Occasional Paper

The Role of Independent Monitoring in Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

March 2010

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The Role of Independent Monitoring in Prevention of Torture and Inhuman or Degrading Treatment

Penal Reform International

> 'Paradoxically, prison – which is part and parcel of the legally constituted state – is more often than not a no-go area for the rule of law. It is a place where a powerful armed group, vested with the full authority of the law and the full force of the state, wields excessive power over a subordinate population, who are viewed as outlaws and supposedly deserving of whatever they get. These attitudes are widespread… In order to try to change things and limit prison abuse, that place of punishment and surveillance must in its turn be supervised, and it is the state's duty to encourage such transparency. External watchdog bodies should have their work made easier, since inspections carried out by the prison services, although obviously useful, are insufficient.'
> Ahmed Othmani, 'Beyond Prison', Berghahn Books (2008)

Introduction

The idea that those deprived of their liberty are to be shut away from the rest of society in closed institutions, subject to unlimited state power, stands at odds with modern understanding of a democratic society. Transparency and independent oversight over the public administration form an integral part of any system based on principles of democracy and the rule of law, particularly when a state is exercising its power to deprive people of their liberty. It is understood that those deprived of their liberty are particularly vulnerable and exposed to the danger of ill-treatment.

International law provides a specific set of norms that regulate the way states can exercise this power, that set out the minimum standards for conditions of detention, and provide guidelines as to how those deprived of their liberty should be treated. Of course, it is up to the state in question to ensure effective implementation of these standards through adoption of appropriate measures at national level. Unfortunately, however, states very often fail to identify, or to acknowledge that their policies, legislation, regulations and administrative practices are inadequate to the most fundamental aim of preventing acts of torture and other cruel, inhuman or degrading treatment or punishment (IDTP) from occurring.

Monitoring the treatment of those deprived of their liberty, including their conditions of detention, through schemes of unannounced and regular visits to places of deprivation of liberty carried out by independent international, regional and national bodies has become accepted as one means of preventing torture and IDTP. Current practice around the world strongly suggests that bringing transparency to places of deprivation of liberty by allowing regular public access to such places is indeed one of the most effective strategies.

The key to success of such monitoring schemes seems to reside in two essential features: their independence and their practical approach. The aim of this paper is to provide a brief overview of the monitoring mechanisms around the world at international, regional and national levels and critically analyse their comparative strengths. It will be argued that in order to achieve the aim of preventing torture and

IDTP, the monitoring bodies must be independent and adopt a pro-active approach to their visiting mandate.

Protection and Prevention

Historically, international human rights law has addressed the issue of torture and IDTP from the perspective of protection. The main aim of the United Nations Convention against Torture (UN CAT) is to ensure that everyone is protected against such appalling practices. States are therefore required, *inter alia*, to ensure criminalisation of torture in their domestic legislation and to put in place effective systems of investigation of allegations of torture and IDTP. However, the UN CAT also refers to the idea of prevention. Article 2 specifically obliges States Parties to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture', and the Committee against Torture has noted this to be a specific obligation under the UN CAT.[2] Most recently, the obligation to prevent has materialised in the provisions of the Optional Protocol to the UN CAT (OPCAT), which sets out a double-tier system of prevention: through creation and the work of the UN Subcommittee on Prevention of Torture (SPT), and the obligation of the States Parties to set up or designate National Preventive Mechanisms (NPMs). The main route for achieving the aim of prevention, according to OPCAT, is a system of regular visits to all places of deprivation of liberty by the SPT and NPMs 'to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'.[3]

International, regional and national practices include many examples of visits carried out to places of deprivation of liberty, all of which could be described as visits capable of, and to some extent aimed at reducing the occurrence of torture and IDTP. However, when examined more closely, a basic distinction can be drawn between protective and preventive visiting. The former is aimed at ensuring protection of (or redress for) a particular individual. In this case the methodology of the visit is constructed to ensure the possibility of dealing with an individual case. The visits are of a more *ad hoc* nature, as normally they are carried out in response to a received complaint. Because complaints may be via an established procedure, usually involving the intervention of prison employees, confidentiality may be incomplete.

The preventive visits, on the other hand, employ a more holistic approach. Instead of dealing with particular cases directly, these aim to illuminate and address more global and systemic problems inherent in the criminal justice system. In marked contrast to protective visits, which provide an opportunity to address a violation that has occurred, preventive visits focus on the potential, in order to ensure that a violation cannot occur in future. The guiding principles of preventive visits, therefore, are long-term engagement with the authorities and constructive, on-going dialogue, but also confidentiality, so as to ensure a gradual change in the established 'culture' of the criminal justice system while ensuring the protection of the individual detained under that system.

The two types of visiting are complementary, each, in isolation, having its limitations. However, as the analysis below demonstrates, existing practice at international, regional and national levels, can be seen to blur the distinction between

[2] CAT General Comment No. 2
[3] Art. 1, OPCAT

the two approaches. This has the potential for certain repercussions. In particular, it is highly unlikely that a protective approach to visiting can be a sufficient tool for the prevention of torture and IDTP.

International Practice

> 'The Special Rapporteur is convinced that there needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards referred to are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing the pervasive darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures to safeguard their privacy and dignity. But those regulations and measures will be the exception, having to be justified as such; the rule will be openness.'
>
> Sir Nigel Rodley, UN Special Rapporteur on Torture; A/56/156 (2001)

The idea that one of the most effective ways to prevent torture and other ill-treatment of people held in places of deprivation of liberty is to enable access to the outside world promptly after being arrested or detained, and during the period of detention, has been recognised at the international level. The International Committee of the Red Cross (ICRC) is a prominent international body that has been successfully conducting such visits since 1915. The aims of visits by the ICRC are:

- *to prevent or put a stop to disappearances and extra-judicial killings;*
- *to prevent or put an end to torture and ill-treatment;*
- *to improve conditions of detention where necessary;*
- *to restore contact between detainees and their families.*[4]

The essential features of the ICRC approach to visits are long-term engagement with the respective authorities and confidentiality. Visit reports and the substance of the engagement with the authorities remain confidential, and this really is a cornerstone of the organisation's approach. Undeniably, the decision in favour of confidentiality, coupled with long-term dialogue and in-country presence allows the ICRC to engage constructively with the authorities and secure step-by-step progress. However, such progress is ensured behind closed doors, leaving little space for engagement with other stakeholders. In addition, the work of the ICRC is more individual-centred, with the aim of the visits being to secure the well-being of the individual, although the organisation also conducts assistance work on health, water and habitat in prisons. Engagement with the broader criminal justice system has relatively recently also become part of the ICRC's focus.

A rather different approach is employed by the UN Special Rapporteur on Torture who, while unable to visit a country in the absence of a state invitation, will only accept such an invitation where there is a clear undertaking from the host country not to jeopardize the visit. This includes ensuring freedom of movement and choice of the places to be visited, as well as the ability of the Special Rapporteur to have private interviews with persons of his or her choice and to publish reports on the visits undertaken.[5]

[4] ICRC: http://www.icrc.org/Web/Eng/siteeng0.nsf/html/detention-visits-010407
[5] http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm

The impact of such public reports, for example those relating to visits to Spain 2003 and Jordan in 2006, has been notable. However, the engagement of the Special Rapporteur is *ad hoc*. Even though there is a follow-up procedure, there is no on-going dialogue with the authorities and the visits are infrequent. The visits therefore offer only a snapshot of the criminal justice system and do not provide an opportunity thoroughly to engage with systemic shortcomings.

Regional Practice

The existing regional systems of human rights protection have also established practices of regional visiting bodies. Arguably, the most advanced system of visiting bodies was created within the Council of Europe (CoE) through the adoption of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Convention) in 1987.[6] Pursuant to Article 1, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was established and is mandated to:

> *'by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment'.*

Every state party engages to allow such visits[7] and at the end of the visit the CPT should issue recommendations to the relevant authorities.[8] The CPT has carried out almost 300 country visits and its 'jurisdiction' stretches to 47 CoE member states.[9] During its visits the CPT not only visits places of deprivation of liberty, but deploys a more holistic approach in scrutinising the effectiveness of the criminal justice system. The two main working principles are: cooperation with the state party in question through a process of on-going dialogue and confidentiality (the reports of the CPT are not published unless expressly authorised by a state).[10]

As a regional body, the CPT has a more frequent presence in country than the UN Special Rapporteur on Torture, but its engagement with the authorities is still infrequent. On average, the CPT visits countries at four-year intervals.

Turning to other regions, in the Americas a Special Rapporteur on the Rights of Persons Deprived of Freedom has been appointed since 2004.[11] The Rapporteur, *inter alia*, carries out visits to places of deprivation of liberty in the member states of the Organization of American States (OAS) and issues recommendations to the authorities. However, once again, engagement with countries is on an *ad hoc* basis. [12]

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[6] CPT/Inf/C (2002) 1 [EN] (Part 1) - Strasbourg, 26.XI.1987
[7] Ibid, Article 2
[8] Ibid, Article 10
[9] http://www.cpt.coe.int/en/about.htm
[10] The practice, however, is that, with very rare exceptions, all states parties request the publication of their reports. Thus, publication of reports has become a custom among the countries under CPT's jurisdiction. The notable exception to this is only Russian Federation - only one of 14 visit reports is in public domain.
[11] See Resolution of the General Assembly of the OAS, OAS Doc. AG/RES. 2037 (XXXIV-O/04) of 8 June 2004 on the Study of the Rights and the Care of Persons Under any Form of Detention or Imprisonment.
[12] The Inter-American Convention to Prevent and Punish Torture does not establish a monitoring mechanism along the lines of the CPT

Similarly, in the African region, the mandate of a Special Rapporteur on Prisons and Conditions of Detention was created by the African Commission on Human and Peoples' Rights (the African Commission) in 1996 as a result of lobbying by PRI and others. Although not defined at the outset, the terms of reference refer to the need for the Special Rapporteur to 'examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights'. [13]

Additionally, in 2002 the African Commission adopted 'The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa' (RIG).[14] At the same time a Follow-Up Committee (RIG Committee) was established which, *inter alia*, is to engage in various activities to disseminate and encourage states to implement the RIG. [15]At the time of writing, in an interesting development, the RIG Committee has been redesignated the Committee for the Prevention of Torture in Africa (CPTA) and the post of Special Rapporteur and Chair of the CPTA are combined in one person.

National Practice

The importance of detainees having access to complaints mechanisms, independent monitoring bodies and civil society organisations is evident from the international and regional practice examined above. While the majority of states have some form of national complaints body, such as a Human Rights Commission (HRC) or one or more Ombudsman offices who may have contact with detainees in the course of investigating a complaint, it is increasingly being recognised that an effective system of *prevention* requires that regular visits to places of detention be undertaken by independent national bodies.[16] Unlike visits undertaken by a complaint-focused body, which are reactive, taking place after an allegation of abuse has been made, the rationale behind preventive visits is to be proactive, to identify risks and assist the authorities to create an environment where these forms of abuse are unlikely to occur.

Perhaps unsurprisingly, practice at national level by states around the world offers a broad range of actors which engage in monitoring activities. These include statutory visiting mechanisms, National Human Rights Institutions (NHRIs) and various civil society initiatives.

1. Statutory Visiting Bodies

Some legal systems provide for the establishment of statutory visiting bodies which are mandated, *inter alia*, to visit places of deprivation of liberty. Such bodies normally carry out a system of regular visits and issue reports with recommendations

[13] As set out in an appendix to the Report of the Special Rapporteur on Prisons and Conditions of Detention to the 21st Session of the African Commission on Human and Peoples' Rights, Tenth Activity Report 1996–1997, Annex VII, para. 2.

[14] Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 32nd Session, Banjul, The Gambia, October 2002

[15] For more details on the Robben Island Guidelines and the OPCAT see Relationship between the African Commission on Human and Peoples' Rights Robben Island Guidelines and the Optional Protocol to the UN Convention Against Torture (OPCAT) Policy Paper of the OPCAT Research Team, University of Bristol (2008); Available at: http://www.bris.ac.uk/law/research/centres-themes/opcat/index.html

[16] See Malcolm Evans and Rod Morgan 'Preventing Torture', Oxford University Press (2001)

to the respective authorities. Her Majesty's Inspectorate for Prisons (HMIP) is an example of such a body in the United Kingdom (UK). Thus in 2008, for example, 140 private and public prisons and young offender institutions and 76 police custody suites in England and Wales were subjected to the inspections of the HMIP [17] through announced, unannounced and follow-up inspections which examine the conditions of detention and treatment of detained individuals. The outcome of such inspections is a report which is normally published, with a press notice, within 15 weeks of the inspection. The inspected establishment must produce an action plan within 3 months of the report relating to the recommendations issued, and a progress report is required after 12 months.[18]

The HMIP in the UK has acquired a very high public profile. The Chief Inspector reports in public and has direct access to Ministers and Parliament. In part as a result, HMIP reports a high rate of acceptance of their recommendations.[19]

While in practice the institution has certainly acquired the reputation of an independent inspectorate, the Chief Inspector is appointed by Her Majesty, and reports to the Secretary of State, who may 'refer specific matters connected with prisons in England and Wales and prisoners in them to the Chief Inspector and direct him to report on them'.[20] Such legal stipulations may call into question the independence of the institution, which potentially at least could undermine the effectiveness of its work.

2. National Human Rights Institutions (NHRIs)

The term is commonly used in respect of two rather different kinds of institution:[21] Human Rights Commissions (HRC) and Ombudsman institutions.[22] The term 'Ombudsman' describes institutions with a role 'to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government's actions more open and the government and its servants more accountable to members of the public'.[23] The term 'Human Rights Commission' on the other hand is more commonly given to institutions created specifically with the aim of promotion and protection of human rights.

Both types of NHRI in recent years have acquired increasing recognition for their role in domestic implementation of international human rights norms. This is evidenced by the role accorded them in the procedures of bodies of the UN[24] as well as in UN treaties.[25] Both types of NHRI at the UN level are evaluated against the so-

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[17] Nigel Newcomen 'UK Practice of Inspecting Prisons' Presentation in the regional Conference 'Prevention of Torture: What does it mean and how well do we do it in South Caucasus?' Tbilisi, Georgia, 01-02 October 2009

[18] http://www.justice.gov.uk/inspectorates/hmi-prisons/full-inspections.htm

[19] In 2007/8- 97% of recommendations accepted and in 2007/8 69% of recommendations implemented by the time of re-inspection 12-36 months later: see: Nigel Newcomen 'UK Practice of Inspecting Prisons' Presentation in the regional Conference 'Prevention of Torture: What does it mean and how well do we do it in South Caucasus?' Tbilisi, Georgia, 01-02 October 2009

[20] See http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1952/cukpga_19520052_en_1#pb1-l1g6

[21] Gauthier de Beco, 'National Human Rights Institutions in Europe' (2007) 7:2 *Human Rights Law Review*, at 332

[22] This paper will use the term 'NHRIs' when referring to the HRC and Ombudsman institutions together

[23] International Ombudsman Institute: http://www.law.ualberta.ca/centres/ioi/index.php

[24] See UN GA res 60/251, 3 Apr. 2006, Arts. 5 (h) and 11; Human Rights Council res. 5/1, 18 June 2007, Annex, Arts 3 (m) and 15 (c)

[25] See, for example, Article 3 of the OPCAT

called Paris Principles[26] which provide that the NHRIs are to have the following powers:

> *'(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; (…) these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
> *(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; (…);*
> *(ii) Any situation of violation of human rights which it decides to take up; (…)*
> *(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*
> *(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation (…)'.*

While the Paris Principles do not specifically mention the function of 'monitoring', it is more and more recognized as a fundamental element of any promotion and protection activities. However, visits to places of detention are more often carried out by the NHRI in the framework of investigating individual complaints from detainees rather than engaging with a more preventive approach to monitoring.

a. Human Rights Commissions (HRCs)

The mandates of HRCs traditionally tend to have rather broad remits encompassing a range of human rights issues, with torture and IDTP prevention forming only a part of their mandate. Some HRCs also receive individual complaints and have powers to issue binding orders to public officials, while others fulfil more the role of a think tank, or advisory body to the government.[27] For example, Kenya National Commission on Human Rights have the powers to issue summons, question any person in respect of the any subject matter which the Commission is investigating and even require any person to disclose any information within such person's knowledge relevant to any investigation conducted by the Commission.[28]

Most of the HRCs also carry out visits to places of deprivation of liberty, even though most commonly these visits are in response to a complaint received or an investigation that is being carried out. Thus Ghanaian Commission on Human Rights

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[26] Paris Principles relating to the Status and functioning of National Institutions for Protection and Promotion of Human Rights (hereinafter: the Paris Principles), G.A.Res. 134, UN GAOR, 48th Sess., UN Doc. A/RES/48/134 (1993); For more details on the aspect of NHRIs and OPCAT see The Relationship between Accreditation by the International Coordinating Committee of National Human Rights Institutions and the Optional Protocol to the UN Convention Against Torture, Policy Paper of the OPCAT Research Team, University of Bristol (2008); Available at: http://www.bris.ac.uk/law/research/centres-themes/opcat/index.html

[27] APT Position Paper, 'National Human Rights Commissions and Ombudspersons' Offices/ Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture'; January 2008; p. 2

[28] Article 19 of the Kenya National Commission on Human Rights Act, 2002; Law No. 2 of 2002

and Administration of Justice conducts visits to places of deprivation of liberty, including prisons and police cells, since 1995 and the Commission stresses that it pays special attention to remand prisoners and police cells- in fact, in 2006-2007 the Commissions selective monitoring visits focused solely on remand prisoners, revealing severe inability of the courts to expedite trails of those who have been remanded in custody.[29]

Nevertheless, given that HRCs have the wide mandate of protection and promotion of all human rights, they generally lack regularity in their approach to visiting places of detention. Moreover, most HRCs carry out visits in response to complaints received or in the remit of their investigations as opposed to system of regular visits. Thus many of these institutions, when being considered for the role of the NPMs (see section below) find themselves revising their approach to visiting to ensure the necessary regularity of visits as well as re-examine their reactive approach.[30]

b. Ombudsman Institutions

Ombudsman institutions are typically charged with addressing a wide ranging mandate encompassing all aspects of the proper administration of justice. Human rights issues *per se* normally do not form a specific part of their mandate and thus the engagement of the Ombudsman institutions with monitoring places of deprivation of liberty most commonly occurs through the consideration of complaints received. In this capacity, the Ombudsman often has quasi-judicial powers which may assist in resolving individual cases to a great degree. Thus while the Parliamentary Ombudsman of Finland carries out visits to places of detention, it has been noted that current visits carried out are 'often quite brief inspections (for example, one day in one prison) by the Ombudsman' during which the focus is 'more on legal issues than policy or funding-related issues'.[31]

However, some Ombudsman institutions also carry out more systematic visits. For example, the Danish Ombudsman may inspect any public institution, company or place of employment which falls under his or her jurisdiction.[32] The challenge however lies with the fact that the office of the Danish Ombudsman, like many other Ombudsman offices, is predominantly composed of lawyers, and the point of reference is Danish law and not international human rights law. This was the basis for criticism levied by non-governmental organisations (NGOs) when the institution was designated as an NPM.[33] The result was that the institution entered into negotiations and concluded a Memorandum of Understanding with the Danish Institute for Human

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[29] Lilian Ayete Nyampong 'Challenges facing the OPCAT in the Implementation of the OPCAT in the African Region. Visiting places of detention- methods'. Presentation in the regional conference 'OPCAT in the African Region: Challenges of Implementation' held 3-4 April 2008, Cape Town, South Africa; Available at: http://www.bris.ac.uk/law/research/centres-themes/opcat/docs.html#OPCATAfricanConference2008

[30] Byunghoon Oh 'National Human Rights Institutions and the Correctional System' Contribution to the ICC 22nd Workshop on NHRIs and Detention. 23 Mar. 2009; Geneva, Switzerland

[31] Jari Pirjola, 'The Parliamentary Ombudsman of Finland as a National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2008) 77 Nordic Journal of International Law; at 170

[32] Section 18 of the Danish Ombudsman Act

[33] Rehabilitation and Research Centre for Torture Victims (RCT), 'Alternative Report to the list of issues (CAT/C/DNK/Q/5/rev.1) 19 Feb. 2007 to be considered by the UN Committee against Torture during the examination of the 5th periodic report of Denmark; 38th Session, May 2007' Apr. 2007, Copenhagen, Denmark; at 20

Rights and the Rehabilitation and Research Centre for Torture Victims in Denmark on cooperating in carrying out the tasks of the NPM.[34]

3. National Preventive Mechanism (NPM) under the provisions of OPCAT

> 'Other important elements for improving detention conditions are a truly independent judiciary and the creation of independent national monitoring mechanisms, inter alia, through the ratification of the Optional protocol to the Convention against Torture, which requires the establishment of such mechanisms.'
>
> Professor Manfred Nowak, UN Special Rapporteur on Torture: A/64/215 (2009)

As mentioned above, OPCAT sets out a two tier system of prevention of torture by providing for the establishment of the SPT at the UN level and obliging states parties to 'set up, designate or maintain at domestic level one or several visiting bodies'[35], the NPM. There is very little prescription in the treaty as to how these bodies are to be constituted: Article 18 calls for guarantees of their functional independence and independence of their personnel; the NPMs are to have the requisite expertise, strive towards gender balance and adequate representation of ethnic and minority groups; states are to provide the NPMs with the necessary resources and give 'due regard' to the Paris Principles when establishing an NPM.

In practice, perhaps due to the reference to the Paris Principles or pragmatic considerations, many States Parties have chosen to designate their existing NHRIs as NPMs, both HRCs[36] and Ombudsman offices.[37] Some states parties, however, have utilised their existing statutory visiting mechanisms, [38]and others have combined the existing Ombudsman offices with the work of NGOs. [39]There are countries that have also decided to create an entirely new institution for the NPM. [40]

These two 'layers', the SPT and the NPMs, are to carry out preventive, regular and systematic visits to all places of deprivation of liberty.[41] The interesting aspect of the OPCAT lies in Article 4, which sets out a very broad definition of deprivation of liberty which can encompass not only prisons and police cells, but also places for the detention of asylum seekers, immigration centres, transit zones at international ports, psychiatric institutions, social care homes, military detention centres and others.

The challenge lies with the need for the existing institutions to adapt to the requirements of a system of regular preventive visiting that OPCAT requires to be put in place. The Croatian Ombudsman, which is considered for the role of NPM, has noted in respect of its visiting practices and their compliance with the requirements of

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[34] See: http://www.ombudsmanden.dk/OPCAT_en/
[35] OPCAT, Article 3
[36]E.g.in Mexico it is the Mexican National Human Rights Commission that has been designated as the only institution to carry out the mandate of the NPM, while in Mali- National Human Rights Commission (Commission nationale des droits de l'homme)
[37] E.g. in Armenia it is the Office of Public Defender of Armenia that has been designated as the NPM; in Estonia it is the Office of the Chancellor of Justice while in Costa Rica- the Ombudsman's Office (La Defensoría de los Habitantes).
[38] E.g. United Kingdom and New Zealand
[39] E.g. in Slovenia, where the NPM is the Ombudsman and, in agreement with him/her, the NGOs.
[40] E.g. in France the institution of General Inspector of Places of Deprivation of Liberty (Contrôleur général des lieux de privation de liberté) has been created country's NPM and in Senegal the National Observer for Places of Deprivation of Liberty (Observateur National des Lieux de Privation de Liberté).
[41] OPCAT, Article 1

NPM visits: 'Although the work done so far has been highly professional and effective, the bulk of the advisor's time is still spent on complaints handling rather than visiting, and it is apparent that visits are too short - usually a maximum of one day per institution'.[42]

4. Civil society

In a number of countries civil society organisations carry out visits to places of deprivation of liberty. Countries where PRI has played a recent role in formation and training of civil society monitoring groups include Armenia, Georgia, Kazakhstan and Ukraine. In Armenia two groups composed of nominated representatives of national NGOs are respectively charged with visiting prisons and police stations and have the right to visit (unannounced) any establishments within their remit.[43] The outcomes of their visits are reports containing recommendations, which are published alongside corresponding replies by the relevant Ministry.

The drawback of such a scheme can lie in the constitution of the PMGs, which are often created on the initiative of the inspected authorities and in such a way as to create significant dependence on their good will. [44]Although the initiatives have been praised by the CPT,[45] the way they are constituted is usually not sufficient to ensure regular, independent oversight over places of deprivation of liberty. Paradoxically, this is particularly the case concerning bodies charged with monitoring at the pre-trial stage.

5. Others

There are various other initiatives in countries around the world[46] that in practice have proved to be successful in assisting people in pre-trial detention, including in such a way as potentially to protect detainees from torture and IDTP, and particularly where detention conditions themselves could be considered inhuman and degrading. One example is the Paralegal Advisory Services projects (PAS) that have been piloted in Africa and elsewhere by a number of actors, including PRI and local partners such as the Malawi-based Paralegal Advisory Services Institute[47] and the Foundation for Human Rights Initiative in Uganda.

The drawback of such initiatives is again that the main goal tends to be to react to and deal with individual cases. PAS initiatives, when carried out by an NGO with a penal reform mandate, or when designed to operate in conjunction with other criminal justice actors, may address the systemic shortcomings of the criminal justice

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[42] Milena Gogic, 'The context and the changing role of the Croatian people's Ombudsman' Contribution to the ICC 22nd Workshop on NHRIs and Detention. 23 Mar. 2009; Geneva, Switzerland

[43] Arman Danielyan 'OPCAT in Armenia' Presentation in the conference OPACT in the OSCE region: What it means and how to make it work? Prague, Czech Republic, 25-16 November 2008 in Prague 2008; Available at: http://www.bris.ac.uk/law/research/centres-themes/opcat/docs.html

[44] See for example CPT concern at the transparency of the process by which prison monitors are recruited in Georgia, in the report to the Georgian Government on the visit conducted from 21 March to 2 April 2007; Available at: http://www.cpt.coe.int/documents/geo/2007-42-inf-eng.htm#_Toc177181650

[45] Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 12 April 2006; CPT/Inf (2007) 47; at para 27

[46] Such as detention visits by parliamentarians, judges, magistrates, who normally have a statutory right of access

[47] For a recent description of PASI's work see IDLO Legal Empowerment Working Paper 2 at: http://www.idlo.int/publications/LEWP/LEWP_Maru.pdf

system, including those conducive to torture and IDTP, but this is not the essential aim of the service.

Conclusions

> ‘’The most difficult task of all is for the State to accept that it needs to take upon itself the task of prevention. Effective prevention requires intervention to protect those at risk. Rarely can this be done on an individualised basis, though if a specific risk is known, that risk can be averted. The key to preventing torture lies in accepting the need to put in place a mechanism that can lessen the likelihood of torture and ill-treatment occurring. This is difficult because these mechanisms and procedures can appear onerous, cumbersome and, in the eye of some, can appear to hamper the work of law enforcement agencies in doing their difficult but vital tasks. The ultimate test of a State’s commitment to delivering to those subject to its jurisdiction the human right that ‘no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’ is the extent to which it is willing to accept limitations upon the powers of its own officials and will permit necessary intrusions into their powers and prerogatives in the interests of extending a mantle of protection to those who are in a position of weakness and vulnerability, irrespective of who they are or what they might be suspected of having done. It is only when States can be seen to be addressing torture and ill-treatment in all these ways that it can truly claim to be working towards realisation of this most fundamental of human rights.’
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> Professor Malcolm D Evans, SPT member, Legal Measures to Prevent Torture and Ill-treatment, in APT-ACHPR workshop ‘Preventing Torture in Africa’, Robben Island, South Africa, 12-14 February 2002, APT, p.62.

Most states provide for entities that carry out visits to places of deprivation of liberty. However, as the brief examination above shows, none of these taken into isolation can ensure the necessary qualities of efficient monitoring: (perceived) independence, regularity, a holistic and systemic approach, engagement at the policy level, securing compliance with recommendations. Although in practice independent, constitutional elements in relation to the statutory visiting bodies may give rise to doubts over their independence, which in turn may limit their effectiveness. NHRIs may lack a systemic and holistic approach, and their visits may be irregular and reactive rather than proactive. Civil society initiatives, while providing the necessary guarantees of independence, may lack regularity, be incapable of addressing systemic issues and too dependant upon the unenforceable cooperation of the authorities. Finally, regional and international mechanisms cannot ensure sufficient regularity of visits and of follow-up, and may lack the detailed knowledge of prevailing national circumstances essential to effect comprehensive change.

A protective approach to issues of torture and IDTP is clearly no longer sufficient: the international bodies such as the Special Rapporteur on Torture and CAT, regional bodies such as the CPT and newly created international treaty body the SPT, all demonstrate the apparent willingness of the international community to move a step further in addressing the problem. Prevention is no longer a mere principle or aspirational aim. The coming into force of OPCAT has firmly approved prevention of torture and IDTP as a clear legal obligation of states. However, in order to achieve this aim, there is a need to shift the existing approach to visiting places of deprivation of liberty, as well as our understanding of the significance of the broader context in which such visits take place. Without a holistic approach, thorough engagement with the criminal justice system and the many other elements of a state which impinge on

that system, prevention will remain a mere principle, and one which is fundamentally misunderstood. Only a web of preventive visiting bodies at the national level, supplemented by those at regional and international levels, and proper, bona fide engagement of state authorities with such bodies, can ensure that a legal obligation to prevent is fulfilled.

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