



Promoting fair and
effective criminal justice

Safeguards against torture and ill-treatment

Independent monitoring of places of detention

Background

Alongside with slavery and genocide, the international community has recognised torture and ill-treatment as impermissible at all times and in all circumstances. Its prohibition is absolute and found its way into customary law, binding to all states irrespective of whether they are parties to international treaties codifying the prohibition.

Human rights law has come a long way to contrast the practice of torture and ill-treatment with detailed safeguards and specialised institutions, responding to factors contributing to torture and aiming at the establishment of accountability and preventive mechanisms. Numerous conventions have been adopted at regional and international level to respond to and prevent the practice of torture and ill-treatment.

Articles 2 and 16 of the UN Convention against Torture (CAT) oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction. Such measures comprise protective, reactive and preventive elements.

Why independent external monitoring of places of detention?

Experience demonstrates that torture and ill-treatment usually take place in isolated places, where those who practise torture feel confident that they are outside the reach of effective monitoring and accountability. Places of detention, per definition, are such isolated places.

Consequently, preventing torture and ill-treatment requires that places of detention are not shielded from the outside. Access of detainees to the outside world such as family visits and lawyers, therefore, is not only a right of its own, but also fulfils the crucial function to prevent torture or ill-treatment from happening, from remaining undetected and unpunished.

Yet, this function can only be fulfilled in a systematic and effective way if regular and external scrutiny is applied to places of detention.

To this end, specific visiting mechanisms have been created to exploit the preventive potential of regular and unannounced visits to places of detention undertaken by an independent body: The possibility of such visits at any time raises the probability of abuses being detected – and thereby discourages prison guards, police officers etc. from committing abuses. At the same time, the added value of such visiting mechanisms is to analyse systemic deficiencies, which, if addressed promptly, prevent future violations of the prohibition of torture and ill-treatment.

The idea is for multidisciplinary teams of independent experts carrying out preventive visits gather first-hand observations and speak confidentially with detainees and staff. They scrutinize the physical facility, rules and procedures, and the adequacy of any safeguards, in order to identify the elements that lead, or might lead in the future, to conditions or treatment amounting to ill-treatment or torture.

This information is then assessed against national, regional and international standards and best practices, leading to specific and practical recommendations addressed to the authorities best able to implement them (at the institutional, regional and/or national level). These recommendations constitute the basis for constructive dialogue with the authorities. Follow-up discussions and visits allow verification of implementation, and further refinement or elaboration, of the recommendations. The preventive visits and the process of dialogue seek to achieve improvements for all members of a detainee population, for the place of detention as a whole, and for the overall system of places of detention in the State.¹

Visits can also contribute to increasing accountability and preventing impunity in places of detention, but this is different from a programme of visits conducted with the primary objective of prevention.

The first such system created – at a regional level- was by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) at by the Council of Europe in 1978. Its mandate is to organise visits to places of detention in all member states of the Council of Europe on a regular basis, i.e. all places where people are deprived of their liberty, thereby including prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc. Delegates of the CPT have “unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private, and communicate freely with anyone who can provide information.”

This model has inspired a comparable mechanism to be created at the international level, resulting in the adoption of the Optional Protocol to the UN Convention Against Torture (OPCAT).

The Optional Protocol to the UN Convention against Torture

The OPCAT is the first international instrument enabling visits to places of detention to be carried out worldwide by the SPT (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture), thereby extending the good practice of regular visits to the international level, to countries outside the Council of Europe which have signed/ acceded/ ratified OPCAT.

But beyond that, the OPCAT is path-breaking because it seeks to fill a gap, namely the exploitation of the preventive potential of monitoring places of detention at the national level, providing a more regular coverage and thereby increasing the preventive potential: The OPCAT, in addition to enabling the SPT to conduct visits, obliges states parties to establish one or several national preventive mechanisms (NPMs), (an) independent expert body/ bodies, entitled to unannounced and unhindered visits to every place where persons are deprived of their liberty.

OPCAT ratification and implementation, therefore, provides for a preventive mechanism through recommendations gathered during regular visits to places of detention, queries to government and authorities and its mandate to review existing and proposed legislation.

Crucial elements of detention monitoring²

- **Independence:** The operational independence of the NPM must be guaranteed. The mechanism needs to enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol. Also, it needs to be ensured that members do not hold any positions that raise questions of conflicts of interest.
- **Comprehensive mandate:** Besides the mandate to regularly examine the treatment of persons deprived of their liberty in places of detention, monitoring bodies should have the power to make recommendations to the relevant authorities and submit proposals and observations

¹ Association to Prevent Torture (APT), Establishment and Designation of National Preventive Mechanisms, 2006, pp. 15, 16

² UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on national preventive mechanisms, 9 December 2010, CAT/OP/12/5.

concerning existing or draft legislation.³

- **Scope of visits:** The visiting mandate should extend to all places of deprivation of liberty within the state's jurisdiction. The mandate thus needs to extend beyond prisons and police stations to encompass, for example, psychiatric institutions, detention areas at military barracks, holding centres for asylum seekers or other categories of foreigners, and places in which young persons may be deprived of their liberty by judicial or administrative order.
- **Professional composition:** In order to fulfil their function effectively the members of a monitoring body must have proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty. The body should also have balanced gender representation on the basis of the principles of equality and non-discrimination. They also need to have an ethnic and minority representation.
- **Regular and unannounced visits:** In order to be effective, visits need to be conducted in a frequency that in fact exposes places of detention, regardless of their geographical location, to regular scrutiny. The mechanism must be able to carry out visits in the manner and with the frequency that it itself decides.
- **Unlimited access:** A preventive mechanism must have unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction; access to full information on places where persons deprived of their liberty are being held, as well as to other information available on the places of detention and its inmates. The monitoring body needs to be entitled to interview in private persons deprived of their liberty and to communicate freely with anyone whom it believes can supply relevant information
- **Unannounced visits:** A monitoring mechanism can only be effective if abuses cannot be covered up by transferring detainees or by temporarily rectifying abusive conditions. Hence, monitoring bodies need to have the right to carry out unannounced visits at all times to all places of deprivation of liberty.
- **Private interviews and confidentiality:** This includes the ability to conduct private interviews with those deprived of liberty. The mechanism also needs to ensure that any confidential information acquired in the course of its work is fully protected.
- **Protection against reprisals:** Those who engage or with whom the monitoring mechanism engages need to be protected from any form of sanction, reprisal or other disability as result of having done so. States must refrain from ordering, applying, permitting or tolerating any sanction or reprisal to be suffered by any person or organisation for having communicated with the monitoring body or for having provided it with information, irrespective of its accuracy, and no such person or organisation should be prejudiced in any way.

End./

³ UN Optional Protocol to the UN Convention Against Torture, Article 19