

**APT Global Forum on the OPCAT**

**Thematic session No 8**

**Achieving a more inclusive strategy on torture prevention**

*By*

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inhuman or degrading treatment or punishment

***11 November 2011, 9:00-11:30***

***Moderator:*** Ms. Martine Anstett, Head of Division, International Organization of La Francophonie, France.

Thank you, Madame Anstett,

Good morning, Ladies and Gentlemen,

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

My mandate has on numerous occasions acknowledged the multifaceted dimensions of torture and ill-treatment and emphasized the importance of approaching the prevention of torture from a multidisciplinary perspective. 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, my predecessors have emphasized the importance of areas of divergence among various disciplines and different key actors working towards effective prevention.

Madam Chair, Ladies and Gentlemen,

Today I wish to reflect on a more inclusive strategy on torture prevention and how my mandate can further this. My intervention does not draw upon the exhaustive list of actors key in achieving the prevention of torture, nor does it promulgate a set of normative standards to this end but reiterates that 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, police officers, interrogators, detainees and former detainees, torture survivors, government officials, academics and the media.

The existing international legal framework provides a broad range of norms and standards with an ultimate aim to prevent acts of torture and ill-treatment. In addition to the preventive obligations explicitly enlisted in the Convention against Torture, such as the prohibition of *refoulement* (Article 3), the prohibition of invoking evidence extracted by torture in any proceedings (Article 15), the obligation to provide education and training to law enforcement and other personnel (article 10), to systematically review interrogation methods and conditions of detention (Article 11), to investigate *ex officio* possible acts of torture (Article 12) and any torture allegations (Article 13), and to the obligations relating to the criminal prosecution of perpetrators of torture (Article 4 to 9), the umbrella clause in Article 2(1) requires States parties also to take other effective measures aimed at preventing torture. Such measures relate primarily to guarantees in the context of the right to personal liberty (prohibition of *incommunicado* detention and prolonged solitary confinement, right of detainees to have access to lawyers and doctors, obligation of States to maintain prison registers, etc.) and the right to a fair trial. Their effective application, however, continues to be a challenge.

During the fact-finding missions, my mandate has reiterated that constitutional, legislative and administrative reforms be expedited to ensure the establishment of solid safeguards against torture and ill-treatment. My mandate has identified that the lack of proper criminalization of torture; the absence of impartial investigations into allegations; and failure to prosecute perpetrators continue to contribute to the persistence of torture. Furthermore, my mandate has provided an analysis of the three main obligations under the Convention and the Optional Protocol: fighting impunity, providing victims with rehabilitation and establishing effective national preventive mechanisms to inspect places of detention. The effective implementation of these obligations will contribute to torture prevention.

Madam Chair, Ladies and Gentlemen,

If States take 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 but there is a pressing need to implement existing standards.

In addition, there are numerous methods of prevention that have been developed in the past, which, if adequately implemented by States, could help eradicate torture. These include:

- abolition of secret detention;
- abolition or tight regulation and control of incommunicado detention;
- proper registration of every detainee from the moment of arrest or apprehension;
- prompt access to legal counsel from the moment of arrest; access to relatives;
- prompt access to an independent judge with powers to rule on the legality of arrest and the conditions of detention;
- strict respect for the presumption of innocence;
- prompt and independent medical examination of all detainees;
- video/audio recording of all interrogations;
- prompt, impartial and effective investigation of all allegations or suspicions of torture;
- inadmissibility of all evidence obtained under torture or originated in torture;
- effective training of all officials involved in the custody, interrogation and medical care of detainees.

As mentioned earlier, the regular inspection of places of detention remains the most effective preventive measure against torture and ill-treatment. Under appropriate conditions, it can ensure the adequate implementation of the above-mentioned

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. In this context, the ratification of the Optional Protocol and the creation of independent national bodies to carry out unannounced visits to all places of detention certainly constitute an effective measure to prevent torture in the sense of Article 2(1).

Many countries already have national mechanisms in place for the inspection of places of detention, such as visiting judges and prosecutors, inspection boards subordinate to relevant ministries, and national human rights institutions, or they allow non-governmental organizations to carry out monitoring visits. In addition, there are independent regional mechanisms such as the European Committee for the Prevention of Torture and international mechanisms such as the Working Group on Arbitrary Detention and the Special Rapporteur on torture that can inspect places of detention.

Madam Chair, Ladies and Gentlemen,

The Human Rights Council, in its Resolution<sup>1</sup> of March 2010, in addition to emphasizing the importance of establishing effective legal and procedural safeguards for the prevention of torture, urges States to respect and ensure respect for the critical role that judges, prosecutors and lawyers play in the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The resolution refers also to the prohibition on arbitrary detention, due process safeguards and fair trial standards, and the need to bring perpetrators to justice. During fact-finding missions, my mandate encourages judges and prosecutors to routinely ask persons arriving from police custody how they have been treated, and to order an independent medical examination in accordance with the Istanbul Protocol if they suspect that detainees have been subjected to ill-treatment. I also urge court officials to initiate an ex-officio investigation if there are reasonable grounds to believe that a confession was obtained through torture or ill-treatment.

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<sup>1</sup> GA A/HRC/RES/13/19

My mandate has also called upon States to empower judges and prosecutors to carry out regular inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment, ensuring that the instructions reach the very top of the chain of command, and that no law-enforcement agents are exempted from criminal liability for acts of ill-treatment or torture committed by them or their subordinates. Such procedures should not be dependent on the existence of a formal complaint. In addition, my mandate insists on the exclusion from the judicial proceedings of any confession or statement made under torture.

Furthermore, I reiterate the importance of the “exclusionary rule” in preventing and suppressing torture, and recall the obligations of States to ensure that any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. If the aim is to discourage torture, we must apply it not only when the victim succeeds in “proving” torture, but in all cases in which safeguards against mistreatments have been violated, as in arrests without probable cause, or arrests and searches without warrant. Similarly, the evidences must be ruled inadmissible should not be restricted to the confession or statement directly obtained through torture, but to all other evidences to which the torture has led, even if regular procedures were later respected. To this end a strict adherence to this most fundamental of rules is essential. I will therefore stress that the exclusionary rule should not only apply to judicial and administrative proceedings, but also interpreted to apply to intelligence and of the decisions by the executive and its agencies. Likewise, diplomatic assurances do not release States from their *non-refoulement* obligations, nor are they necessarily the best way to prevent torture and *refoulement*.

Madam Chair, Ladies and Gentlemen,

Forensic experts assume a decisive role in holding perpetrators to account. With their forensic expertise they ensure that torture traumas, whether visible or invisible, physical or mental, are scrupulously documented before they disappear.

Medical records can be instrumental in overcoming the otherwise lack of objective evidence with which survivors of torture are so commonly confronted, given that torture mostly takes place without witnesses. The work of a forensic scientist is germane to the efforts of my mandate to address impunity for acts of torture, as the expert opinion forms the evidential basis for prosecution of allegations of torture. 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. This does not only increase the chance of a successive prosecution; but also enhances the possibility to receive immediate medical and other assistance and, in the longer term, other forms of redress and reparation.

Additionally, the work of forensic scientists provides considered insights 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 general, I also strongly believe that scientific methods of detecting crime are far more effective way of obtaining safe convictions and reducing criminality than the brutality of interrogation under torture. If forensic sciences were more systematically applied, they would go a long way in refuting the perceived need to resort to torture.

Madam Chair, Ladies and Gentlemen,

During fact-finding missions my mandate has called upon the authorities to ensure timely forensic examination of persons alleging ill-treatment and ensure that medical staff in places of detention are independent from the organs of justice administration, by calling for them to be placed in the Ministry of Health; and providing training for the forensic medical services in the medical investigation of torture and other forms of ill-treatment. One of the challenges observed during the fact-finding missions, is that victims are invariably caught between requirements of the law to adduce evidence to support allegations of torture and the lack of practical possibilities to produce such evidence, especially on the part of those persons who are still being detained. My mandate has noted that many, of the alleged victims, who

make credible allegations of torture on the basis of evidence corroborated by forensic evaluations, are left with no recourse to have their complaints effectively investigated.

Indeed, in the course of country visits, my mandate has alerted the authorities of the need to immediately investigate and prosecute such cases and has sought information on follow-up measures taken by Governments. Likewise, in transmitting to Governments urgent appeals and allegation letters concerning alleged torture and ill-treatment, my mandate regularly inquires into the details and results of medical examinations carried out pursuant to investigations. Regrettably, very little follow-up information in this regard is ever provided.

Madam Chair, Ladies and Gentlemen,

I am convinced that efforts to combat torture require a more victim-centred perspective that seeks an integrated long-term approach to adequate redress and reparation, including compensation, rehabilitation for victims of torture and their families and their reintegration in society. Long term rehabilitation measures, which are often provided by special *torture rehabilitation centres*, are fairly cost intensive,<sup>2</sup> and 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 by rehabilitation centres for 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.

Madam Chair, Ladies and Gentlemen,

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<sup>2</sup> A/HRC/4/4/33., 17 January 2007. Paras. 61-68.

Medical rehabilitation centres manage to inform, train and mobilize lawyers, journalists and other professionals in order to support victims and disseminate information about cases of torture; initiate programmes of survivor activism, encourage victims to share with the public their stories, images and communications about survival, and work to make their voices heard. In this connection, information provided by detainees and victims also plays an important role in structuring the response and strategies to addressing the systemic failures which facilitates torture. Similarly, these centres are at the forefront when it comes to dealing with the legacy of the national security regimes and the continuing impunity for the crimes committed during those periods. In many countries, rehabilitation centres engage in campaigns advocating for legal reform and the passing of laws that comply with the Convention against Torture and its Optional Protocol.

Madam Chair, Ladies and Gentlemen,

My working methods are based on my mandate as originally stipulated in Commission on Human Rights resolution 1985/33 and as developed by the previous Commission and Council in numerous further resolutions. The most recent Human Rights Council Resolution 16/23, *inter alia*, asks the Special Rapporteur to study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices and to identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and other cruel, inhuman or degrading treatment or punishment.

The main activities are in themselves preventive by nature. Making urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or be occurring, is not per se accusatory, but essentially preventive in nature and purpose. I believe that 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. During country visits I call upon States to ratify the Protocol and promptly designate or establish a truly

independent and effective National Preventive Mechanism (NPM) in accordance with the Protocol.

Madam Chair, Ladies and Gentlemen,

I believe that in order to achieve optimal results, it is essential to coordinate 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.