



**Questionnaire to members states,
national human rights institutions,
civil society and other relevant stakeholders
on the role of prevention in the promotion
and protection of human rights**

Submission of the APT

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I. Introduction

This paper is the Association for the Prevention of Torture's (APT) submission to the OHCHR questionnaire on the role of prevention in the promotion and protection of human rights¹. The APT is an international non-governmental organization which has been working for over thirty years for the prevention of torture and other ill-treatment. The APT was behind the drafting and adoption of the Optional Protocol to the Convention against Torture (OPCAT) and supports actors around the world to prevent torture through capacity strengthening, legal advice, fostering exchanges, research an analysis and providing practical tools.

The APT welcomes the opportunity to submit information to this questionnaire. In particular it believes that a reflection on the role of prevention can add value to existing efforts in the promotion and protection of human rights. Given that the APT works at the global level, its submission will not focus on specific country situations. Instead it seeks to share some of the insights it has gained on the conceptual and practical dimensions of prevention in the field of torture and other ill-treatment. The paper follows the format (main sections) of the questionnaire and tries to respond to individual questions where possible. The information included draws on existing APT publications, including *OPCAT Implementation Manual*² and the joint APT, OHCHR and APF publication *Preventing Torture: An Operational Guide for NHRIs*³.

II. Overview of achievements and challenges in promoting and protecting human rights

Developing an understanding of torture prevention

A significant achievement in the fight against torture and other ill-treatment in recent years has been the adoption of an approach focusing on prevention, at the international, regional and national levels. Bodies with a specifically preventive mandate have developed a wealth of knowledge on the conceptual and practical dimensions of the prevention of torture and other ill-treatment. Indeed, it may be in this field of human rights that an understanding of prevention has been furthest developed – it may therefore serve to inform a consideration of the role and added value of prevention in relation to human rights promotion and protection more broadly.

¹ Drafted in response to Human Rights Council Resolution 14/5 (A/HRC/RES/14/5), op. 6.

² APT/IIHR, *OPCAT Implementation Manual* (2010).

³ APT/OHCHR/APF, *Preventing Torture: An Operational Guide for NHRIs* (2010).

Why prevention of torture and other ill-treatment?

The need for a preventive approach in the fight against torture was in part a response to the challenges and obstacles faced in traditional approaches in this field. Although the prohibition of torture is found in a wealth of international instruments, states were failing to meet this obligation. In particular, the focus on documenting and exposing cases of torture, and calling for investigations and prosecutions, had not been effective. Not only did torture persist, but impunity for the act of torture was almost total⁴. At the same time, although there is an obligation on states to prevent torture and other-ill-treatment⁵, there was little focus on implementing this obligation and a low level of understanding of what it entails.

A focus on transparency and regular visits to places of detention

Developments in the field of torture prevention have been based on the concept that ensuring transparency through regular, unannounced visits to places of deprivation of liberty, is one of the most effective ways of preventing torture and other ill-treatment. The mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect. The objective of these visits is not to document cases of torture or denounce the situation or the authorities. Instead the aim is to analyse the overall functioning of places of detention and provide constructive, systemic recommendations aimed at improving the conditions and treatment of detained persons⁶.

The establishment of bodies with a specifically preventive mandate

The past three decades have witnessed the establishment of bodies with the specific mandate to prevent torture, including through visits to places of detention. At the regional level, in 1989, the Committee for the Prevention of Torture was established within the Council of Europe system. The Committee has thus far carried out 300 visits⁷ to countries in the region. The African Commission on Human and Peoples' Rights adopted the Robben Island Guidelines for the prevention and prohibition of torture in 2002, and established the Committee for the Prevention of Torture in Africa in 2009. At the International level, the Optional Protocol to the Convention against Torture (OPCAT) establishes a system of preventive visits to places of detention by international and national bodies: namely the Subcommittee on Prevention of Torture (SPT) and National Preventive Mechanisms (NPMs) that states have to establish. The OPCAT came into force in 2006.

The concept of prevention of torture and other ill-treatment

Through efforts to establish these bodies, and their subsequent work, key concepts in relation to the prevention of torture have been developed. A common feature is the understanding that torture prevention aims at *reducing risks* and *creating an environment* where violations (torture and other ill-treatment) are less likely to occur. So the SPT has stated that prevention embraces "as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring"⁸. Prevention is therefore wide-

⁴ A/HRC/13/39: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak to the Human Rights Council* (9 February 2010), p.11.

⁵ Articles 2 and 16 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁶ APT/OHCHR/APF, *Preventing Torture: An Operational Guide for NHRIs* (2010), p.8.

⁷ As of 3 March 2011. See <http://www.cpt.coe.int/en/about.htm>.

⁸ CAT/OP/12/6: *The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (December 2010) (hereafter 'The approach of the SPT to the concept of prevention of torture'), op 3.

ranging and evolving concept⁹, which requires a holistic approach. As the SPT has pointed out, “there is more to prevention than compliance with legal commitments”¹⁰ and “attention should also be paid to a whole range of other factors relevant to the experience and treatment of persons deprived of their liberty”¹¹.

The practical dimensions of prevention: key elements

The preventive approach is relevant for all actors working against torture and other ill-treatment, including states, monitoring bodies, national human rights institutions and civil society organizations. In practice, the following can be identified as key features of prevention in this field:

- The preventive approach is proactive and forward looking, in contrast to the methods which seek to respond to cases of torture once they have occurred.
- Prevention does not examine the symptoms (the violation) but the root causes, systemic faults and patterns of failures that lead to violations occurring or a risk that they might occur.
- It therefore involves a holistic approach: looking at all relevant factors, including the broader policy, legal and institutional frameworks.
- It is based on cooperation and constructive dialogue between relevant actors, including with authorities
- It uses regular monitoring and the proposal of concrete, solution-based recommendations.
- It is aimed at mitigating risk factors, and creating an enabling environment so that violations are less likely to occur in the future.
- It seeks to foster a “culture of prevention” among relevant actors, institutions.
- Prevention is therefore an ongoing process that is relevant to all states and contexts: whether there are reported violations at a given time or not.

The relationship between prevention, promotion and protection

The term “protection” has most often been used in the sense of immediate responses to violations or where people are threatened. However, as OHCHR has highlighted, it can also be understood more broadly as situations where “rights are acknowledged, respected and fulfilled by those under a duty to do so, and as a result of which dignity and freedom is enhanced”¹². Protection therefore also includes “longer-term work to build and strengthen laws and institutions that protect rights - within States and on the global level”¹³. In this sense, the prevention of torture can be understood as a part of broader protection of the right not to be tortured. But whereas protection is a *desired outcome*¹⁴, prevention is an endeavor which is first and foremost a matter of *process* and *approach*: ones that seek to ensure rights are respected through the elimination of risks. Prevention therefore also includes aspects of promotion, such as awareness raising and training (see below).

⁹UN Committee against Torture, *General Comment 2: Implementation of article 2 by States parties* (2008) (CAT/C/GC/2), op. 3.

¹⁰ CAT/OP/12/6: *The approach of the SPT to the concept of prevention of torture*, op. 3

¹¹ Ibid.

¹² The UN High Commissioner for Human Rights, *OHCHR Plan of Action: Protection and Empowerment* (2005), p.12.

¹³ Ibid.

¹⁴ Ibid.

III. Measures of protection and promotion aimed at prevention of human rights violations and abuses at the national level.

At a time where many interventions in the fight against torture are described as “prevention”, it is important to distinguish between two different forms of torture prevention. This distinction is based on when the intervention occurs and the approach that is employed¹⁵.

- **Direct prevention** (mitigation) aims to **prevent torture from occurring** by reducing the risk factors and eliminating possible causes. This intervention happens before torture takes place and aims to address the root causes that can lead to torture and ill-treatment, through training, education and regular monitoring of places of detention. As described above, direct prevention is forward-looking and, over the long term, aims to create an environment where torture is not likely to occur.¹⁶
- **Indirect prevention** (deterrence) takes place once cases of torture or ill-treatment have already occurred and is focused on **avoiding the repetition of such acts**. Through investigation and documentation of past cases, denunciation, litigation, prosecution and sanction of the perpetrators, as well as reparation for victims, indirect prevention aims to convince potential torturers that the “costs” of torturing are greater than any possible “benefits”.

For a long time, strategies to fight torture have been focused on “indirect prevention”. However this approach alone has proved ineffective to eradicate torture, hence the need for a direct approach which aims to intervene before the act. They are, however, complementary and both should form part of an integrated programme to prevent torture (see below).

IV. Legislative, judicial, administrative and other measures to prevent human rights violations

Measures that expressly and specifically prevent torture

The APT is aware of a number of measures taken by Governments, which are expressly and specifically aimed at preventing torture. The ratification of the OPCAT and its implementation at the national level is a prime example: fifty-seven states had ratified the OPCAT at the time of writing. In addition, some states have adopted legislation that is explicitly aimed at preventing torture. For example the Madagascar law against torture and other cruel inhuman and degrading treatment or punishment (2008)¹⁷ lists prevention as one of its objectives in the preamble.

There may be a value in explicitly articulating the preventive objective of human rights measures, in particular in order to encourage a shift in perspective of actors involved in their implementation, from the traditional reactive approach. However, prevention will include a broad range of measures, some of which be related indirectly to the specific violation at hand. It is therefore less important that all of these are explicitly called preventive measures, and more important that they form a

¹⁵ APT/OHCHR/APF, *Preventing Torture: An Operational Guide for NHRIs* (2010), pp. 9 – 10

¹⁶ In the medical field, this is called ‘primary prevention’ (i.e. all the measures taken to reduce the risk of occurrence of a disease).

¹⁷ LOI N° 2008 - 008 DU 25 JUIN 2008 contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

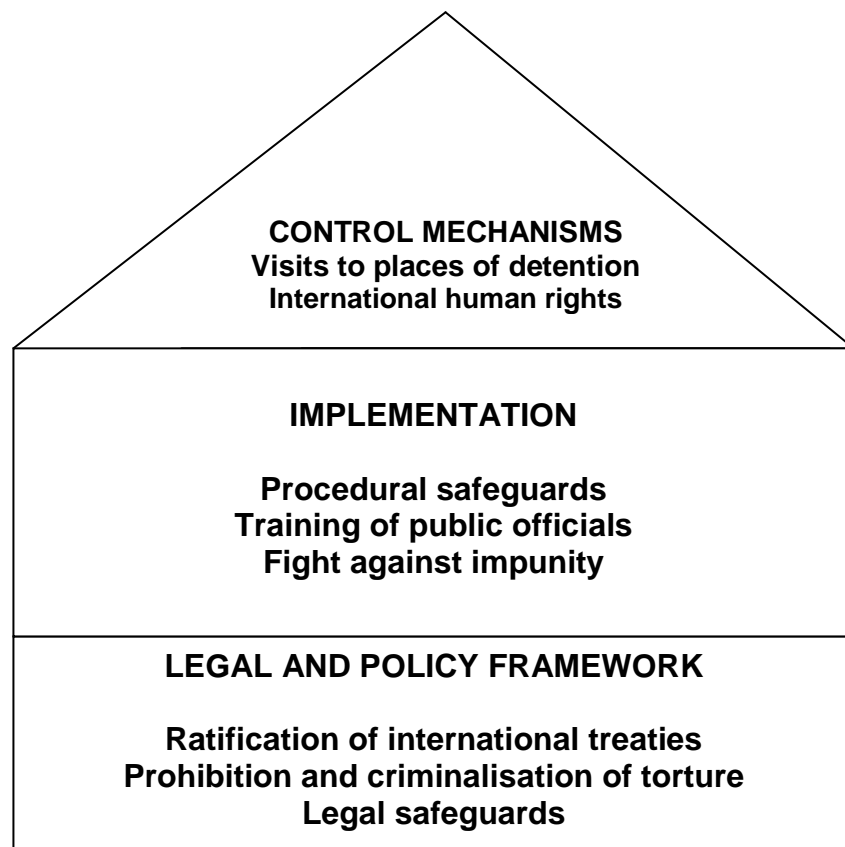
comprehensive strategy to address root causes and risks. The focus should therefore not be on implementing a check list of measures, but rather on adopting an integrated approach.

An integrated approach to torture prevention

The APT has developed a conceptual framework to describe an integrated approach to torture prevention, composed of three interrelated elements:¹⁸

- a legal and policy framework that prohibits and prevents torture
- effective implementation of this framework
- mechanisms to monitor the legal and policy framework and its implementation.

This integrated preventive strategy can be depicted in the form of a house, where the legal and policy framework forms the foundation, implementation of the framework creates the walls and the control mechanisms provide the protective roof.



Existence of a comprehensive legal and policy framework

A strong legal framework to prohibit torture is a critical component of any torture prevention strategy. The legal framework should reflect relevant international human rights standards and include specific provisions to prohibit and prevent torture.

¹⁸ APT/OHCHR/APF, *Preventing Torture: An Operational Guide for NHRIs* (2010), pp. 4 – 8 and APT/IIHR, *OPCAT Implementation Manual* (2010), pp. 19 – 22.

States can draw on the international legal framework by:

- ratifying relevant international human rights treaties
- integrating international human rights treaties into national law
- respecting soft law in relation to the prohibition of torture and deprivation of liberty.

At the domestic level, States should adopt explicit legislative provisions that prohibit torture, including to make it an offence under criminal law with appropriate penalties, and ensure that information obtained through torture is inadmissible as evidence. In addition, the legal safeguards for persons deprived of their liberty should be provided (for example, the right to have access to a lawyer and doctor and contact with the outside world).¹⁹

General public policies, such as human rights action plans, and specific public policies that affect deprivation of liberty are of particular relevance in terms of establishing legal provisions to prevent torture and other ill-treatment. For instance, public policies on crime (e.g. zero tolerance policies), drug users, juvenile justice, and immigration, as well as mental health and public health policies (e.g. in relation to HIV), may have an important direct or indirect impact on torture prevention²⁰.

Implementation of the legal and policy framework

Effective implementation requires practical measures to be taken on a range of levels to ensure that national laws and policies relating to torture and ill-treatment are respected in practice, these may include:

- Training and education – of different actors involved in implementing the legal framework, and in particular those within the criminal justice system
- Procedural measures – including to protect persons deprived of their liberty (such as regular review of police codes of conducts).
- Investigation and punishment of allegations of torture and other ill-treatment
- Taking action to tackle impunity
- Providing reparation for victims

Control mechanisms

In addition to an effective legal framework, there is also a need to establish control mechanisms, as the risk of torture is present in all countries at all times. As the SPT has stated, “Effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention. These mechanisms will likely take a variety of forms and operate at many levels. Some will be internal agencies involved, others will provide scrutiny from within the apparatus of government, whilst others will provide wholly independent scrutiny...”²¹. The SPT recognizes that a variety of bodies, including NPMs, NHRIs, civil society, and the judiciary may be involved in providing oversight. In addition, international bodies, such as UN human rights mechanisms, as well as national media, can contribute to an effective system of checks and balances to prevent torture.

The preventive approach has sometimes been misused by constituencies as a cover for human rights violations and window dressing. It is thus all the more important that prevention be conceived as a comprehensive strategy that requires the

¹⁹ As the SPT explains: “the purpose of safeguards is to reduce the risk of torture occurring and they are of relevance irrespective of whether there is any evidence of torture or ill-treatment actually taking place”. See CAT/OP/12/6: *The approach of the SPT to the concept of prevention of torture*, op. 5 (c).

²⁰ APT/IIHR, *OPCAT Implementation Manual* (2010), p. 20.

²¹ CAT/OP/12/6: *The approach of the SPT to the concept of prevention of torture*, op. 5 (g) and (h).

implementation of concrete measures on the ground, including ensuring accountability. It is also part and parcel of broader work on human rights protection and promotion.

V. Establishment and reinforcement of independent specialized national institutions

The role of national institutions in the prevention of torture

Independent national institutions have a key role to play in the prevention of torture. As mentioned above, they can act as control mechanisms to provide oversight of places of detention, as well as promote legal reform, run training programmes and raise public awareness. National Human Rights Institutions (NHRIs) are a vital part of strong national protection systems and their mandate means they can interact with all relevant actors at the national and international levels to contribute to the prevention of torture²².

The role of national institutions in the prevention of torture has been explicitly recognized in the OPCAT: the first international human rights treaty which gives a role to national institutions in the monitoring of international human rights obligations. The OPCAT is pioneering in that it establishes a system for complementary international and national efforts²³. Furthermore, these bodies have a specific mandate focused on prevention.

National preventive mechanisms under the OPCAT

Under the OPCAT, States Parties have the obligation to set up one or several national preventive mechanisms (NPMs) within one year. The NPM is an independent institution with the mandate to conduct regular, unannounced visits to places of detention, enter into dialogue with the authorities and propose concrete recommendations aimed at the prevention of torture and other ill-treatment.

The OPCAT does not dictate the form that these mechanisms must take, thereby providing the flexibility for States Parties to designate one or several bodies of their choosing, including new specialized bodies, existing human rights commissions, ombudsperson's offices, parliamentary commissions. However, each national mechanism, irrespective of the form it takes, must comply with the minimum guarantees and powers set out in the OPCAT.²⁴

Thirty-five states parties to the OPCAT have established or designated an NPM thus far. Some states chose to establish new, specialized institutions to take on the NPM role (for example France, Liechtenstein, Germany, Cambodia, Senegal, Paraguay). Others have designated National Human Rights Institutions as NPMs (for example, Albania, Azerbaijan, Mali, Mexico and the Maldives). In some cases, the mandate of these national institutions was strengthened to comply with the OPCAT requirements for NPMs, and ensure they could play a preventive role effectively. For example, the mandate of the Czech Public Defender of Rights (Ombudsman) was amended by law in 2005, in anticipation of its future designation as NPM (in 2006).

²² For more information on the role of NHRIs in the prevention of torture, see APT/OHCHR/APF, *Preventing Torture: An Operational Guide for NHRIs* (2010).

²³ APT/IIHR, *OPCAT Implementation Manual* (2010), p. 13.

²⁴ APT/IIHR, *OPCAT Implementation Manual* (2010), p. 25 and chapters IV and V.

The importance of prevention at the national level²⁵

The requirement for States Parties to put some form of NPM in place is a novel aspect that greatly strengthens the OPCAT as a preventive tool²⁶. NPMs, by their nature, are situated within States Parties so they can conduct more frequent visits, maintain a more regular and sustained dialogue with those responsible for the care and custody of persons deprived of their liberty, propose concrete preventive measures adapted to the national context and follow-up on the implementation of recommendations, including those of the SPT²⁷.

The increasing focus on prevention at the national level

Significantly, the OPCAT system has had the impact of increasing the focus of institutions at the national level on prevention. On the one hand, new institutions have been created with this mandate. On the other hand, the designation of NHRIs as NPM, has in many cases resulted in a change in approach from a reactive, case based approach to investigating and documenting allegations of torture, to a more proactive holistic approach of working against torture.

VI. Action-oriented policies, practices, strategies in preventing human rights violations

The effective prevention of human rights violations by nature requires action-oriented policies and hands-on engagement by a range of state authorities, as well as other actors. The first step is an analysis of risk factors (those conditions that increase the possibility of torture or other ill-treatment occurring). This can be used to inform the formulation and implementation of comprehensive and concrete measures, tailored to the specific context, and aimed at addressing the root causes and reducing the risks of these abuses occurring. At the same time, preventive measures should be constantly under review and adapted to evolving situations and to make them effective.

A proper analysis of risk factors for torture and other ill-treatment will require the consideration of a broad range of issues that can impact on the treatment of detainees:

- The general **political environment** is an important factor to consider, as a lack of political will to prohibit torture, a lack of openness of governance, a lack of respect for the rule of law and high levels of corruption can all increase the risk of torture. The same is true for the **social and cultural environment**. Societal attitudes and values may contribute to an environment of impunity in which practices of torture and ill-treatment persist. Where there is a culture of violence, or high public support to “get tough” on crime, the risk of torture occurring is also increased.
- The national **legal framework** should also be analysed. In countries where torture is prohibited in the Constitution and in law, as well as being a specific offence under the criminal code, the risk of torture might be lower than in countries where this is not the case. The analysis should also focus on the rules and regulations that apply to places where persons are deprived of their liberty, as well as the existence of appropriate legal safeguards. In addition,

²⁵ See APT/IIHR, *OPCAT Implementation Manual* (2010), p. 25.

²⁶ Nowak and McArthur, *The UNCAT*, p. 923.

²⁷ Nowak and McArthur, *The UNCAT*, p. 923.

the way in which the legal framework is implemented in practice should be closely analysed.

- The organization and functioning of the **criminal justice system** is another important factor to consider. The level of independence of the judiciary, as well as the level of reliance on confessions in the criminal justice system, will have a direct influence on the risk of torture. As the risk of torture is higher during the initial period of detention, particular attention should be paid to law enforcement authorities. In this regard, the institutional culture, the role and functioning of the police and recruitment and training processes for officers can all positively or negatively influence the risk of torture.
- Finally, the overall **institutional environment** should be included in the analysis. The level of accountability and transparency of the authorities, the existence of public policies regarding crime prevention and the effectiveness of complaints mechanisms are factors that can reduce the risk of torture, along with effective independent external actors, such as NHRIs and civil society organizations.

Monitoring bodies, such as National Preventive Mechanisms, can assist the state authorities in the analysis of risk factors, especially through the first hand information they gather through regular visits to places of detention. Rather than focusing on what can be done to address human rights violations, preventive bodies make concrete and solution-oriented recommendations, as to what states should do in order to prevent torture. These should be part of the action-oriented policies and strategies that states adopt and implement.

VII. Data collection and disaggregation, research and study

The uses and limitations of data in preventive work

The collection and use of data has its uses and limitations in terms of preventive work. As already mentioned, the prevention of torture and other ill-treatment requires an in depth analysis of risk factors and root causes. Relevant data, where available, can serve to inform such analyses and feed into concrete strategies. From this perspective, data on a broad range of aspects of the treatment and conditions of persons deprived of their liberty is relevant. Disaggregated data, especially in terms of vulnerable groups, is particularly relevant to prevention – as they may be more at risk of ill-treatment.

Some types of data may be more readily available than others. For example, it is common for countries to have statistics on the number and different types of detention centres, and possibly the number of persons detained in them. However, it may be less likely to have comprehensive data on the way detainees are processed and the compliance with safeguards in detention. Statistics may also be difficult to interpret. What, for example, is the relevance of an increase in the number of complaints regarding torture and other ill-treatment? This could provide an indication of worsening treatment of detainees, or on the contrary, that complaints systems are more widely available and known among detainee populations.

In addition, it should be borne in mind that statistics on specific violations, such as the number of reported torture cases, are only likely to be representative to the extent they are collected scientifically and consistently in a given place and over a given time frame (data will reflect definitions of “torture” adopted at the national level). Such statistics will also tend to highlight symptoms rather than root causes. An

analysis of broader statistical patterns and trends may be more helpful for understanding systemic problems and failures that need to be addressed.

The importance of first hand information and monitoring bodies

It is because of the lack and limitations of data that monitoring bodies, that visit places of detention, are essential in terms of torture prevention. These bodies can actually go inside places of detention to observe and collect first hand information on the situation of the detainees, from a holistic perspective. They not only look at figures, but speak to individuals – including detainees and staff, to understand the conditions, treatment, processes, systems and challenges. By analysing their findings, with reference to wider information and data, they are able to understand root causes and identify systemic changes that need to be made to reduce the risk of torture and other ill-treatment occurring.

Opportunities in measuring the impact of prevention

In practice, it is difficult to obtain reliable and representative statistics on the prevalence of violations such as torture and other ill-treatment, especially because they normally occur in secret. Experience has shown that even if there is an apparent increase or decrease detected in the occurrence of torture, it would be difficult to attribute this to specific preventive measures. Such changes are not normally due to one measure, but a result of a variety of factors, making it difficult to establish causal links. In addition, individual and isolated cases of torture do not necessarily constitute evidence of the failure of preventive action.

Prevention is based on the premise that the risk of torture and ill-treatment can exist or develop anywhere, including in countries that are considered to be free or almost free from torture at a given time. Preventive work is therefore necessary in all countries and contexts – irrespective of statistics indicating violations. As mentioned above, prevention is more a process and approach than an outcome. In this sense, it is possible to discern impacts of prevention, in the form of “steps” achieved in that process of creating an environment where the risk of abuse is reduced.

A number of indicators may be used to assess the extent to which the risk is reduced in a given place (unhindered access by outsiders, existence and implementation of safeguards, etc), and the environment in that place is not conducive to abuse. A number of institutions with a specific mandate on prevention, including National Preventive Mechanisms, have demonstrated important results in building an environment where the risk of abuse is mitigated. This includes improving detention registers and the way they are used, restricting the use of lethal and non lethal weapons by law enforcement and penitentiary personnel, and closing down worst detention facilities, etc. What is important however, is not only *what* measures have been taken (legislation/public policy etc), but *how* they are adopted and implemented.

VIII. Education and awareness raising

Education and awareness raising is an important component of preventive work. As explained above, the prevention of torture requires a comprehensive legal and policy framework that is properly implemented by relevant actors. These actors, and in particular those within the criminal justice system (such as law enforcement officials, judges and detaining authorities), will require proper training – both initial and ongoing – regarding the normative framework and the development of operational practices that respect these norms. In addition, the prevalence of torture and other ill-treatment may reflect wider societal values and behaviors not directly linked to laws and policies,

including, for example, attitudes towards violence and its acceptability in society. Awareness raising activities may therefore need to target a wider audience in society, in order to change mentalities and foster a culture of prevention through social change. Finally, it is crucial for members of the public to know their rights, in order to be able to claim them and ensure that preventive measures are effective in practice.

IX. Ratification and implementation of international treaties

Since the OPCAT was adopted in 2002, the APT has been working around the world to encourage and support States to ratify and implement the instrument. The OPCAT is the first international human rights treaty focused on prevention. It does not entail any new substantive obligations for states. Rather, it sets up a system of independent visits to places of detention by the SPT and NPMs, which seeks to assist states to better implement existing obligations and prevent torture. The constructive and practical approach of this treaty has meant that some states are more open to ratifying and implementing it: 57 states have done so, so far.

As for states that have not yet ratified the OPCAT, in the APT's experience, there are a number of reasons this may be the case. In particular:

- States are reluctant to ratify further international human rights instruments. Some misunderstand the OPCAT and believe for example that it entails further substantive or reporting obligations.
- States may be reluctant to open up places of detention to external scrutiny, by national and international actors. Some states do not understand that this scrutiny is based on constructive dialogue (and that the SPT's findings are confidential).
- Some states may believe that they do not need to prevent torture, as they do not have problems of torture at present – they misunderstand that prevention is important for all states.
- States face limited resources and do not want to invest in torture prevention: some states do not understand why it is important, and prefer to invest in more tangible projects such as construction of prisons.
- States do not understand the concept of independent bodies, and/or are reluctant to establish them (as required by the OPCAT).
- States do not prioritise working against torture.

In addition, it is relevant to note that some States have ratified the OPCAT, but have not taken action to properly implement the treaty. This risks undermining the OPCAT system rather than reinforcing it.

X. Provision of effective remedies, recourse and other measures at the national level

Ensuring remedies and recourse for victims of torture and other ill-treatment is an international obligation. Unfortunately, as the findings of the UN Special Rapporteur on Torture illustrates: "In practice, the right to a remedy and adequate reparation for victims of torture is either non-existent or severely limited, and adequate reparation is almost never provided"²⁸ and "In most countries visited by the Special Rapporteur, he was not presented with a single case of a law enforcement official being suspended, investigated and prosecuted, let alone convicted, for torture...."²⁹.

²⁸ A/HRC/13/39: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak to the UN Human Rights Council* (9 February 2010), p.15.

²⁹ A/65/273: *Interim report of the Special Rapporteur on torture and*

Tackling impunity and ensuring remedies for victims is an important part of a comprehensive approach to the prevention of torture. Indeed, the Special Rapporteur has identified ongoing impunity as a key reason torture and ill-treatment persists³⁰. When a culture of impunity develops, it can undermine both the force of the law and its implementation. In terms of the preventive perspective, ensuring accountability and remedies for torture victims are measures that intervene after the fact, to provide redress and ensure the non-repetition of these acts. That is why, to complement these, a comprehensive approach towards the prevention of torture and other ill-treatment must also include a broad range of measures to intervene before torture and ill-treatment occurs (as described above).

XI. Ways forward

What concrete measures should be adopted and implemented to ensure prevention at the national, regional and international level?

Prevention of torture and other ill-treatment take place first and foremost at the national level. It is national actors that are best placed to analyse risk factors and root causes, and propose and adopt measures that are best suited to the specific context. Measures and mechanisms at the regional and international levels play an important role in complimenting, supporting and reinforcing processes of prevention at the national level. It is therefore important that cooperation and exchanges are ensured between actors at all these levels.

National level

- A focus on prevention should be consciously adopted by all actors working against torture at the national level, including state authorities, NHRIs, civil society and other monitoring bodies, as a complement to other action when relevant.
- The emphasis should be on the analysis and elimination of risk factors and the creation of an environment where torture and other ill-treatment are less likely to occur.
- An integrated strategy should be adopted, composed of three elements: a comprehensive legal and policy framework, implementation of this framework and ensuring control mechanisms.
- This should involve a broad range of concrete measures: legal, institutional, policy and practical, suited to the specific context (for example ensuring legal and procedural safeguards against torture in detention, effective complaints mechanisms, independence of the prosecution and judiciary, training of relevant actors, etc. See section IV above on an integrated approach and for examples of specific measures).
- Independent bodies with the mandate to conduct regular unannounced visits to places of detention should be established. These can gather first hand information, analyse risks and propose concrete solution-oriented recommendations.
- States should ratify the OPCAT and establish effective National Preventive Mechanisms for the prevention of torture.

Regional-level

- Effective regional bodies with a mandate to prevent torture should be established, supported and maintained (i.e. CPT & CPTA).

other cruel, inhuman or degrading treatment or punishment to the UN General Assembly (10 August 2010), p. 2.

³⁰ *Ibid.* p. 13.

- Effective regional legal frameworks against torture should be put in place, including preventive safeguards.
- Effective regional human rights mechanisms (including courts) should be established and mainstream a preventive approach where possible.

International level

- The OPCAT establishes an innovative system for the prevention of torture at the international level. Measures should be taken to ensure that the OPCAT system is effective: the SPT and NPMs should be sufficiently resourced and supported to carry out their preventive mandates.
- Relevant bodies and mechanisms of the UN human rights system should reflect on and further develop the conceptual and practical dimensions of prevention, in consultation and collaboration with regional and national actors, so as to inform those working in this field: this questionnaire and upcoming workshop on the subject is an important step in this regard.
- The preventive approach should be mainstreamed by international organizations, human rights mechanisms and NGOs working against torture around the world.

Cross-cutting measures

- Relationships and exchanges between the international, regional and national preventive bodies should be developed, to contribute to the implementation of an integrated approach and ensure coherence where possible.
- Relevant actors working against torture at all levels (international, regional, and national) must join forces to avoid overlap and cover critical gaps. Cooperation between relevant actors must be viewed as a process leading to clearly defined expected results (exchange of information, joint sessions, etc) rather than mere discussions.
- A more inclusive approach to torture prevention should be adopted at all levels, involving a wide range of actors that have not traditionally been included in the fight against torture but whose involvement is relevant and necessary for creating a culture of prevention.

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