
amnesty international

**Reflections on the Definition of
“Prevention” for the purposes
of the Optional Protocol to the**



Convention against Torture

AI Index: POL 30/001/2009

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

TABLE OF CONTENTS

DEFINITION	1
CONCEPT OF PREVENTION: PREVENTION AND CAUSES OF TORTURE	1
PLACES OF PARTICULAR RISK.....	1
PEOPLE AT PARTICULAR RISK.....	2
SYSTEMS THAT PARTICULARLY RISK GIVING RISE TO POTENTIAL TORTURERS.....	3
<i>Policing</i>	3
<i>Punishment</i>	4
<i>Control, intimidation or exploitation</i>	5
APPROACHES TO THE PREVENTION OF TORTURE	6
CHALLENGES FOR NPMS.....	6
LESSONS FROM THE CONCEPT OF PREVENTION.....	7

Reflections on the Definition of “Prevention” for the purposes of the Optional Protocol to the Convention against Torture

Notes from a presentation to the OPCAT contact group

Definition

The Oxford English Dictionary defines the verb ‘prevent’ as meaning to stop something from happening or to stop someone from doing something. Thus, the concept of the prevention of torture is the concept of stopping torture from happening, or stopping someone from torturing. The concept can therefore either apply to interrupting torture that is already continuing, or reducing the risk that torture will occur in the future even if no torture is known to be occurring at present or to have occurred in the past. The fact that “preventive” measures are relevant and can be effective *even in places where no torture is known to have occurred or be occurring* is one element that can (but will not always) distinguish them from other kinds of measures against torture.

Concept of prevention: prevention and causes of torture

To effectively prevent torture, it is important to be aware of a) places, conditions and situations where risks of torture are high, b) people who are vulnerable to being tortured, due to their personal attributes or circumstances and c) systems or institutions that may create an environment that allows potential torturers to develop and act. This will aid national preventive mechanisms (NPMs) to identify the places they should visit as a matter of priority, the people/bodies/forces/institutions to which they should pay particular attention, and other activities that might be of use in prevention.

Places of particular risk

Aside from the better known risk areas such as police holding cells and prisons, people are at risk of torture or ill treatment wherever else they are deprived of their liberty. This includes migration centres,¹ children’s homes and schools,² drug rehabilitation centres³ and psychiatric hospitals.⁴

¹ Report of the Special Rapporteur on the rights of migrants, A/HRC/7/12 at para 44.

² CRC/C/GC/8 generally, including para 32.

³ In China, drug users are liable to administrative detention and Enforced Drug Rehabilitation – a form of administrative detention: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - E/CN.4/2006/6/Add.6 at para 33; footnote 35.

⁴ Report of the Special Rapporteur on the question of torture and other cruel, inhuman and degrading treatment or punishment, A/58/120 at para 36.

NPMs need to be open to visiting and receiving reports concerning all of these institutions, and to be able to take action to expose and address torture in all environments. While giving priority to places where a problem of torture or other abuse is already known to exist may help an NPM to be as effective as possible, and information from other independent actors such as NGOs can help in this regard, random selection of other places for unannounced visits may reveal previously undocumented abuse, and the fact that such visits can and do occur may help to spread the “preventive” effect to all places potentially subject to such visits.

People at particular risk

While being deprived of one’s liberty immediately increases the risk of torture for any individual, certain people are particularly vulnerable to being tortured. These include those in irregular detention, such as those being held by police without warrant, judicial oversight or charge; those in administrative detention;⁵ those with cultural or social barriers to being able to protect themselves with recourse to the legal system, such as migrants,⁶ ethnic minorities, the poor, or women⁷ in some countries; those with disabilities including challenged mobility, deafness, blindness, muteness;⁸ or those with addiction problems.⁹ For example, during a recent inspection of Parkhurst jail in the United Kingdom, it was found that 75 per cent of vulnerable prisoners¹⁰ felt unsafe. The fact that measures or conditions imposed generally on a prison population may have particular consequences for vulnerable subcategories of prisoners should also be recognised.

⁵ Report of the Special Rapporteur on the question of torture and other cruel, inhuman and degrading treatment or punishment, A/56/156 at para 39(g).

⁶ In his report to the Human Rights Council, the Special Rapporteur on the rights of migrants points out that some migrants feel pressured into signing documents that they do not understand, due to lack of legal and translation assistance: A/HRC/7/12 at para 46.

⁷ Manfred Nowak, the present Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, links the risk faced by women to powerlessness, arising from a subordinate status of women and discriminatory laws and a failure of States to punish perpetrators: A/HRC/7/3 at para 29. He also points to gender specific forms of violence, such as *inter alia* virginity testing (para 34) or infringement of reproductive rights (paras 37 – 39).

⁸ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 at para 50.

⁹ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/10/44 at para 57 – 58, in which reference is made to a European Court of Human Rights case where a woman had died after not receiving treatment for drug withdrawal symptoms - *McGlinchey and others v. The United Kingdom* (Application No. 50390/99), judgement of 29 April 2003, para. 57).

¹⁰ This term is not further defined in the report, other than to specify that “vulnerable prisoners” are housed in separate wings than the general population: Report on an unannounced full follow-up inspection of HMP Parkhurst, 8 – 12 December 2008, HM Chief Inspector of Prisons, available at [http://inspectors.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html/551161/Parkhurst_\(2008\).pdf?view=Binary](http://inspectors.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html/551161/Parkhurst_(2008).pdf?view=Binary), accessed 17 June 2009.

Some disabled prisoners had gone without showers for many months, one for over a year, because the only baths and showers were in locations that the disabled prisoners could not access without physical assistance – which was not provided.¹¹ To the extent that such treatment were discriminatory and intentional, it could constitute torture of these vulnerable prisoners if it caused them severe mental or physical pain or suffering.¹²

The existence of torture will also occasionally depend on the personal characteristics of the individual. Thus, in assessing whether an act or omission constitutes torture in any given circumstance, the Special Rapporteur points out that the requirement of severe pain or suffering should be assessed with respect to the individual concerned: the “level of suffering or pain, relative in its nature, requires considering the circumstances of the case, including the existence of a disability... as well as looking at the acquisition or deterioration of impairment as a result of the treatment or conditions of detention in the victim”.¹³

It is important that vulnerable people are acknowledged as such. The NPMs should recognise these potential vulnerabilities, and barriers to access, for people who wish to lodge complaints or voice concerns. In these circumstances, for example, ensuring officials are fully aware of the risks faced by disabled detainees, and that minority detainee populations can access information on the NPMs in their own language or, for blind and partly-sighted persons, in Braille, could form part of the concept of the prevention of torture.

Systems that particularly risk giving rise to potential torturers

It is also useful to look at the systems that allow individuals to become torturers, and the motivations for torturing. It is, after all, the actions of these people that this concept is directed to: trying to prevent them from becoming torturers. As with the above two considerations, the list of possible torturers, and the systems within which they operate could be very long. A few examples follow.

Policing

Firstly and most obviously, police and prison officers ordinarily have physical and other kinds of control over those they detain, and may be subject to institutional pressures or acquiescence that

¹¹ Guardian online newspaper, <http://www.guardian.co.uk/society/2009/may/20/prisons-parkhurst-owers-disabled-prisoners>, accessed 20 May 2009.

¹² Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 at para 53.

¹³ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 at paras 46 – 47.

creates an environment in which torture or other ill-treatment is perceived as acceptable.¹⁴ The pursuit of a confession or information concerning a crime, a desire to punish the individual for their perceived or actual wrongdoing, or reasons of discrimination, may be circumstances giving rise to particular risk. It is to these motivations that much international law on torture responds.¹⁵ Pressures or encouragement could come from within the police itself or, for instance, by the courts readily admitting statements obtained by torture, requiring proof by confession to the exclusion of proof by circumstantial physical evidence or witness testimony, or refusing to investigate the circumstances in which statements were obtained.

Providing training and resources for law enforcement and other officials on how to recognise and prevent torture generally will assist in combating these problems within the law enforcement system.¹⁶ This could include techniques of evidence-gathering apart from attempting to extract confessions – such as gathering physical evidence, interviewing cooperative witnesses, and so on. Such training and resources, which states should be providing anyway, can thus make a subtle but potentially powerful contribution to prevention.

Enacting a rule that the state bears the burden of proving the voluntariness of any statement by the accused before it can be used in evidence, rather than requiring the accused to prove that it was obtained by torture or other coercion, can also be a subtle but important element of prevention.

Punishment

In some circumstances, law enforcement officials see it as their role to punish people who they believe to be guilty. This may be the case where the judicial process is corrupt or otherwise ineffective, leaving victims and police feeling that justice has not been done. In such cases, improving the justice system is not only something that must be done in its own right; it may also have a preventive effect. NPMs may be effective in reducing the incidence of torture by making recommendations to higher government officials concerning the judiciary, and ensuring that the government makes clear to law enforcement officers that they should not be performing this role and reacts appropriately when this instruction is violated. It should be remembered, of course, that while acknowledging these as contributing factors to torture, we must guard against the risk

¹⁴ See reports of the Special Procedures of the Human Rights Council, for example E/CN.4/2001/66/Add.2 para 7;

¹⁵ For example, Article 1 Convention Against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as being motivated by “purposes [such] as obtaining from [a] person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind...”

¹⁶ See *General Comment 2: Implementation of article 2 by States Parties*, Committee Against Torture, CAT/C/GC/2 at para 25.

that states do simply what they should already be doing anyway in terms of improving the justice system, and claim that as the entirety of their “torture prevention” measures.

Control, intimidation or exploitation

Finally, some torture occurs during attempts to control or restrain people. Such instances may occur in psychiatric hospitals or children’s homes, for example, where the detainees may be difficult to manage.¹⁷ People detained in these institutions may be particularly vulnerable: detention here may arise from a perception that detainees are not capable of taking care of themselves, pose a risk to others, or are in need of discipline, among other reasons.¹⁸ The SPT has set a good example by visiting a psychiatric hospital in Paraguay.¹⁹ Continuing to visit such places of detention and ensuring that NPMs are accessible to those so detained could make an effective contribution to prevention.

Victims who are not able to tell anyone about their experiences, due to physical incapacity or language barriers for example, are particularly vulnerable to being taken advantage of. All of these elements must be considered in order to be able to effectively prevent torture from occurring. Ensuring States and NPMs are aware of the above risk factors, and no doubt many more, will be pivotal to successfully preventing torture under the OPCAT and the bodies that will implement it – namely NPMs and the SPT.

¹⁷ See, for example, CCPT/C/CZE/CO/2 at para 13, as referred to in the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 at para 56.

¹⁸ The Committee on the Rights of the Child has recognised that, “those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it... [but have stipulated that] the principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.”, CRC/C/GC/8 at para 15.

¹⁹ Press release of the Sub-Committee on the Prevention of Torture, available at <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>, 9 June 2009.

Approaches to the prevention of torture

Challenges for NPMs

It is becoming clear that many states are choosing to designate existing bodies as their NPM.²⁰ Bodies such as Ombudspersons and national human rights institutions often have a history of being reactive, rather than preventative, in that they have traditionally acted upon receiving a complaint that an act of torture or ill treatment has already happened. Those that already carry out “inspections” of government facilities may have a mixed mandate – for instance combining assessment of conditions with assessment of economic performance or punitive effect – that can interfere with a clear focus on prevention of torture from an objective or detainee-centred perspective.

Engaging in proactive preventive activity, such as visiting detention facilities from which no formal complaints may have been received, may be foreign to many of them. Yet those places of detention where individuals are most cut off from contact with such primarily reactive institutions may in fact be where the risk of torture is greatest. Thus, to conform to the requirements of NPMs set out in the OPCAT, such as visits to detention facilities or review of legislation, these organisations may have to adopt a radically different approach to their work. It is important that in doing so they are aware of the broad circumstances in which torture can arise, including those outlined above.

The SPT should ensure that it is available to assist states in ensuring that NPM enabling legislation fully conforms to the OPCAT, as well as assisting NPMs to understand the distinction between proactive preventive measures and reactive complaints-addressing measures, and to ensure that they plan and implement an effective programme of proactive preventive measures (in addition to any reactive role) to the greatest extent possible. While recognising that individual complaints received by an NPM from prisoners will be important information in developing a programme of proactive visits, governments must ensure that NPMs have, and actually use, the mandate, powers, and resources to carry out proactive work and not only to react to individual complaints. The SPT might even consider establishing a process for receiving and acting on complaints from individuals and non-governmental organisations about NPMs that do not perform their role effectively.

²⁰ The Association for the Prevention of Torture maintains a list of designated NPMs, which reveals the majority of these NPMs are existing national human rights institutions, including Ombudsmen: <http://www.apr.ch/content/view/138/152/lang.en/> (accessed June 10).

Lessons from the concept of prevention

To properly address torture and reduce the risk of its use as a technique of control, intimidation or interrogation, the above factors must be accounted for. The concept of the prevention of torture will require equipping NPMs with the tools to overcome these difficulties, such as ensuring that they have the power to make recommendations on matters related to training law enforcement officers in interrogation or evidence gathering techniques, and provision of tools such as finger print kits. This could be supported by laws or regulations preventing conviction based solely on the confession of the accused (or indeed ensuring confession is not required for conviction) and requiring the state to prove the voluntariness of any statement from the accused. NPMs should also be aware of segments of the population that may be particularly vulnerable to experiencing torture are not overlooked in their preventative work. Ensuring a space for civil society in the dialogue on prevention could also be effective in creating and maintaining pressure on States to employ preventative measures.