforcement officials in many countries. Moreover, under the rubric of fighting the war on terror or maintaining an effective immigration policy, States have, regrettably, attempted to dilute cardinal principles necessary to preventing and suppressing torture and ill-treatment or have become complicit in acts of torture.

If States took their obligations under the Convention and the Optional Protocol seriously and abide by their legally binding obligations, torture could easily be eradicated in today's world. While the appalling conditions of detention in most countries of the world could be effectively addressed by implementing the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Convention and its Optional Protocol contain a broad range of very specific positive State obligations aimed at preventing and combating torture, no further standard setting is required to combat torture; what we need is robust implementation of existing standards.

Ladies and Gentlemen,

The regular inspection of places of detention remains the most effective preventive measure against torture and ill-treatment. It can ensure the adequate implementation of safeguards against torture, create a strong deterrent effect and provide a means to generate timely and adequate responses to allegations of torture and ill-treatment by law enforcement officials. With the entry into force of the Optional Protocol in 2006, one may conclude that its ratification by States parties and the creation of independent national visiting bodies can be considered as one of the most effective legislative measures to prevent torture in the sense of Article 2(1) of the Convention. The rationale behind this is based on the experience that torture and ill-treatment usually takes place in isolated and unmonitored places of detention.

As the Subcommittee can only sporadically conduct monitoring visits to the increasing number of States parties to the Optional Protocol, the main responsibility for systematic monitoring rests with the national preventive mechanisms. As of July 2011, of the current 61 States Parties to the Optional Protocol, 37 have designated a national preventive mechanism. Given that all the existing national preventive mechanisms are still at an initial stage and have yet to develop their practices, the current phase is absolutely crucial in terms of paving the way for the Optional Protocol to exert its full potential for the prevention of torture. Against this background, a first stocktaking would appear to be instructive in order to identify lessons learned and potential pitfalls in the process of setting up national preventive mechanisms.

At the same time, the national preventive mechanisms face growing challenges including to their independence, composition and resources; guarantees and powers; and working methods. Most fundamentally, national preventive mechanisms lack a clear legal basis specifying their powers and ensuring their complete independence from the State authorities. Regrettably, some States fail to provide their national preventive mechanism with the necessary security and stability. Even the most independent national preventive mechanisms, with a robust mandate, cannot function without sufficient resources. Particular problems can arise for a national preventive mechanism that functions within a previously existing institution such as a national human rights institution, for a national preventive mechanism

composed of several bodies and for a national preventive mechanism that cooperates institutionally with civil society organizations. Those models all require a particular effort of planning and coordination and a clarification of the exact roles and tasks within the institution.

Ladies and Gentlemen,

Many countries already have national mechanisms in place for the inspection of places of detention, in addition to already established regional mechanisms such as the European Committee for the Prevention of Torture and international mechanisms including the Working Group on Arbitrary Detention and the Special Rapporteur on torture that inspect places of detention.

While suggesting that the Optional Protocol to the Convention against Torture is the most effective and innovative method for the prevention of torture and ill-treatment worldwide, it is important to stress that effective prevention requires coordinated action between various disciplines and different key actors, both domestically and internationally. Combating impunity for torture, providing victims of torture with an effective remedy and adequate reparation, as well as monitoring conditions of detention is integral to the global efforts to prevent and suppress torture and ill-treatment and requires involvement of various actors, including judges, prosecutors, lawyers, forensic experts, doctors, detainees, police officers, interrogators, torture survivors, governmental officials, academics and the media.

It is important to note the critical role played by judges, lawyers and prosecutors in the prevention of torture, including with respect to arbitrary detention, due process safeguards and fair trial standards, and bringing perpetrators to justice. Similarly, it is essential that State institutions uphold unambiguously the zero tolerance policy against torture and ill-treatment and make further efforts to reduce the risk of ill-treatment and excessive use of force by the police at the time of apprehension and while in detention. Instructions to this effect must reach from the very top of the chain of command down to every member of the force. This will ensure that no agents of law-enforcement, State security or intelligence services are

exempted from criminal liability for acts of ill-treatment or torture committed by them or their subordinates, and that they are bound to disobey orders to the contrary.

Furthermore, the work of a forensic scientist is germane to the efforts of my mandate to address impunity for acts of torture. Forensic expertise ensures that torture traumas, whether visible or invisible, physical or mental, are scrupulously documented before they disappear. Similarly, the corroborative effect of this professional opinion, and its role in assessing the overall credibility of alleged victims, provides a stronger basis for prosecutions. Additionally, the work of forensic scientists provides significant insight into the methods and pattern of torture employed in places of detention. This has been essential to framing recommendations aimed at addressing systemic cause or facilitators of torture and ill-treatment in places of detention. In addition, forensic sciences provide a much sounder and more effective way to investigate crime and successfully prosecute offenders. The brutality of torture obtains confessions but just as frequently misleads and disorients investigations.

Finally, since my approach to my mandate is victim-centered, I am convinced that efforts to combat torture require a more involvement of victims we seek an integrated long-term approach to adequate redress and reparation, including compensation, rehabilitation for victims of torture and their families and their reintegration into society. The respective costs should ideally be borne by the individual perpetrators, their superiors and the authorities responsible for human rights violations. If States provided effective remedies ensuring that the individual perpetrators are held accountable to pay all the costs of long term rehabilitation for torture victims, this would probably have a strong deterrent effect to complement criminal punishment (A/65/273, 2010). As far as the preventive aspect of rehabilitation centres is concerned, it is important to note that the services provided to the victims of torture go beyond the medical aspects of rehabilitation. They also contribute to raising awareness of the issue of torture and the establishment of justice. Alerting and informing society of the prevalence of torture and States' involvement in it can trigger public pressure and eventually bring about policy changes.

Ladies and Gentlemen,

All States have an international legal obligation to take effective legislative, administrative, judicial and other measures to prevent torture. In this respect, my mandate has called upon States promptly to ratify the Convention against Torture and its Optional Protocol and to establish, through legislative action on the basis of an inclusive and transparent process, independent and professional national preventive mechanisms, in full compliance with the Paris Principles. Such national preventive mechanisms should be granted unrestricted access to all places of detention and the opportunity to have private interviews with detainees. Moreover, States should provide national preventive mechanisms with the necessary financial and human resources to enable them regularly to inspect all places of detention, to examine the treatment of detainees and to prevent acts of torture or ill-treatment in detention. Frequent and unannounced visits, including timely and unlimited internal monitoring by independent mechanisms in all places of deprivation of liberty, are crucial for the prevention of torture.

It is equally important to coordinate my efforts and working methods with the Committee against Torture and the Subcommittee on the Prevention of Torture, especially with regard to upcoming country visits, monitoring conditions in places where persons are deprived of their liberty, and following up on recommendations. I look forward to working with regional bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); the Committee for the Prevention of Torture in Africa; the Inter-American Commission on Human Rights (IACHR) and other relevant bodies, to further strengthen international and regional standards on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

I thank you for your attention, and look forward to a further discussion.