

APT Global Forum on the OPCAT

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Five Years of OPCAT: process and impact

Mark Thomson, Secretary General APT

Distinguished Speakers, Representatives of Governments, United Nations Agencies, other Inter-Governmental Bodies, National Human Rights Institutions (NHRIs), Non-Governmental Organisations (NGOs) and the Media. Ladies and Gentlemen it is my pleasure to have an early opportunity to speak to you, on behalf of the APT, to open an initial plenary discussion on where we are after the first five years of the entry into force of this new system to prevent torture, the Optional Protocol to the Convention against torture, commonly now known by its acronym the “OPCAT”.

This is the first time that: all States Parties to the OPCAT; all States Signatories; all National Preventive Mechanisms (NPMs); the Sub-Committee for the Prevention of Torture (SPT); the UN Special Rapporteur on Torture; along with National Human Rights Commissions (NHRIs) and NGOs active in prevention of torture have been invited to come together to share their experiences in the implementation of the OPCAT.

Nearly ten years after the OPCAT was adopted by the United Nations and five years after the OPCAT came into force the time is right for this gathering. The timing is appropriate because all of you can now share enough practical experience for the conclusions of your exchanges to have the potential to be instructive on making the preventive system work even better.

The full SPT is now up and running, nearly 40 NPMs have been designated and more than half of them have started their work, including making recommendations which have begun to be taken up by States Parties. Furthermore nearly half of the States around the world have either ratified or signed the Protocol, a much broader variety of institutions and actors have got involved in prevention work (your participation today is a manifestation of that) and fresh wind has been blown into the sails of legal reforms that were previously adrift in the doldrums.

However, as with any new system, especially one dealing with such a fundamental human rights violation as torture, implementation is not as straight forward as we would hope it to be.

For a start, many governments have been in a state of denial that torture or the threat of it was applicable to the way in which their authorities dealt with persons deprived of their liberty. Well the so called recent “war on terror” changed that perception. Now no one can seriously deny that the risk of torture exists everywhere. Whilst we have all witnessed over the last decade such flagrant under-mining of the absolute prohibition of torture, with horrendous human consequences, these blatant violations have contributed to overcoming that denial syndrome and instead helped a growing realisation that steps must be taken to prevent such abuses ever taking place and in whatever circumstances.

At the same time there has been a growing public awareness that the majority of our penitentiary and detention systems are over-stretched, gone way beyond accommodation capacities and some are fast spinning out of control. Police and prison authorities are not able to cope with the sheer scale of social, criminal and political problems that are being dumped on them. In such under-resourced situations and a lack of political will to deal with it, all sorts of abuses are bound to occur with far-reaching negative consequences for former detainees, victims of torture and our societies.

Fortunately the OPCAT has offered a system to help us navigate a way out of this impasse. With its insistence on greater transparency on what goes on behind the previously closed doors of detention centres, plus its objective of proposing relevant and feasible solutions to State authorities on how to reduce the risks of abuse, the OPCAT isn't setting new standards but rather proposing practical steps for States to implement the obligations they already have.

Even when the OPCAT is presented as forward looking and collaborative (for example with authorities and detainees) there often remains some scepticism from the "old guard" who anyway never want to change anything. Sometimes a completely different tactic is required to convince them. For example, most people will agree that we all need a strong independent institution to oversee State expenditure, report on it publicly and at least to our democratically elected representatives. Well if we accept such oversight systems for that why not on the rule of law and detention procedures? It helps enormously to add that at least one active NPM is led by someone who previously was an Auditor of State Affairs which he knows well after holding senior positions within various key ministries..

A fundamental aspect of the OPCAT, which is essential for it to have real impact in prevention, is of course the ability for the National Preventive Mechanisms and the Subcommittee on Prevention to have access to all places where persons are deprived of their liberty. In some countries this broad scope of access generates uncertainty from some sectors such as the military and migrant centres which might not be used to any scrutiny or free access to their centres of detention. These concerns need to be addressed.

In reality the OPCAT bodies that will conduct the most regular visits are and certainly will be the National Preventive Mechanisms. NPMs clearly have the potential to make the most lasting impact in the prevention of torture but that depends on a number of factors that we need to discuss here at the Forum, such as: how have they been set up? How strong are their mandates? Are they adequately resourced in terms of guaranteed funding and competent staff? Are they performing preventive visits to a wide variety of places where persons are deprived of their liberty? Are they making recommendations on feasible solutions to reduce the risks of torture and other ill-treatment?

Some National Preventive Mechanisms have also opened up policy debates on penal reform and rehabilitation of offenders that broadens their scope even further. I believe that this is a positive interpretation of their mandate and I encourage Representatives of functioning NPMs present to share with us their views on that development. Just as

it will also be instructive to hear how they have interpreted and applied other aspects of their founding legislation, such as on public reporting.

When public consultations have taken place on the OPCAT, especially regarding NPM establishment, we have sometimes witnessed a very positive spin-off of greater attention being given to reform laws to criminalise torture as well as reform of detention conditions and procedures, such as on the critical issue of interrogations. Sometimes it's easier to negotiate an anti-torture law rather than ratification of the OPCAT or establishment of an effective NPM. Often the stumbling block here is the reluctance to allocating the necessary human and financial resources to NPMs. Sometimes a little ingenuity is required, such as by the head of one NPM who had no budget and no staff but had a clear mandate so he bought a metro ticket and visited a Police station. Admittedly public transport systems are not the same in all countries but the morale of the story being that actions speak louder than words. However, resources for prevention are another key challenge the Forum needs to address.

Five years on we need to start showing some results. We know of how recommendations of the Subcommittee has led to immediate actions, such as the closing of a detention centre in Paraguay, we know of how recommendations of some NPM have brought about changes in procedures at the time of arrest and improvements in conditions of detention. We expect that Representatives of NPMs and the SPT will share with us other examples of immediate impact. However, how are you going about measuring changes in procedures, practices and policies? We ourselves intend to commission a three year external study to evaluate the impact of prevention. Apart from the public reports of the SPT and NPMs I suggest that the Forum needs to start that reflection and share more information on how we are monitoring and evaluating our impact.

The previous speaker, Bacré Waly N'Diaye, has quite rightly given particular attention to the Subcommittee on the Prevention of Torture for this opening of the plenary debate. So I need not add to that except to make one point which is that I think it is high time to explode the myth that the SPT should only interact with NPMs and States parties through formal in-country missions. Surely it is in the interests of their working relationship for smaller SPT delegations to visit countries for working meetings with NPMs and States Parties and why not even before a State ratifies the OPCAT? I invite the Maldives Representatives to explain how useful it was to have, earlier this year, an SPT representative present in the first ever national dialogue on the implementation of the OPCAT. Let's explore further how NGOs can also assist this type of in-country contact and follow-up to SPT and NPM recommendations.

Being open to these new partnerships in prevention is the essence of why we are all here today. When Jean Jacques Gautier started his campaigning' over 30 years ago, to get States to take actions to prevent torture, in particular by opening up places of detention to monitoring bodies, he soon realised that he would get nowhere on his own. The concept of partnership in prevention has not only guided the APT's work since then but it is even incorporated into the OPCAT and its promotion of a collaborative approach between State and non-State actors. In the process of implementing the OPCAT I believe we are also changing the discourse on human rights and their national application. The methodologies of prevention, identifying risks, making recommendations, entering dialogue and taking remedial actions lends

itself to new and lasting partnerships in human rights protection. However, this requires a cultural shift for some institutions which need to be persuaded that it is in their mutual interests to cooperate more. Yet another matter that needs our attention to move from a laudable aspiration to logical actions.

Ladies and gentlemen, Madam President, allow me to conclude.

The Special Rapporteur, Juan Mendez, has stated earlier this morning that “the current phase is absolutely crucial in terms of paving the way for the Optional Protocol to exert its full potential...” Furthermore, Peter Maurer has stated this morning that: « Nous sommes aujourd’hui à un moment clef, à une étape charnière, de notre combat »

I believe that one enormous advantage of still being in the relatively early stages of implementation is that there is more room for creativity, for having confidence in your intuition and for trusting your instincts on what we think will work best for effective prevention. I therefore encourage you all to take full advantage of these two days to jointly find the solutions that will better prevent torture and other ill-treatment. The fate of the Forum and to a large extent the prevention of torture, worldwide, is now yours.

I hope that you will seize the opportunity with both hands.

Thank you for your attention.