



Visiting Places of Detention

Lessons Learned and Practices of Selected Domestic Institutions

Report on an expert seminar, Geneva, July 2003

Including: “**National Visiting Mechanisms – Categories, Assessment**”, background paper by Walter Suntinger

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FOREWORD

Promoting human rights is far not enough, it is important to act for the protection of these rights. I therefore welcome very much the initiative taken by the Association for the Prevention of Torture (APT) of organising an expert seminar with representatives of national bodies, which focus on the protection of detained persons. We co-sponsored the event with pleasure, because we are convinced that their experience on how to prevent torture and ill-treatment through regular visits to places of detention does teach us a lot about how national protection systems function and how we, at the international level, can strengthen them. In an increasingly difficult international context, these national systems lay at the heart of our current struggles to improve human rights worldwide.

Torture is still quite widespread and it is therefore crucial to recall that the definition of torture in the Convention against Torture is an irreducible minimum and that we have to hold the line at this. How can protection against torture best take place and what is the relative importance of the role of national protection? Actually, at the international level, most of the protection activities undertaken are indirect protection activities such as standard setting, studies, seminars, reporting, etc. On the other side, direct protection activities are taking place in a more reduced way by international actors, through the UN Special Rapporteurs, through international officials such as the Secretary General and through the consideration of petitions under the various complaints procedures. In recent years, however, we have observed an increased reluctance from many States towards us dealing with country situations.

The challenge in the future will be, therefore, to place an emphasize on protection at the national level. It is relevant to make a reference to the Secretary General's appeal to the agencies of the UN system to look increasingly at how they can support countries to enhance their national protection's systems. However, to me it is obvious that in many circumstances in which human rights violations take place, it is difficult to sustain protection at the national level without the supporting role of the international level.

It is in this context that we look forward to the entering into force of the Optional Protocol to the UN Convention against Torture. This instrument relies precisely on national protection systems, in this case National Preventive Mechanisms, which will receive guidance and support from a specialised international body, the future Sub-Committee to the Committee against Torture. We therefore hope that this seminar will encourage national allies in their efforts to ratify this protocol.

We welcome in particular the participation of several National Human Rights Institutions in the seminar and the fact that our National Institutions Team participated actively. It is clear that National Institutions by virtue of their mandate and functions are natural partners for states and civil society in the prevention of torture. Furthermore, some of them already have the power to conduct visits to places of detention.

The seminar was further enriched thanks to the participation from other international organisations based in Geneva, in particular thanks to the representative of the ICRC, whose experience on visits to places of detention and interviewing detainees proved to be very relevant for our debate.

Bertrand Ramcharan
Acting High Commissioner for Human Rights

INTRODUCTION

The Context of this paper

In their struggle against torture and ill treatment, numerous national actors all over the world have developed protection systems for persons deprived of their liberty. Regular monitoring visits to places of detention promote the most direct anticipatory protection from torture. It is therefore not astonishing that such visits are a cornerstone of many national protection systems. The organisations, which conduct such preventive visits on the national level, have taken very different institutional forms, ranging from civil society and lay groups to highly specialised expert boards and national institutions with broad human rights mandates.

In December 2002, the General Assembly of the United Nations (UNGA) adopted a new protocol, which aims at assuring the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the national level through strengthening such national protection mechanisms. State parties to the **Optional Protocol to the UN Convention against Torture (OPCAT)** will set up independent National Preventive Mechanisms, which will have all the necessary guarantees and powers in order to visit persons deprived of their liberty.

The seminar

Convinced that much can be learned from the expertise of existing domestic bodies that visit places of detention in order to implement this new protocol, the Association for the Prevention of Torture (APT) conducted an expert seminar entitled “*Domestic visiting bodies¹ around the world: practices and lessons learned*”, from 2-4 July 2003, in Geneva, Switzerland. Eighteen participants representing various domestic visiting bodies around the world actively participated in the debate. They came from **Argentina, Austria, Brazil, Bulgaria, Burundi, Colombia, Costa Rica, Fiji, Georgia, Nepal, Poland, Senegal, South Africa, Sri Lanka, Switzerland, Tunisia, Uganda and Uruguay**. Overall forty participants took part in the seminar². The seminar was co-sponsored by the **Office of the United Nations High Commissioner for Human Rights (OHCHR)**.

¹ For the purpose of this publication, the term domestic visiting bodies refers in general to bodies conducting visits to places of detention at the national level, while the term National Preventive Mechanisms refers to the mechanism foreseen by the Optional Protocol to the UN Convention against Torture.

² See list of participants in Annex IV.

The objective was to bring together human rights practitioners for an **exchange of experience** in visiting places of detention with a view to prevent torture, in order to draw lessons and highlight best practices. This seminar was also an opportunity to open a **debate on the OPCAT** and the issues at stake for National Preventive Mechanisms in the frame of ratification and implementation of this new treaty. The seminar was organised in half-day thematic sessions consisting of panel and plenary discussions. The sessions broached key issues related to the institutional functioning and the role of domestic visiting mechanisms, on the one hand, and the visiting methodology, on the other hand.

The content of this report

This paper gives an account of the issues raised during the seminar. They concern the **practices of and lessons learned** from existing domestic visiting mechanisms, substantiated with examples and reflection stemming from the rich source of professional know-how of the seminar participants. Based on their experience, the participants further discussed the **potentiality and challenges of the OPCAT**. We hope that by making the thoughts and voices of these experienced practitioners available to the human rights community, others will be able to join in our common reflection on how persons deprived of their liberty can best be protected from torture and ill-treatment in the framework of the OPCAT and/or through preventive visits undertaken by domestic bodies in other contexts.

The framework of the debate was set by an assessment of the categories of the different forms of domestic visiting mechanisms, which was discussed in an introductory session and which is summed-up in section I of this report. Section II discusses the key issue of assuring the independence of visiting bodies. Section III addresses the relationship between visiting bodies and the authorities and the different roles the visiting bodies have in this relationship. The lessons and practices related to the methodology of visits are discussed in section IV. Section V deals with multiple visiting mechanisms on the national level. The final section VI concludes the debate on the OPCAT and the role domestic visiting bodies would like to play in the framework of this protocol.

The participants prepared **fact sheets** about their institutions ahead of the meeting. The fact sheets are available in a standardized form in the annexes of this report, together with the background paper, the agenda, the list of participants³.

³ For the text of the OPCAT, please see www.apr.ch/un/opcat/opcat.pdf

It lies in the nature of a seminar discussion that the choice of addressed sub-topics is not exhaustive. This publication therefore does not aim at giving an overview of the functioning of domestic visiting mechanisms, the methodology of visits to places of detention or the steps to take in order to implement the OPCAT. Such further analysis and tools can be found in the respective APT publications and on the APT website⁴. Further information will also be made available on the national institutions website: www.nhri.net. This seminar report aims at complementing these other APT publications by providing insight into the lessons and practices of a variety of existing visiting bodies from different parts of the world.

We have tried to make this summary of the discussion as objective as possible. However, a discussion as lively and rich as had taken place during the seminar cannot be reproduced in an exact and objective way. The analysis given and the conclusions drawn in this report are, therefore, entirely those of the authors and not necessarily those of the OHCHR or of all the people, who participated in the debates.

The APT would like, first of all, to thank the participants from the domestic visiting bodies for sharing their precious insights so generously with us. Thanks also go to all the other participants for their valuable contributions to the discussion. The APT is very grateful to the National Institutions Team of the High Commissioner for Human Rights for co-sponsoring the event. The seminar would not have been possible without the help of the volunteering interpreters. Walter Suntinger provided not only the background paper, but also helped by agreeing to take on the function of a rapporteur during the seminar. Upon the request of the seminar participants, the *Geneva Parliamentary Commission*, together with the Cantonal Penitentiary Office, organised a visit to the Champ- Dollon pre-trial detention centre. The APT would like to thank the authorities, in particular Prison Director M. Constantin Franziskakis for welcoming the group. Last but not least, we would like to extend our gratitude to our core donors; without their generous support the seminar would not have taken place, nor could this report have been published.

Esther Schaufelberger and Sabrina Oberson
APT visits programme
Geneva, May 2004

⁴ See “The Optional Protocol to the UN Convention against Torture: A manual for prevention”, June 2004. For a commentary on the provisions of the OPCAT related to National Preventive Mechanisms see “Implementation of the Optional Protocol to the UN Convention against Torture: National Preventive Mechanisms”, APT, Geneva, November 2003. On the methodology of visits see “Monitoring places of detention: a practical guide”.
The APT website is: www.appt.ch

I. Categories of domestic visiting bodies

Around the world efforts have led in the last decade to the creation of **diverse forms of oversight** of prisons and other places of detention in order to have the conditions of detention, treatment and rights of detainees regularly controlled, to ensure public trust in the prison or police system or to follow-up on complaints. Depending on the national political culture and institutional context, these bodies have taken different institutional forms, ranging from National Human Rights Institutions (NIs)⁵ to lay visiting scheme and specialised advisory boards.

The OPCAT lays out the mandate, powers and guarantees for National Preventive Mechanisms, but it does **not specify which institutional form** a National Preventive Mechanism has to take. Actors, who are considering ratifying this new treaty, have therefore, started to look at the different categories of existing domestic visiting mechanisms, seeking guidance on the advantages and disadvantages of certain institutional forms of visiting bodies.

In preparation for the seminar an APT consultant⁶ categorized the different forms of existing domestic visiting mechanisms and assessed the different categories according to their effectiveness in preventing torture and improving conditions of detention. This led to a background paper, which provided the basis for the first plenary discussion and which is enclosed as an annex to this report.

The author established the following categories:

- Internal administrative inspection
- Inspection by outside/mixed bodies established within the respective authority/ministry
- Inspection by NIs
- Inspection by parliamentary organs
- Judicial inspection
- Inspection by NGOs
- Other models

He assessed them with the help of criteria drawn from the OPCAT, the Paris Principles⁷, the European Committee for the Prevention of Torture (CPT) and best practices developed by different actors. The conclusion he drew was that most

⁵ NIs include national human rights commissions and human rights ombudsmen and other similar bodies.

⁶ Walter Suntinger, Austrian Human Rights Advisory Board (Menschenrechtsbeirat).

⁷ Principles relating to the Status and functioning of national institutions for protection and promotion of human rights, General Assembly resolution 48/134 of 20 December 1993.

existing mechanisms fall short of some criteria, but that most have valuable strengths, which can be developed further. He gave indications of how to build on the respective strengths and compensate for weaknesses⁸.

The background paper provided a framework for the discussions during the entire seminar. This first section highlights an issue, which triggered particular interest, namely the objective of visits.

Participants asked themselves, when can a visit to a place of detention be qualified as a **preventive** visit? While all the organisations represented during the seminar visit places of detention more or less regularly, not all of them do this with prevention as the primary objective. Many visits take place with another objective in mind, namely to follow-up on individual complaints or to provide legal aid.

PREVENTIVE VISITS

“It is interesting that the OPCAT talks about preventive measures, and that it specifies that visits must be regular in order to be preventive. What National Human Rights Institutions normally do is to visit places of detention when a complaint has been lodged. We have to look into this”.

Shaista Shameem, Director, National Human Rights Commission, Fiji

On the other hand, participants agreed that monitoring places of detention does not take place only through visits, but that monitoring is a much broader process in which the actual visit is only one element. Moreover, and as will be discussed in more detail in the coming sections, they also stressed that visits are only one tool among several for preventing torture.

MONITORING AND VISITS

“The term visits is imprecise! You can have a lot of purposes for visits: religious, sanitary, entertainment, rehabilitation, etc. We talk here of the human rights purpose, which is a specific one. When we talk about human rights monitoring of places of detention, the visit is not the only source of information. I would even say that for some places, visits are not the primary source of information with regard to ill-treatment and torture.”

Krassimir Kanev, Bulgarian Helsinki Committee

II. Lessons on ensuring the independence of visiting bodies

Independence is clearly a fundamental issue and a pre-condition for a domestic body to be effective in monitoring the treatment of detained persons. The debate on the issue showed that independence must be constantly asserted whatever the

⁸ The background paper is available in Annex II.

mechanism in order to ensure conditions permitting independent action and judgement of a given situation.

The debate was first of all inspired by the practical experience of the participants. The recent adoption of the OPCAT with its provisions on National Preventive Mechanisms added a second layer to the discussion, as the participants asked themselves if their institutions would comply with the criteria for independence set out in this protocol. Almost half of the participants represented NIs. Therefore, independence was also looked at in the light of the conditions set by the Paris Principles, to which the OPCAT also makes reference.

The debate showed that independence does, indeed, depend first of all on the respect for the “**formal criteria**”, as they have been set out in the above-mentioned texts. However, these criteria alone do not ensure a sufficient level of independence. Participants identified other factors, which also have a significant impact on the level of independence of a domestic body. We will call them “**contextual or soft factors**”.

1. Formal criteria for independence

The debate on the “formal criteria” confirmed the importance of the criteria set out in the OPCAT and the Paris Principles. The latter, defined for assuring the independence for NIs, are central to measuring the independence of different types of visiting bodies. None of the participants contested the significance of a strong legal base which clearly sets out the mandate and powers; financial autonomy; operational autonomy; clear, transparent and effective appointment and dismissal procedures; and the importance of pluralistic representation. However, the diverse practical experiences suggest that the challenge is to find ways of how to best apply these criteria in any given political and institutional context.

Participants recalled the importance for domestic visiting bodies to have a **strong legal base**. Having a founding instrument highly placed in the legal hierarchy will ensure a high level of legitimacy as well as ensure that the authorities cannot modify this act easily. Based on their experiences in NIs, several participants identified as an optimal solution that the domestic visiting bodies be entrenched within the constitution. Most NIs represented at the seminar were established by virtue of the constitution, including: the *Human Rights Commissions of Fiji, South Africa and Uganda*, and the *Defensoria del Pueblo of Colombia*. It should be noted that other domestic visiting bodies are not based on the constitution. Certain NIs, such as the *National Human Rights Commission of Nepal* for example, function solely on the basis of parliamentary legislation, as do other

bodies such as the *Geneva Parliamentary Commission*. A presidential decree lays the ground for the *Senegalese Committee for Human Rights* and the *Office of the Penitentiary Ombudsman in Argentina*.

Visiting mechanisms composed of representatives from the community and civil society are often based on the laws regulating the deprivation of liberty. The NGO *Bulgarian Helsinki Committee* is able to conduct an impressive visiting scheme in different types of places of detention thanks to provisions in different laws (such as Article 99 of the Law on the Execution of Penalties). In Georgia, the law on imprisonment is the basis for visits by representatives of civil society (so-called “Small Commissions”).

Moreover, in the same country a decree of the Minister of Justice allows visits by another mechanism to penitentiary institutions (referred to as the “Big Commission”). However, this visiting mechanism is perceived as lacking independence due to the fact that the minister can easily amend the decree⁹.

Whatever the nature of the founding legislation of a domestic visiting body, it is crucial that the legal text sets out clearly the **mandate and powers** related to visits and that these are able to be undertaken in an independent manner without interference from state bodies.

As example, we can refer to the *Uganda Human Rights Commission*, which has the mandate to visit Prisons. This power is clearly spelt out in Article 52 of the Constitution. Furthermore, it has the powers to order the release of a detained or restricted person and to order for payment of compensation. The *Bulgarian Helsinki Committee* also has a clear mandate, which is defined in the agreements it concludes with the different ministries in charge of the places of detention.

THE IMPORTANCE OF A CLEAR MANDATE

Article 52 of the Uganda Constitution provides that the Commission is mandated to visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of inmates and make recommendations.

Another question related to independence is what occurs when appointed or elected members of an institution with a broader mandate, such as a NI, **delegate their mandate and powers** for preventive visits to a sub-committee (or any other institution). Is this a risk to the independence of a visiting mechanism? The question is important for those NIs, which have reflected on how they can fulfil the mandate of a National Preventive Mechanism under the OPCAT. It is also very relevant in contexts where strong NGO or community visiting schemes exist.

⁹ See chapter V on cooperation between the small commissions and the big commission in Georgia.

Could a NI delegate its visiting powers to other bodies? The drafters of the Act establishing the *South African Human Rights Commission* recognised a certain risk in such acts of delegation and have made a provision, which allows the commissioners to form *ad hoc* committees for special issues. This allows the Commissioner to receive support without having to delegate the Commission's powers.

To ensure the independence of a monitoring body, it is very important as to who appoints and dismisses the members of this body and according to which **procedure appointment and dismissals are made**. The OPCAT and the Paris Principles set out criteria for an independent appointment and dismissal procedure, however without specifying one specific procedure. Irrespective of the appointment and dismissal procedure, participants stressed that it should be clearly spelt out in the founding legislation.

EXAMPLES OF APPOINTMENT AND DISMISSAL PROCEDURES

In *Sri Lanka*, a constitutional council composed of the government, the opposition and minority groups is involved in the appointment procedure for the Human Rights Commission. This is meant to guarantee that the chosen individuals have the trust of all sides, which is particularly important in this conflict-ridden country. In *Senegal*, the chairperson of the Committee is appointed by a presidential decree. The other members are appointed by a decree of the Minister of Justice. In *Poland*, the Commissioner for Civil Rights Protection is appointed by the Sejm, which is one of the chambers constituting the Polish National Assembly, upon approval of the Senate. In *Austria*, the Minister of Interior appoints the members of the Human Rights Advisory Board. The Ministry takes into account the recommendations of the NGOs, but because the final decision is taken by the authority, which the mechanism has to monitor, this procedure may restrict the institution's independence.

A procedure, which affords the **pluralistic representation** of all social forces in the visiting body, may help guarantee the institution's impartiality and provide a broader perspective on issues. This approach can, therefore, contribute to ensuring the institution makes well informed, independent decisions on particular issues. While some argue that representatives of parliamentary groups in a visiting mechanism may undermine the independence of that body, it is not the view of the *Geneva Parliamentary Commission*. The Commission is composed of members from all political parties represented in the parliament. This allows it as a whole to take an impartial view beyond party politics. The *Community Council of Rio de Janeiro* in Brazil, is also composed of a broad variety of people from civil society, including representatives of NGOs, former prisoners, social workers, university personnel and public defenders. As its representative explained: "This heterogeneity makes that different visions come together, which allows us to always chose the best possible way to act." A number of NIs are pluralist in their composition and also have working groups or committee structures, which reach out to civil society and other groups. The Paris Principles provide a list of possible representatives which should be represented in NIs, or with whom NIs should have good relations.

In order to act effectively and independently domestic bodies need **adequate financial resources** and **financial autonomy**. However, how can one ensure that adequate funds are available and that governments do not use funding to influence visiting bodies? Many NIs struggle to ensure adequate funding for their operations and activities. Some suggestions for ensuring this include having it clearly noted in legislation that a certain percentage of the state budget's funds are provided for in the enabling legislation or by ensuring parliamentary (rather than ministerial) control over the budget. National visiting mechanisms could be inspired by such approaches. For example, the Human Rights Act of the *Sri Lanka Human Rights Commission* provides that the commission will have adequate funding¹⁰. Few other NIs have such a provision. Similarly, it is also important that the mechanism is able to determine its own spending priorities, including staffing based on the institution's mandate and particular needs.

The case is different for non-governmental visiting schemes like the one conducted by the *Bulgarian Helsinki Committee*. This NGO receives its funds through non-governmental sources. It is, therefore, accountable not to government or parliament, but only to its human rights mandate. Its members highlight this as an advantage in terms of independence. Does this therefore mean that it would be the best solution for National Preventive Mechanisms under the OPCAT to receive their finances through donors? Probably not, as under the OPCAT the State Party will have the positive obligation to maintain a visiting scheme and will have to provide adequate resources. The same is implicitly implied in the Paris Principles.

2. Contextual and soft factors

Participants identified “contextual and soft factors” which have definite impact on the level of independence and effectiveness of a domestic body.

Participants stressed that the **national context** has also to be taken into account as it clearly has an impact on the functioning of domestic bodies and particularly on their independence. A good social, political and economic environment will help domestic bodies to act effectively and maintain a sufficient level of independence in the activities it undertakes. Nevertheless the impressive work that mechanisms are able to achieve in contexts such as Colombia, Sri Lanka or Nepal prove that, even in difficult country situations, domestic bodies are able to achieve results.

¹⁰ According to Article 29(1) of the Human Rights Commission Act (N°21 of 1996) of Sri Lanka, “The state shall provide the Commission with adequate funds to enable the Commission to discharge the functions assigned to it by this Act.”

In order to be independent a body does not only need to have certain powers but its members also need to **insist on those powers** in their working relationship with the authorities. Stories exchanged among the participants illustrated the fact that those bodies which have the formal powers to conduct unannounced and repeated visits often have to be very persistent until the doors of a specific place of detention open up to them.

Related to this, participants stressed that in the end a lot depends on the **personalities** and qualifications of the members of a body. As one participant expressed it: *“You can put in place the principles and mechanisms which lay the ground for an institution to be independent. All the rest is up to the people (in this institution). You can take a person and put her in the condition to be independent, but if the person does not want to be independent, she will never be. On the other hand, if a person fundamentally is independent, you put that person in hard situations and this person will strive to remain independent”*.

Credibility also plays an important role. In order to fulfil their mandate visiting mechanisms do not only need to be independent, they also need to be perceived as such by their interlocutor and the wider public. They need to be listened to and respected. Not only formal independence, but also professionalism, competence and transparency are all very important elements for establishing this credibility.

CREDIBILITY AND RESPECT FOR THE DEFENSORIA DEL PUEBLO OF COLOMBIA

“In the prisons there are grenades and grenade launchers, the prisoners show us all their arms and we try to solve this issue. An objective of the visit is to mediate. These arms make us vulnerable. We managed to do our job by remaining neutral. We listen to the paramilitaries, the common law prisoners. If we listen to the guerillas, we also have to listen to the paramilitaries, we have to remain neutral and remain credible in their eyes. They have to believe us and respect us and then they take us to the “tunnels” where they punish their co-detainees. Thereby we can go to places, where the director and the personnel do not have access to. We also take pictures of these inaccessible places. If you enjoy credibility, you enjoy respect. Our institution manages quite well.”

Patricia Ramos, Deputy Ombudsman for Criminal and Penitentiary Policy, Defensoria del Pueblo of Colombia

Related to the issue of credibility, several participants suggested looking at independence not only from the side of the functioning of a mechanism, but also from the side of the **results** a visiting body is able to achieve. What counts in the end, it was suggested, is the due consideration the authorities give to the recommendations and the concrete results in terms of change which visits ultimately provoke. The *Community Council of Rio de Janeiro*, for example, is often called in, either by the administration or by detainees, to mediate during riots. Their ability to play this role shows that they are perceived as impartial and independent by both sides. The *Penitentiary Ombudsman of Argentina* gave an example of a concrete result he achieved, and

the confidence building this needed: *“We found a detainee, who was completely abandoned, he was blind because of the beating he received. We visited him frequently in order to establish a dialogue with him, but he was not sure enough who we were. After we were able to reassure him, he told us what happened. We launched a criminal complaint and received a medical certificate and determined that one of the guards be brought to justice.”*

In the final analysis, how can the independence of a visiting body be measured? The discussion suggested that the formal soft and contextual factors taken together promote a good understanding of the state of independence of a visiting mechanism.

III. Lessons on defining the relationship with the authorities

The OPCAT is designed to promote a relationship based on cooperation and dialogue between the National Preventive Mechanism and the State Party. The National Preventive Mechanisms under the OPCAT will examine the treatment of detained persons and will enter into a dialogue with the authorities on how to implement these recommendations. In other words, the visiting mechanism will have to monitor and control the authorities while at the same time building a relationship of cooperation and trust with them.

How do the existing visiting mechanisms deal with those potentially conflicting roles? How do they manage to establish relationships of trust and cooperation with the authorities without losing the right distance for making independent judgements? How can they be critical about the situation without harming the cooperation of the authorities?

The discussion suggested that institutions that have **enforcement powers** do not have a problem with reconciling the different roles they play. The potential to impose sanctions or to take court action seems to guarantee that the authorities continue to cooperate with the visiting institution even if they take a very critical stance on certain issues or cases. On the other hand, visiting bodies that depend entirely on the cooperation of the authorities in order to achieve change have more problems in defining their relationship towards the authorities.

The *Fiji Human Rights Commission* admitted not to having any difficulties reconciling its duties and powers with both the advisory and monitoring role of the Commission. The fact that the Commission is a quasi-judicial body with enforcement powers contributes to this situation. Furthermore, it has the constitutional power to apply directly to the courts when the relevant authorities do not implement the recommendations made by the Commission within six months.

The *Supervising Judge in Costa Rica* oversees that the execution of sentences takes place according to the law. In order to do so, he visits places of detention and makes recommendations, which are binding orders.

Bodies established as **advisory bodies** to governmental ministries appear to have difficulties in reconciling their advisory and monitoring roles. This seems to be the case with the *Austrian Human Rights Advisory Board*. This body was set up to advise the Ministry of Interior (places of police detention are under its competence) on how to improve human rights within the police system. The sub-commissions of the Board carry out systematic visits to places of police detention and make recommendations to the Ministry. It is unclear if the board can or should take further action if these recommendations are not implemented. Since no enforcement measures are foreseen, the only step the board can take is to make its concerns public through statements. However, thereby it risks harming its working relationship with the Ministry.

CONFLICTING ROLES

“We make recommendations but we don’t have the enforcement power to do anything about it. If the Ministry does not take into account our recommendations, we should make a public statement, but the more cautious members of our board say, we should not be too critical in public. But the members stemming from NGOs think such a statement is needed, because our credibility is at stake, in particular our credibility in the eyes of the detained persons.”

Walter Suntinger, Human Rights Advisory Board, Austria

NGOs and other civil society organisations have to grapple with this same issue. They are in fact often asked whether establishing a close working relationship with the authorities does not co-opt them into losing their independent assessment of the situation. The NGOs present at the meeting had, however, not really encountered major problems with finding their roles. In one case, the authorities of the places of detention changed so often that there was no risk of becoming too close to them. However they admitted that, since their right to conduct visits is not very strong, the authorities could in theory withdraw the permission to conduct such visits, if their reports are too critical. In practice, this has yet to happen. The representative of the *Bulgarian Helsinki Committee* thought that the fact, that they always publish their reports with the comments of the authorities, might have contributed to maintenance of a relationship of trust, while being critical at the same time.

DIALOGUE OR CONFRONTATION?

“ Sometimes it can cause problems when we take a harsh stance against a particular prison administration. For example, recently we recommended not appointing a certain person as prison director, but he was appointed. This caused us some problems to work afterwards with this person.”

Giorgi Chkeidze, Young Lawyers’ Association, Georgia

When comparing their different experiences, the participants came to the conclusion that national bodies can do most for the prevention of torture if their **monitoring and recommendatory powers are combined with certain enforcement powers**. While nobody contested the importance of visits as a preventive tool, a very important lesson is that a combination of visits with other tools geared at preventing torture will add additional teeth to this instrument.

IV. Practices and lessons on conducting visits

It was striking to see how similar visiting methodologies are, taking into account the different institutional form and national contexts in which the participating organisations function. It seems that experience has moved actors as diverse as NGOs, community councils and NIs all proceed in a relatively similar way while conducting visits to places of detention.

The following discussion can be divided into three main stages relating to a timeframe: the preparation of the visit, the visit itself and follow-up to the visit.

1. Preparation for the visit

The main issues debated concerning the preparation of visits related to the selection of places and time to visit, the gathering of background information, the composition of the visiting team and whether to announce the visit.

Most of the bodies represented at the seminar conduct visits to different places of detention such as police stations, remand prisons, prisons for sentenced persons, juvenile detention centres and to (a lesser degree) mental health institutions. Some bodies have more specific mandates and visit only people detained under the responsibility of a certain ministry (either the only Ministry of Justice or Ministry of Interior). However, all of them have to use certain criteria to determine the **choice of the specific institution** that they will visit. Some domestic visiting bodies base their decision on the number of complaints they receive from people detained in each institution. This is the case for the *Sri Lanka Human Rights Commission* where the number of complaints has an influence on the choice of the institution. Others establish a yearly plan. The *Polish Commissioner for Civil Rights Protection* combines general visits based on a plan with *ad hoc* visits in cases of complaints or reports of the occurrence of particular problems. One participant remarked that occasionally they pay special attention to places from where they do not receive any complaints, as this could indicate a situation of fear preventing the lodging of complaints.

For the prevention of torture it is particularly important to find out where **torture and ill treatment** might happen and to collect allegations about such cases. Most bodies, therefore, try to visit as a priority those places where there is a risk of torture happening. They are convinced that an outside presence in those places has a positive impact on the level of violence. One participant warned that visits at an early stage can have a negative effect under certain circumstances, particularly in countries with a lack of rule of law, as the authorities might hide those persons most at risk of being tortured. In the worst cases, these victims risk disappearing completely from official registers and places of detention.

Another participant highlighted that although torture and ill treatment often occur, during or immediately after the **arrest**, many visiting bodies are only mandated to monitor how the arrested persons are treated once they are at the police station or in prison. He therefore stressed the importance of having a robust definition of when “deprivation of liberty” begins.

OVERSEEING DEMONSTRATIONS IN GENEVA

“During the police activities related to the demonstrations against the G8 summit, our commission made a program and was present at three places: 1. temporary holding areas where we checked how the persons were brought there, if they were handcuffed, how long they had to wait and how they were searched; 2. places for interrogation, where we interviewed those having been interrogated; and 3. the prison, including the conditions of the transport to prisons.”

Alain-Dominique Mauris, Chair, Geneva Parliamentary Commission, Switzerland

Once the visits’ programme has been established and the places to be visited have been selected, the visiting bodies normally **collect as much information** as possible about this specific place from outside sources. The monitoring thereby starts outside this place of detention by consulting sources such as studies carried out by universities or non-governmental organisations. Ombudspersons offices and other organisations, which receive complaints, analyse the nature of these complaints in order to have beforehand a good picture of the main problems. Ex-detainees and families of detained persons are also a very valuable source of information. The *Penitentiary Ombudsman of Argentina* has set up a phone line free of charge, thanks to which the Ombudsman receives complaints and information from even the remotest areas.

During the preparation phase, the visiting mechanisms work with **international and national standards** on the treatment of detained persons and conditions of detention. The *Defensor del Pueblo of Colombia* explained that on the basis of the international standards they draw an “ideal paper prison”, which functions as a reference for measuring the realities encountered during the visit. The *Uganda Human Rights Commission* used international standards and domestic legislation for designing targeted questionnaires for each type of place of detention.

Regarding **the composition of the visiting team**, all bodies stressed the importance of a pluralistic composition. Experience showed that it is particularly important to have a doctor on the team, who will facilitate contact with the prison doctor and detainees. According to the professional code of ethics for medical doctors, only a doctor can consult medical files and receive confidential medical information. In some cases the medical doctor on the visiting team will even be able to issue a certificate substantiating allegations of torture. Bodies, whose members are generalists (*Geneva Parliamentary Commission*) or all lawyers, usually include external experts as participants in the visits. In the case of Colombia these experts are a doctor and an architect; in the case of the *Geneva Parliamentary Commission* they are doctors, lawyers, human rights experts or former prison directors. The *Polish Commissioner for Civil Rights Protection* also invites medical experts to participate in visits. It was further underlined that it is important that the members of a visiting team and the experts receive adequate training.

Is it better to **announce a visit** in advance or to undertake unannounced visits? The participants agreed that it is crucial to have and insist on the right to undertake unannounced visits at any time and to any place where people are deprived of their liberty. Some held the opinion that for practical reasons it make sense to announce some types of visits in advance. The *Polish Commissioner for Civil Rights Protection* has the right to make unannounced visits, and uses this right for visits to places about which he has received reports of human rights violations. On the other hand, the same office announces its scheduled general visits two days in advance. The *Uganda Human Rights Commission* conducts all visits without notice and insists on the importance of such “gate crashing”. Only this allows it to obtain a realistic picture of the situation. The *Defensoria del Pueblo of Colombia* also does not announce its visits.

On the question of the **timing of a visit**, we observed that this differs from one institution to another. Some domestic bodies occasionally visit during the night as it enables them to check any overcrowding, while others prefer to carry out visits during the day in order to see all detainees and to ensure that all of them are aware of the visiting team’s presence.

2. The visit itself

All organisations start their visit by **meeting the director** of the institution and its staff in order to explain the purpose and agenda of the visit. This moment also offers an opportunity for the people running the institution to give their views on the situation.

After this initial talk, most visiting bodies start with making a **round of the premises**. In particular, if it is a first visit to the facility, such a round allows them to get a general impression of the situation by looking at the infrastructure and the general state of health of the detainees. The tour allows a first assessment of the level of overcrowding. During visits by the *Uganda Human Rights Commission*, for example, the visiting teams look at the cells, toilettes, and kitchen, check all cupboards and examine places particularly important for the health of the detainees such as the sickbay, water sources and rooms in which the food is kept. In Colombia where the civil war has led to a high level of violence between detainees, the *Defensor* notes that it has managed to establish the trust of all groups and can, therefore, visit places within prisons, to which the prison staff has no access. The *South African Human Rights Commission* obtains a first impression of the composition of the prison population and aims at detecting the presence of particularly vulnerable detainees such as pregnant women, children and minorities.

The tour is also an occasion for the visiting team to **explain its mandate** and functions to detainees and penitentiary staff. Several participants stressed that it is important that visitors do everything to avoid creating false expectations, i.e. by explaining the limitations of their mandate. The tour is further an occasion to disseminate information about prisoners' rights, as the *Uganda Human Rights Commission* does. In their relationship with the staff the visiting teams need to clarify that their mandate differs from that of internal inspectors, even if they examine the premises in the same manner.

During such a general tour visiting teams are often overwhelmed with requests from prisoners, who wish to speak with them. The *Defensor of Colombia* has, therefore, established the practice of freeing up one member of the team to respond to these demands, while the others continue their tour.

One participant suggested to **identify an appropriate location to conduct interviews with detainees in private** during such tours. Since, at least in newly constructed prisons in certain regions, most rooms are now equipped with microphones, it might be best to carry out interviews with detainees in private in places such as showers or in the middle of the courtyard. A cornerstone of all visits are the **interviews with the detainees in private**, both individually and in groups. It was stressed that it is essential that those interviews take place out of earshot of the personnel, and, if possible, also out of their sight.

The methodologies differ when it comes to the **selection of the persons to interview**. The *Uganda Human Rights Commission* conducts interviews with any

prisoner either individually or in groups and either in the presence of prison staff or *in camera*, whichever is most appropriate. The *Polish Commissioner for Civil Rights Protection* randomly selects the people to be interviewed, while interviewing at least ten percent of the prison population, but only one person per cell. The representative from the *Bulgarian Helsinki Committee* stressed the importance to focus on the vulnerable part of the prison population who are at a high risk of torture and ill treatment, such as persons held in isolation cells or minorities. The *Geneva Parliamentary Commission* conducts interviews only with those having requested such an opportunity, a practice which experience has shown to be a shortcoming. The *Geneva Parliamentary Commission* is, therefore, about to change its methodology and will in the future also visit detainees who have been randomly selected. This lowers the risk of reprisals those detainees who have talked to the visiting team.

The *Defensoria del Pueblo of Colombia* has developed an innovative approach for conducting group interviews. It works with human rights committees made up of detainees who are elected by popular vote by their fellow prisoners and are established within the place of detention.

During these interviews the visiting teams do not limit themselves to ensuring that no torture or ill treatment has taken place, but they look also into **the general conditions of detention**. One participant asked if it would not be better to concentrate on torture and ill treatment? However, the general opinion was that, in order to prevent any treatment which violates the dignity of the detained persons, a visiting body has to look at the overall conditions of detention. The representative of the *Geneva Parliamentary Commission* remarked that in the case of Switzerland cases of physical torture are rare and that his team, therefore, has to deal more with detecting psychological torture, which is even more intertwined with the conditions of detention. Among other issues this body looks at the following: the number and nationalities of detainees, their previous places of detention, the physical conditions of the buildings, hygienic conditions (kitchen, bath, others), quality of the food, working conditions and the salaries of detainees, the contact with the outside world (visits, letters, private visits) and medical care. They are also allowed to consult all registers.

The *Geneva Parliamentary Commission* also pays special attention to the **working conditions of the staff**. It has seen that the working conditions of the staff have a direct impact on the detainees and, in particular, on the way they are treated.

WORKING CONDITIONS OF THE STAFF

“Our commission does not always have a good reputation with the police. But we do not want to teach them their profession; we aim at contributing to their transparency! They are afraid of transparency, but in fact it helps the police to assure credibility. Nowadays, we have a good relationship with the prison authorities, they understand the positive role of the commission. Moreover, we also analyse the working conditions of the prison personnel and the police, which is beneficial for them.”

Alain-Dominique Mauris, Chair, Geneva Parliamentary Commission, Switzerland

One participant stressed that it depends on the type of establishment whether a detainee dares to speak freely with the visitor during those interviews. Detainees will often dare only later to talk about what happened in the **police station and during their interrogation**, in particular if they were submitted to torture. It is, therefore, important to collect this type of information later, i.e. once the detainee has been transferred to another place of detention or has been released.

Several of the visiting mechanisms present at the seminar do take legal action in individual cases, in particular if confronted with cases of torture¹¹. The **issuing of medical certificates in cases of torture** is, therefore, a particularly important and challenging issue. In most cases, visiting mechanisms cannot issue such certificates themselves, but have to call for a certified forensic doctor to do so. In some cases this seems to work fairly well (i.e. Colombia). In many others, however, this weakens the possibility of proving torture cases because forensic doctors are dependent on the administration and do not want to risk issuing compromising certificates. The *visiting commissions in Georgia*, for example, often find it difficult to find a doctor who will agree to issue such a certificate. One participant, therefore, suggested looking into the possibility of changing legal procedures in a way that would allow testimonies from general medical practitioners to be used as evidence.

PROVING TORTURE

“It is always a big problem to prove torture has happened. It is not easy to find a doctor, who will certify that torture happened. But there are doctors, who accept to do so.”

Giorgi Chkeidze, NGO Young Lawyers' Association, Georgia

The *community councils of Rio de Janeiro*, tries to address this problem through the training of prison doctors on certification of torture on the basis of the Istanbul

¹¹ See more on the issue in chapter IV section 3.

Protocol¹². They had to send the victims of torture to a forensic doctor for a medical certificate. Since a member of the penitentiary personnel used to accompany the victims during those examinations, the victims rarely dared to testify out of fear of reprisal. The *Community Councils* hope that prison doctors will be more easily accessible, while at the same time acknowledging that they will also have to testify against their employer. The next step will, therefore, be the creation of a system for protecting the doctors from reprisals, i.e. through a legal instrument making notification of torture mandatory for doctors.

In order to monitor the situation in a precise way, several bodies use **questionnaires** during their visits, which cluster together all the questions and issues the visiting team wishes to cover. Most participants generally recognized this tool as an effective one, although some highlighted the danger of having a too static approach, which did not enable the people deprived of their liberty to exchange spontaneous concerns or thoughts. It was recalled that it is crucial that these questionnaires be used only as a basis for the interviews and that they have to evolve with time and experience. It was also stressed that the visiting team and other experts conducting visits should receive training in order to use this kind of tool in an optimal way.

Some mechanisms use **cameras and tape recorders**, even if the authorities seem often to show particular resistance in allowing such devices to be used. The *Defensoria del Pueblo of Colombia* noted that pictures are a powerful tool for sensitising public officials, while reports tend to disappear into drawers. In order to assure confidentiality, it does not take pictures of people, but only of places. Participants agreed that cameras should be used very carefully in order to guarantee the confidentiality of and to protect detained persons. It was also suggested that a visiting body can use pictures in order to demonstrate how prison authorities have developed innovative practices and solutions, rather than only for purposes of denunciation.

At the end of the visit most domestic visiting bodies again meet with the director of the facility for a **final talk** and, if necessary, address immediate recommendations to the prison director and staff.

3. Follow-up

The drafting of a report is a follow-up activity common to all visiting bodies. Such reports typically contain recommendations addressing either structural issues or individual cases. Apart from this activity, however, the follow-up practices of the

¹² The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol), Geneva, August 1999.

different visiting bodies were very diverse, depending on the national legislation and context and on the institutional nature of the visiting bodies.

The visiting bodies draft different types of **reports**. Most bodies issue an annual report. Some complement the annual report with thematic reports concerning a particular visit or place of detention or reports on individual cases. The reports sum-up the findings and contain **recommendations** addressed to the authorities on how to improve the situation.

The **addressees** of the reports differ according to the legal basis and institutional nature of the visiting body. In some cases the authorities are obliged to comment on the report. The *Uganda Human Rights Commission*, which can compel the authorities of a place of detention or the responsible Minister to issue comment or explanation, submits its annual report to parliament. The *Bulgarian Helsinki Committee* submits a report to the competent authorities after each visit. It subsequently publishes the report together with the comments of the state authorities.

The participants stressed the importance of undertaking **follow-up visits**. Such visits allow one to check if recommendations have been implemented. Further, they are very important in order to ensure that detainees interviewed in private do not suffer **reprisals**. The *Geneva*

THE IMPORTANCE OF FOLLOW-UP

“It is important to return soon to the place visited in order to follow-up and assess the implementation of the recommendations. (...) It is important to have sufficient human and material resources to fulfill these missions, in particular the follow-up.”

Guillermo Paysse, Peace and Justice Service (SERPAJ), Uruguay

Parliamentary Commission therefore aims at making regular follow-up visits to interviewed detainees, but admitted that this is difficult in practice. At the beginning of its visits' programme, some of the detainees visited by the *Uganda Human Rights Commission* were subject to reprisals. The Commission followed up on those cases, which led to the dismissal of several prison officials and, since then, this practice has stopped.

How can visiting bodies assure that their recommendations are **implemented**? The situation is different between recommendations concerning individual cases (i.e. allowing access of a lawyer to a specific person) and recommendations concerning structural issues (i.e. respecting the right of access to a lawyer for all persons held under the responsibility of the police).

The *Supervising Judge in Costa Rica* was one of the bodies present at the seminar, which has coercive powers allowing him to order the authorities to implement **recommendations concerning structural issues**. The others had to

find other ways to bring the authorities to follow their recommendations. Typically, a visiting body does try to establish a dialogue with the authorities and convince them through strong argumentation. If this does not lead to success, most use public pressure through the mobilisation of shame.

Among the visiting bodies present at the seminar were several who go beyond making recommendations in **individual cases**. This concerns in particular NIs with mandates for dealing with individual complaints and several of the NGOs.

Several mechanisms support individual detainees in taking **legal action**. The NGO *Burundi Association for the Protection of Human Rights and of Detained Persons* supports victims of torture in filing criminal cases against those responsible. This is often difficult due to the lack of independence of the investigation. Nevertheless, with the help of public pressure exerted through their radio programmes, they managed to achieve that two investigating officers were brought to justice. The *Young Lawyers Association in Georgia* provides legal assistance to victims to prosecute those responsible for violations of rights and to bring them to court. Moreover, they take cases to the Constitutional Court in order to “litigate against the wrong system and legislation”.

The *Uganda Human Rights Commission* can establish a Human Rights Court chaired by a Human Rights Commissioner to deal with individual cases. The decisions of the Court are binding and are enforceable as those of courts of law. The *Penitentiary Ombudsman of Argentina* not only supports victims in bringing criminal charges against perpetrators, but its members can also present themselves as witnesses in such cases.

The *Fiji Human Rights Commission* has several possibilities to assist victims of torture in bringing those responsible to court. The Commission can support them in filing a criminal case. However, the Commission can also take legal action in a civil court or a special human rights court, where the burden of proof is less than in the criminal court. Participants suggested looking into the possibility of supporting victims in bringing civil complaints against the institution in which torture has taken place, without prejudice against any criminal action against those responsible.

The *Community Council of Rio de Janeiro* tries to hold the authorities accountable for torture before the state parliament. It asks the parliament in its state to conduct public hearings, during which prison wardens alleged to have tortured inmates are questioned and the concerned institutions are required to give explanations. In the few cases in which such public hearings were conducted, this procedure turned out to be very powerful.

The **media** are an important tool for many mechanisms, in particular those with weak or no enforcement powers. In Tunisia, lawyers are the only independent persons, who are able to meet with people deprived of their liberty. The lawyers engaged in the struggle against torture work intensively with the media. As the national media have limited freedom, they particularly work with the foreign media.

EXAMPLE : INDIVIDUAL VERSUS STRUCTURAL IMPROVEMENTS

“If the case is less serious, i.e. access to medical care, comfort of the cell, etc., I enter into contact with the director of the prison and this works quite well. If the situation is serious, the only solution is to alert the international community and to denounce. But this approach is not preventive. The result is always limited to the person concerned, even if sometimes this leads to a temporary improvement of the situation.”

Radhia Nasraoui, human rights lawyer, Tunisia

Finally, participants recalled the follow-up measures available at the international level such as the possibility to collaborate with UN special rapporteurs and request the

issuance of urgent appeals, or to bring cases to the Committee against Torture (CAT) and to draft parallel reports to CAT’s State party reports.

V. Practices established for collaboration between visiting bodies

If there are several preventive visiting mechanisms active at the national level, how do they cooperate in order to ensure a maximum level of protection for the persons deprived of their liberty?

The examples presented in the seminar showed that different mechanisms in a same country can be complementary to each other and reinforce each other. For example, bodies with a preventive mandate can complement those which react to complaints. Alternatively one organisation can deal exclusively with the penitentiary system, while the other monitors police detention. They can also develop different relationships with the authorities, with one having a stronger advisory role based on dialogue and confidential reports, while the other takes a more confrontational stance by publicly criticising the authorities. At the same time, some participants remarked that there is a danger that the multiplication of mechanisms leads to confusion, overlapping in mandates and puts a strain on the already tight available resources.

The representative of the *South African Human Rights Commission (SAHRC)* shared his experience about how cooperation with the other visiting bodies allows the Commission to ensure that the concerns of the persons deprived of their liberty are addressed efficiently. The SAHRC can leave a substantial part of the regular monitoring and dealing with general issues in prisons to the Independent Prison Visitors which exist all over the country and which are in close proximity to

the prisons. A substantial part of the individual complaints in the prison system is dealt with by an internal complaints system. The same is true for the police where an internal body staffed with external experts deals with the complaints, so that the SAHRC can limit itself to monitoring the work of this body only in particularly serious cases. This system appears to allow the SAHRC, which has a strong constitutional mandate, but limited resources for regular preventive visits due to its broad human rights mandate, to focus on dealing with the most serious cases, for racially motivated human rights violations.

EXAMPLE: MULTIPLE MECHANISMS IN SOUTH AFRICA

The South African Correctional Service Department has a Human Rights Unit charged with investigating allegations of violations of human rights by members of the correctional services. As an internal mechanism, staffed with former correctional service personnel, this unit does not have the full trust of the prisoners. However, the unit has a good understanding of the mission of the SAHRC and requests their support when they are confronted with persons refusing to talk to the internal unit. Within the police, an Independent Complaints Directorate (ICD) investigates complaints against misconduct or unlawful behaviour of its members and visits the complainant wherever he or she is held. While financially and operationally (investigation) dependent on the police, the ICD enjoys certain independence thanks to the fact that its members are recruited from the outside. The SAHRC transfers all complaints of violations by the police to the ICD. The SAHRC thereafter plays a monitoring role and receives reports from the ICD.

Moreover, there is the Judicial Inspectorate (JI) for the correctional services with a preventive visiting mandate. The JI is headed by a retired judge and supported by the Independent Prison Visitors. The SAHRC refers prisoners' complaints of a day-to-day nature to the JI so that the Prison Visitors can deal with it more expeditiously than the SAHRC could. On issues such as the rights of foreign nationals or public interest litigation the SAHRC also regularly cooperates with NGOs.

In **Costa Rica** two independent institutions visit prisoners, the *Supervising Judge* and the *Defensoria de los Habitantes*. According to the *Supervising Judge* present at the seminar, the two institutions complement each other and work together in a fruitful way. As stated earlier in this report, the *Supervising Judge* is charged with assuring that the execution of sentences takes place in accordance with the law. If he finds this is not the case, he can give instructions to the penitentiary authorities. However, he does not issue any reports and the public is not informed about his instructions. The *Defensoria de los Habitantes*, on the other hand, does draft public reports. Sometimes the two institutions even conduct joint visits.

Georgia has a three-tiered visiting system. So-called "Small Commissions" composed of members of NGOs, local government and religious organisations monitor prisons and pre-trial detention facilities. At the same time, there is as an advisory body to the Minister of Justice, the so-called "Big Commission", which visits the same establishments and is essentially composed of members from the same organisations. The Big Commission prepares drafts for ministerial decrees and amendments to legislation and undertakes initiatives to change the

penitentiary system. The Big Commission use the information and the case studies gathered by the Small Commissions in order to prepare their recommendations. This system would work quite well, but it is weakened by the fact that the legal base of the Big Commission is weak (see above). In addition, Georgia's Public Defender, under Article 18 of its enabling legislation, has unimpeded access to pre-trial detention centres and other places of confinement. Article 19 elaborates on the inspection regime.

The representative of the **International Committee of the Red Cross (ICRC)** at the seminar explained that the detention activities of his organisation are in many aspects closer to those of a national visiting mechanism than to those of other international mechanisms. The ICRC normally has in-country delegations and has, therefore, the resources to visit as frequently as a national mechanism.

COMPLEMENTARITY

"The challenge is to find the optimal complementarities between us and the national mechanisms. We all have the same objective, but the methods have to be different in order to be complementary."

*André Picot, Protection Division,
ICRC*

He stressed, therefore, that it is important that national visiting mechanisms and the ICRC work complementarily. However, he acknowledged the limits of this cooperation, in particular that members of national mechanisms can sometimes be frustrated about the fact that the ICRC is limited in its information sharing because of the need for confidentiality.

Relatively new actors on the national level in the domain of detention are the **National Red Cross and Red Crescent Societies**. In several countries they have started to visit holding centres for migrants and asylum seekers.

Participants further stressed the importance of cooperation with regional and international mechanisms. They underlined that national and international mechanisms can mutually reinforce each other.

VI. Conclusion: Issues at stake for establishing and designating National Preventive Mechanisms under the OPCAT

The seminar demonstrated that domestic visiting bodies – in spite of their different forms - all apply surprisingly similar methodologies including interviews in private with persons deprived of their liberty, inspections of places of detention, use of international standards and dialogue with the authorities including the submission of recommendations and follow-up activities to these recommendations. The main difference lay in the follow-up to visits and, related to this issue, in how the monitoring visits relate to other human rights promotion and protection activities undertaken by the body as well as the enforcement of recommendations. Some organisations will follow-up on individual cases, for example by taking cases to court, while others concentrate exclusively on monitoring. While some organisations are specialised in preventive visits, there are others which combine preventive visits with visits based on complaints.

The event showed that future National Preventive Mechanisms as they will be established and nominated under the OPCAT can draw on the rich experience of existing domestic visiting bodies.

The seminar confirmed that a national body can only effectively protect persons deprived of their liberty if it has as a minimum the powers and guarantees set out in the OPCAT. Experiences further suggest that the OPCAT was right in not specifying more precisely which institutional form the National Preventive Mechanism should assume. Current thinking suggests that each institutional form has its strength and weaknesses. The different options available at the national level, therefore, need to be carefully weighed against each other in the light of the principles as well as the practical experiences of the already existing bodies. One participant proposed, therefore, to involve civil society and the public in the decision making process on the future establishment of National Preventive Mechanisms through a series of dialogues in each country.

Many of the states foreseeing ratification of the OPCAT will have to decide between strengthening an existing mechanism or creating a new visiting body. Whatever the decision will be, it is important that the existing bodies can make their voices heard. Taking into consideration the scarcity of financial and human resources, as well as the risk of confusion, it will make sense to seriously consider the option of adapting an existing mechanism to become a National Preventive Mechanism before embarking on the exercise of creating a new body. The seminar session on multiple mechanisms, however, also showed some of the advantages of having several mechanisms at the national level.

States may opt for creating or designating a NI with a broad human rights mandate or for creating or designating a body with a specific mandate for preventive visits to place of detention. An innovative third option was discussed: the idea was put on the table to opt for a body, which focuses on the prevention of torture, but which will have at its disposal different instruments needed to implement the UN Convention Against Torture at the national level, namely preventive visits, criminalisation of torture and redress. Participants stressed that the preferable overall national protection system would combine all these elements, without, however, coming to a final conclusion on the question if one institution should encompass all roles, or if it is better to distribute them among several actors.

In his background paper, Walter Suntinger warned that states might be tempted to simply designate existing bodies as National Preventive Mechanisms under the OPCAT, adopting a minimalist approach in order not to have to reform or set up a new institution. However, the discussion

showed that – on the contrary – existing institutions see the OPCAT as an opportunity to enhance their mandates and establish more regular and more preventive visits’ programme. Moreover, the OPCAT, through the foreseen communication between the National Preventive Mechanisms and the Sub-Committee, will further strengthen national protection by linking it with an international body, which will provide guidance and support. Many of the participants recognised this opportunity and will, therefore, take part in lobbying activities in their countries for the ratification of the OPCAT. At the same time, they are also conscious that they must remain vigilant in order to ensure that the OPCAT will not be used as a pretext for putting an end to the protection activities of existing bodies.

AN OPPORTUNITY

We see the OPCAT as an opportunity to strengthen existing National Human Rights Institutions, where appropriate. This is not a minimalist approach, this is hard work! (...) This is a real opportunity.”
Orest Nowosad, National Institutions Team, OHCHR

ANNEXES

Annex I: Factsheets of participating institutions

Annex II: Background Paper: National Visiting Mechanisms –
Categories and Assessment, by Walter Suntinger

Annex III: Agenda

Annex IV: List of Participants

Factsheets of participating institutions

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Fiji Human Rights Commission¹

The Fiji Human Rights Commission was established by Section 42 of the 1997 Constitution. The Human Rights Commission Act (1999) regulates its functioning.

Mandate

The Fiji Human Rights Commission has a broad mandate to educate the general public on human rights, to make recommendations to the Government on its obligations to those conventions and treaties that have been ratified, and to perform other functions conferred to it by an Act of Parliament.

The Commission also has an important function in the protection of human rights, which involves the investigation of allegations of violations of human rights and unfair discrimination, and subsequent legal action, if necessary.

Composition

The Commission is composed of three members, a chair and two part-time Commissioners who are appointed by the President on the advice of the Prime Minister, in consultation with the leader of the opposition and the sector Standing Committee of the House of Representatives. At the time of the seminar, the Commission employed 19 staff to carry out its constitutional mandate.

Visits

Section 7 (1)(j) of the Human Rights Commission Act grants the Commission the powers to investigate allegations of contraventions of human rights. Since most of the complainants addressing the Commission are people deprived of their liberty, the Commission carries out visits to places of detention in this context.

The monitoring team is composed of 2 male investigators with experience in the legal field and with good communication skills. The Commission inspects Prisons, including Remand Centres, Military Detention Cells, Police Cells, and Psychiatric Hospitals. The information collected during the visit is mainly related to allegations of ill-treatment, violations of rights and complaints regarding living conditions.

¹ Website: www.humanrights.org.fj

Although the legislation does not specify the right for the Commission to carry out unannounced visits, the Commission has derived this power from its general functions.

The Commission carries out visits once every 3 months. The frequency of the visits also depends on the urgency of a particular case or situation.

Reports and Recommendations

The visiting team reports to the Commission and the Commission in turn, reports annually to the Government. A public meeting is then organised to discuss the content of the report.

Recommendations are included into the reports. It must be noted that the Commission has a power of enforcement and can take a matter to court if recommendations are not implemented by the relevant authorities.

Miscellaneous

The Commission provides legal aid to persons in need of advice and in the framework of its functions, relays messages from the detainees to their family and vice-versa.

It also carries out training programmes for police and prison officers and conducts awareness raising activities through weekly radio broadcasts and through the regular publication of a newsletter.

Nepal Human Rights Commission² (NHRC)

The Nepal Human Rights Commission was established on 26 May 2000 and is based on the Parliamentary enactment of the Human Rights Commission Act (1997, herein after referred to the NHRC Act).

Mandate

The mandate of the Commission is the effective protection and promotion of Human Rights as conferred by the Constitution of the Kingdom of Nepal, other prevailing laws of the land including the NHRC Act, International Human Rights Instruments, and on the basis of recognized principles of justice.

Composition

The Commission is composed of a Chairperson, 4 members and an acting secretary. At the time of the seminar around 30 persons currently worked at the Commission.

The Chairperson (which must be a retired Chief Justice or Judge) and the members of the Commission are appointed by the King following the advice of the “Recommendation Committee” consisting of the Prime Minister, the Chief Justice and the Leader of the Opposition in the House of Representatives. The term of office of the members is five years.

Visits

The legislative division of the Commission carries out visits and inspections with a view to assessing the overall human rights situation within the concerned institution.

Depending on the situation, visits are conducted by the Chairperson, by the members of the Commission, by officials and by the staff of the Protection and Monitoring Division. There is also a tradition of involving local human rights organizations’ representatives.

The NHRC has the mandate to conduct unannounced and unimpeded visits to central and district prisons, police and military detention centres, areas and sites or any place where human rights violations may have occurred.

During the visit, the Commission makes individual or collective interviews in private. It has the power to inspect all the premises and can have meetings

² Website: www.nhrc-nepal.org

with concerned authorities. Follow-up visits are conducted to facilities previously visited by the monitoring team.

It must be noted that visits are conducted to prisons and detention centres only when complaints are received.

Reports and Recommendations

The Commission prepares an annual report on its activities which is submitted to the King. It can also publish details of the activities carried out for the purpose of public information. If the Commission deems it necessary, it may publish these details at any time.

In the framework of its visiting activities, detailed reports and recommendations are submitted to the Home Ministry, the Cabinet Secretariat and other related institutions. Reports outline both individual cases and comprehensive suggestions for improving conditions of the prisoners and prison facilities. The Commission also has the power to make immediate recommendations to the concerned authorities during the meeting.

Miscellaneous

The NHRC submits its decisions on cases or complaints received to the concerned Ministries and Departments and can recommend compensation for victims depending on the cases. The Commission also conducts awareness raising programmes and workshops.

Senegal Committee for Human Rights

The Senegal Committee for Human Rights (herein after referred to as “Senegal CHR”) was created in 1970 by a Presidential decree.

Mandate

The Senegal CHR is an independent institution for consulting, observing, evaluating and making recommendations on issues related to the respect for human rights.

Composition

The Senegal CHR is composed of 29 members from different domains of public life (Parliament, justice, academics, NGOs and other public organisations, administration). The chair is appointed by Presidential decree and the other members by the Ministry of Justice.

Visits

Although the law does not expressly foresee visits to places of detention, in practice, the Senegal CHR has carried out inspections.

The inspections are carried out with a view to assessing conditions of detention and compliance with national legislation and UN minimal standards as well as to assess the timeframe of remand detention of individuals.

The monitoring team is composed of one representative from each of the member organisations of the Senegal CHR. Each visit is accompanied by an invited “high dignitary” of the country.

In this framework, it must be noted that a draft amendment to the legislation is planned that would allow the Senegal CHR to conduct unannounced visits and unimpeded visits with access to all detention places, with the power to conduct private interviews with both detainees and staff.

The Senegal CHR conducts visits once every 3 months.

Reports and Recommendations

An annual report on human rights situations is produced and published and contains the reports on the visits.

The Senegal CHR has the responsibility to make recommendations on all issues related to human rights and proposes modifications to laws and regulations.

Miscellaneous

The Senegal CHR disseminates information to the public on human rights issues generally.

South African Human Rights Commission³ (SAHRC)

The SAHCR is a national institution, which derives its powers from the Constitution and from the Human Rights Commission Act of 1994.

Mandate

The mandate of the SAHCR is to promote and protect human rights, monitor and assess the observance of human rights, investigate and report on the human rights violations, take steps to secure appropriate redress where human rights have been violated and provide education on human rights.

Composition

Commissioners are elected by a majority of the members of the national assembly and the President confirms the appointments. The President determines the time of their appointment (fixed term) taking into account that it must not exceed seven years. Overall 130 members are part of the Commission (members and staff).

It must be noted that the SAHCR has created *ad hoc* committees for special issues⁴, which advise and assist the Commission in its work. A Commissioner, appointed by the Commission as a whole, chairs each committee.

The Commission has also established five provincial offices.

Visits

The inspections are carried out with the view to monitoring and assessing the observance of human rights in detention places (in accordance with the Bill of Rights). The Commission is able to receive complaints and is also entitled to conduct enquiries and investigations on its own initiative.

The monitoring team is composed of Legal Officers from the Legal Service Department of the Commission. At the local level, one person for each of the five provincial offices is working on monitoring places of detention.

The Commission carries out inspections to prisons (central and local), police stations and police holding cells, psychiatric institutions as well as visits to refugees and foreigners in detention centres. It must be noted that the Commission has the right to conduct interviews in private.

³ Website: www.sahrc.org.za

⁴ Actually there are 2 committees on the following issues: children rights and disability rights.

Reports and Recommendations

The Commission reports to Parliament and to the Minister of Correctional Services or to the National Commissioner of Prisons. The annual report is debated in Parliament.

The Commission also drafts reports and produces regular media releases on specific human rights issues.

Miscellaneous

The Commission collaborates with many NGOs, government departments and other domestic visiting mechanisms such as the Independent Complaints Directorate, the Judicial Inspectorate and its independent prison visitors.

There is a special training department in the Human Rights Commission that is specialised in the training of trainers. Prison's departments and correctional services are major participants.

Sri Lanka Human Rights Commission

The Human Rights Commission was established in 1997 through the Human Rights Commission Act No. 21 of 1996.

Mandate

The Commission has a wide mandate to deal with illegal detention, torture, disappearances and murder. It has a responsibility to educate the public and armed forces and to advise on any administrative or other changes that may be necessary to avoid violations of human rights and fundamental freedoms.

Composition

The Commission consists of five commissioners chosen from among persons having knowledge of or practical experience in a variety of matters relating to human rights.

The members are appointed by the President on the recommendation of the Constitutional Council⁵ and serve for a period of 3 years.

Visits

For the purpose of discharging its functions the Commission may monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention.

In Sri Lanka, the Commission is the only institution empowered to conduct visits to prisons and police stations.

Reports and Recommendations

The Commission shall submit an annual report to Parliament of all its activities during the year.

⁵ This Constitutional Council is composed of the Prime Minister, the leader of the opposition and some other representatives such as minority communities.

Uganda Human Rights Commission⁶ (UHRC)

The UHRC has been established under article 51 of the Constitution (1995) and its functioning is regulated by the Human Rights Commission Act (1997).

Mandate

The Commission's mandate includes the establishment of a programme of research, education and information to enhance the respect of human rights, the monitoring of the Government's compliance with international treaties on human rights and has the task of visiting jails, prisons and places of detention or related facilities with a view to assessing and inspecting the conditions of the inmates and make recommendations.

Composition

The Commission has one Chairperson and six members. The Chair shall be a judge of the High Court and the members of the Commission shall be persons with high moral character and proven integrity. The Chairperson is appointed by the President with the approval of Parliament and shall serve for a period of six years. The Commission appoints its own staff.

Visits

The Commission has quasi-judicial powers as, according to article 53 of the Constitution, it has the power to order the release of a detained or restricted person and to order the payment of compensation.

Visits are carried out in order to assess conditions in places of detention such as local and governmental prisons, police stations and police cells, remand homes (places of detention for juvenile delinquents), refugee camps and (IDP's) camps. The team is led by the Commissioner and two or three other researchers.

The Commission has the power to conduct visits without giving prior notice to the institutions concerned and can conduct private interviews.

Reports and Recommendations

Reports are made to the concerned institutions and the annual report is submitted to Parliament. Recommendations for improvements are part of the report.

⁶ Website: www.uhrc.org

Miscellaneous

The Commission organises human rights training for prison staff and prepares legal briefs on investigated complaints to be forwarded to the Legal and Tribunal Department.

Defensoria del Pueblo of Colombia⁷

The Defensoria is a Colombian state institution, which was created under articles 281 and 282 of the Constitution of Colombia (1991). Law 24 of 1992 develops its organisation and functioning.

Mandate

The institution's general mandate is the defence and promotion of human rights within the framework of a democratic, participative and pluralistic rule of law.

The Defensoria is part of the Ministry of Interior and exercises functions under the hierarchy of the National Attorney General, "Procurador General". It has administrative and financial autonomy.

Composition

Overall 437 civil servants are working within the Defensoria. There are 24 regional offices and 11 local offices.

The team conducting visits to places of detention is composed of the delegate Defensor for Criminal and Penitentiary Policy, which coordinates with the regional and local offices.

The *Defensor* is named by the House of Representatives and the assistant ombudspersons (directors) are named by the Ombudsman.

Visits

Visits are explicitly recognized in the Penitentiary code (Law 65 of 1993, and article 169 and 113).

Inspections are carried out with a view to verify living conditions, respect for human rights, infrastructures, and organisation and functioning of the facilities.

The Defensoria carries out visits in the following places of detention: national and municipal prisons, police holding facilities, mental health wards in prisons, psychiatric hospitals, detention facilities for members of the public forces (police and military).

⁷ Website: www.defensoria.org.co

The Defensoria can conduct unannounced visits and can demand any information necessary for prevention or verification of a complaint. He/She can also conduct private interviews.

Reports and Recommendations

Reports are generally directed to the National Penitentiary Institute, to the Ministries of Interior and Justice.

The Defensoria makes recommendations concerning the respect and enjoyment of human rights urging the State to cease practices that violate human rights. These recommendations can be on a general problem or for a specific case (collective or individual). They are made public through the press or in a bi-annual publication.

Miscellaneous

Where there are insufficient resources, a public defender can be named to represent a case.

The Defensoria also conducts awareness-raising activities for public authorities and civil society on human rights issues.

Penitentiary Ombudsman⁸, Argentina

The position of the Penitentiary Ombudsman was created in 1993, by decree No. 1598.

Mandate

The Penitentiary Ombudsman is mandated to protect the human rights of people deprived of liberty within the federal penitentiary system, as well as to improve the external control of prisons (similar to an ombudsman dedicated to the protection, promotion of the human rights of people deprived of liberty).

Composition

The Penitentiary Ombudsman is designated by the executive branch through the Ministry of Justice for a 4 year term. The Ombudsman's office is composed of 8 lawyers, 3 experts, a doctor and a psychologist.

Visits

The Penitentiary Ombudsman maintains a constant dialogue with the detainees and with the penitentiary authorities through weekly visits to places of detention. Inspections are carried out with a view to monitoring the respect of human rights by the relevant authorities.

During the visit, the Penitentiary Ombudsman has the power to conduct private interviews with the detainees and can order medical checks. When violations are observed, a report is drafted and in such cases, members of the office often testify.

Reports and Recommendations

The Penitentiary Ombudsman has to inform periodically the Ministry of Justice and report annually to Congress.

Upon receiving a complaint, an investigation is conducted and recommendations are directed to the relevant authorities. They are not binding in nature but in practice there is a high degree of compliance.

⁸ Website: www.jus.gov.ar/Ppn

Miscellaneous

The Penitentiary Ombudsman's office concludes agreements with governmental institutions, NGOs, Universities and other relevant institutions in order to conduct joint studies and/or investigations on various human rights issues⁹.

⁹ The Penitentiary Ombudsman's office has for example conducted a joint study with a medical institute to analyse the consequences of the penitentiary treatment on women and children.

Polish Office of the Commissioner for Civil Rights Protection¹⁰

The Commissioner for Civil Rights Protection (herein after referred to as “Commissioner”) was established in Poland, in 1987, by the Constitution and by the Commissioner for Civil Rights Protection Act (1987).

Mandate

The Commissioner has a general mandate to ensure good conditions in isolation institutions (i.e. respect for rights and dignity of inmates; and avoidance of torture). In this framework, he/she monitors the respect for human rights in the work of the police, public prosecutor, remand institutions, courts, prisons, police detention centres including special units for drunk people, and remand custody for children (penal-educational institutions for youth).

Composition

At the time of the seminar, the Commissioner employed over 200 people in the different units of the office. The Commissioner is appointed by the “Sejm” upon approval of the Senate for a fixed term of 5 years. He/she must be a Polish citizen of outstanding legal knowledge, professional experience and high prestige due to the individual’s moral values and social sensitivity.

The Group of Executive Law, which is composed of 7 specialists (6 of them being lawyers), is the unit responsible for penitentiary issues.

Visits

Visits are carried out with a view to monitoring conditions and respect for human rights in detention institutions.

The monitoring team consists mainly of lawyers specialised in prison issues. The team is composed of at least 3-4 persons. It must be noted that the Commissioner has the right to co-opt external specialists.

The Commissioner carries out visits based on a yearly plan, to all prisons and police detention centres. He has the right to conduct visits without warning, though in most cases visits are announced. He can conduct interviews with staff and inmates (interviews with inmates being made on a voluntary basis).

¹⁰ Website: www.brpo.gov.pl

The visited institutions are obliged to co-operate, to provide access to information and documents and to answer to the comments and opinions formulated during the visit.

Reports and Recommendations

At the end of each visit a debriefing with prison staff is organised and a report is subsequently drafted. Recommendations are included in the visit report. The Prison authorities are also requested to provide an opinion on the findings and conclusions of the report.

On the basis of the report, the Commissioner can request appropriate action from the relevant institutions.

The report is distributed and made public.

Miscellaneous

The Commissioner's Office conducts awareness raising activities through conferences, press releases and publications. The office also collaborates with various associations and civic movements.

It furthermore maintains a good relationship with the media. This is helpful to disseminate information about human rights violations, ill-treatment in prison and pre-trial detention centres. Some representatives of the media also help the office to prepare special newspaper research on this issue. Occasionally, special TV programmes are devoted to torture or other related human rights violations.

Bulgarian Helsinki Committee¹¹ (BHC)

The Bulgarian Helsinki Committee is an independent non-governmental organisation for the protection of human rights, which was created in 1992.

Mandate

The BHC has a general mandate to monitor and report on the human rights situation in Bulgaria and abroad.

Composition

At the time of the seminar, 25 persons were working within the BHC out of whom 6 dealt in particular with the monitoring of places of detention (two lawyers, one forensic doctor, two sociologists and one journalist). The members of the BHC are selected on the basis of their professional expertise, motivation and experience.

Visits

Regarding visits to places of detention, the BHC concludes yearly agreements with relevant Ministries, on the basis of the Law on the Execution of Sentences.

Visits are carried out with a view to determining whether the detention conditions are in line with international standards.

The monitoring team consists of at least 2 people (sometimes 4 or 5). By law, the BHC can visit sentenced prisoners. For non-sentenced inmates the BHC needs a case-by-case permission. It can visit privately other detainees such as the mentally ill, delinquent children and foreigners detained pending expulsion.

Visits to prisons are unannounced but those to police stations are subject to a special procedure. The BHC has the power to conduct interviews with inmates in private. The information collected is based on standardised questionnaires (more than 100 questions).

The BHC conducts 2 or 3 visits per week throughout the year.

¹¹ Website: www.bghelsinki.org

Reports and Recommendations

The visiting team reports to the BHC. It then prepares and publishes reports on specific places of detention or on specific issues. Some of the reports are offered to relevant authorities for comments prior to the publication.

Recommendations are related to the topics of the specific reports. The BHC can also write letters to relevant authorities on individual cases.

Miscellaneous

The BHC has the possibility to start legal action on cases of violation brought to its attention as a result of its visits to places of detention as well as through other means such as letters of complaint submitted by relatives.

It takes part in training programs for prison and police officers and diffuses information on rights among inmates.

The BHC sometimes organises specialized half-day meetings with the prison staff of specific institutions to discuss the situation in their institution.

Peace and Justice Service of Uruguay¹² (SERPAJ)

Created in 1981, SERPAJ is a non-governmental organisation with consultative status before the UN (ECOSOC, UNESCO).

Mandate

SERPAJ's work aims at participating in the construction of a society respecting the rights of the people. One of its main functions is therefore the defence of human rights through education on human rights and denunciations of violations taking place within society.

Composition

The Service is composed of several thematic groups including the working group for prisons, which is led by two lawyers with the assistance of a law student.

Visits

SERPAJ has a general authorisation to visit national prisons but it must get a special authorisation to visit prisons in the provinces.

It carries out visits to male and female adult prisons, psychiatric institutions and detention centres for minors.

The working group has an interdisciplinary approach, which is legal, social, medical, sociological and psychiatric, and collaborates with different government agencies if necessary.

The visits include interviews with prison authorities, as well as interviews with prisoners, in groups and individually.

Visits are announced and SERPAJ is able to visit 8 to 10 places of detention per year.

Reports and Recommendations

The NGO publishes an annual report on the human rights situation in Uruguay including information on visits that have been carried out. Information is also transmitted to the Ministry of Interior and to the competent prison authorities.

¹² Website: www.derechos.org/serpaj/

The recommendations made by SERPAJ give an overview as well as observations and proposals on specific issues such as the infrastructure, hygiene, food, external communication, disciplinary sanctions, employment, education and recreation, family visits, searches, corruption, prison personnel and prison population.

Miscellaneous

SERPAJ accompanies family members when they request legal advice. Furthermore it has conducted urgent actions by denouncing at the national and international level the conditions of detention within Uruguayan institutions.

Georgian Young Lawyer’s Association¹³ (GYLA)

The Georgian Young Lawyer’s Association (GYLA) was created in 1992.

Mandate

The mandate of GYLA includes the development of lawyers’ professional skills and qualifications, the establishment of professional ethical norms among lawyers, the protection of human rights and freedoms, the establishment of the rule of law, raising public awareness on legal issues, and the protection of the rights of detained persons.

Composition

About 800 lawyers compose GYLA all over the country. The staff working on monitoring places of detention is divided as follows: 10 lawyers within the Central Office and 8 lawyers within Regional Offices. The Board appoints people to the main posts within the Association.

Visits

Visits are carried out mainly to provide free legal assistance.

The monitoring team is composed of a majority of lawyers with specialisation in criminal procedural law with supporting staff.

GYLA visits prisons and pre-trial detention centres in the Capital and in other cities but does not have the possibility to visit police cells. It has full access to all pre-trial investigation cells and to all prison facilities and has the power to conduct unannounced visits and to conduct private interviews.

The frequency of the visits is on a case by case basis but a new project will provide for the establishment of regular visits.

Reports and Recommendations

After each visit, an internal report is drafted and a general report with recommendations is submitted to the Minister of Justice every 6 months. An annual report is published.

¹³ Website: www.gyla.ge

After a visit, case-by-case recommendations can be submitted to the prison administrations. GYLA also produces recommendations on legislative reforms.

Miscellaneous

GYLA produces various informational brochures on prisoner's rights and organises seminars and round table meetings on human rights issues.

Association for the Protection of Human Rights and Detained Persons, Burundi (APRODH)

The Association for the Protection of Human Rights and Detained Persons (APRODH) was created in 1997.

Mandate

The Association works for the rights of detained persons and in this framework conducts regular visits to places of detention.

Composition

Information not available

Visits

The Association regularly conducts visits to places of detention. It must be noted that in order to fulfil this task, the Association needs to ask for permission to the various Ministries responsible for places of detention.

The Association provides support to people deprived of their liberty and ensures that they receive medical assistance if needed and that a report is drafted whenever violations occur. Furthermore it assists prisoners to bring their complaints against the authorities.

Reports and Recommendations

An annual report is drafted as well as periodic reports. These reports are disseminated to the Government, to the media, to NGOs and to any other institutions that may be able to assist them.

Miscellaneous

Regular meetings are organised with the judicial authorities (magistrates, administrative personnel, representatives of civil society, but not police officers) in order to encourage them to take their responsibilities seriously.

The Association also participates in radio programmes with a view to raising awareness among the society as a whole. A weekly radio programme deals with various human rights issues including torture and people deprived of their liberty. The use of the media in the case of Burundi has encouraged people to denounce acts of torture and other forms of ill-treatment and has on occasion led to the arrest of the perpetrator.

The Association faces an important lack of financial, material and communication resources, which hinders its work.

Geneva Parliamentary Commission, Switzerland

Created in 1825, the Parliamentary Commission is based on cantonal legislation.

Mandate

The mandate of the Commission is to examine the conditions of detention of all places where people are deprived of their liberty in the Canton of Geneva as well as in other institutions within the Commission's jurisdiction.

Composition

The Commission is composed of 9 members from the Parliament, representing the political parties proportionally. It must be noted that the Commission, in the framework of its visiting activities, can make use of specific external experts (doctors, lawyers, former prison directors, etc).

Visits

The monitoring team is composed of at least 3 members of the Commission representing three different parties.

The Commission carries out visits to all places of detention in the Canton of Geneva as well as those in other Cantons where inmates from Geneva are detained. The Commission can also visit detention places for youth, retention areas at the airports and police stations and cells.

The Commission has the power to conduct unannounced and unimpeded visits and conduct interviews in private.

Announced visits are conducted at least twice a year and unannounced visits are made according to the situation.

Reports and Recommendations

The Commission presents an annual report containing a summary of its activities as well as the necessary recommendations or observations. This report is sent to the Council of States and to the General Attorney for discussion as well as to the institutions that have been visited and to the chiefs of the department of the penitentiary system under which these institutions are managed.

The Commission can also, after discussions within the plenary, make recommendations directly to the relevant authorities.

Specific reports can also be presented following special events.

Miscellaneous

Training workshops are organised for the visiting team, which gather detainees, prison staff and representatives of the penitentiary authorities.

The Commission also follows up on complaints received regarding conditions of detention.

Community Council, Rio de Janeiro, Brazil

The Community Council of Rio de Janeiro was created in 1992 (Law on the Execution of Penal Sentences, article 80 and 81).

Mandate

The Community Council is an independent institution mandated to monitor the way sentences of deprivation of liberty are carried out. In accordance with this mandate, the Council monitors conditions of detention.

Composition

Representatives of about 26 organisations constitute the Council and five of them lead the Council.

Visits

The Community Council can carry out visits without previous notification to the visited institution. It has the power to conduct planned, as well as unannounced visits, at any time and at any place of detention within its jurisdiction.

The Council can also hold private interviews with the detainees as well as with prison staff and can have access to all premises of the institution.

Reports and Recommendations

The Council must report to the Supervising Judge every month, although it works independently from the judicial authorities.

It makes denunciations and notifications to the relevant authorities and participates in public hearings held by the legislative authorities.

Miscellaneous

The law does not provide any provisions ensuring the Council of financial and administrative resources to carry out its functions. Therefore, the Council functions on a voluntary basis.

The Council participated in the elaboration of programmes and policies in the penitentiary area (e.g. it participated in a programme for health professionals aimed at training them to identify and denounce cases of torture within prisons).

The Austrian Human Rights Advisory Board¹⁴

The Austrian Human Rights Advisory Board was established by a regulation of 30 June of 1999¹⁵ and an amendment of the law on the security police¹⁶, which was adopted with constitutional rank, as an advisory body to the Ministry of the Interior.

Mandate

The main purpose is the prevention of any form of ill-treatment in line with the European Convention for the Prevention of Torture.

According to Article 15a of the Security Police Act, the task of the Human Rights Advisory Board consists in observing and examining the activity of security authorities, subordinate authorities of the Federal Ministry of the Interior, and those authorities entitled to exercise direct administrative and coercive power.

The Advisory Board can act on its own decisions or on the request of the Minister of the Interior.

Composition

The Human Rights Advisory Board is composed of 11 members and the same number of deputy members. The Constitutional amendment establishes that three members are from the Ministry of the Interior, one from the Federal Chancellery and one from the Ministry of Justice. Five other members, usually experts, are nominated by private NGOs active in the protection of human rights. The Minister of the Interior formally appoints the nominees.

For the implementation of the monitoring and observation of police activity, regionally organised expert commissions of the Human Rights Advisory Board have been established, they examine in an accompanying way detention of individuals at the premises of security police (art.15c al.1). Six Commissions have started their activities by July 2000. The existing six Commissions are each composed of a minimum of five and a maximum of eight members. For the management of each commission, the Advisory Board nominates a recognised personality in the field of human rights. Experts from the security police are not accepted as members of commissions (see article 15c, para 2).

¹⁴ Website: www.menschenrechtsbeirat.at

¹⁵ BGB1. II Nr. 202/1999

¹⁶ The Security Police Act (article 15a-c).

Visits

Visits can be made by the complete Commission or by a delegation of the Commission. A delegation is composed by at least two Commission members.

The Advisory Board with its delegations and Commissions is empowered to visit each and every office or place of the security police where administrative and coercive power is practised by the security police. The accompanying record of an individual's detention in offices of the security police has to be drawn up by the commissions of the Human Rights Advisory Board.

According to Article 15c, para 4, the director of a visited office is obliged to ensure inspection of files and provide information. He has to allow access for the delegation or commission to all places and rooms and has to cooperate with the wishes of the members if they want to contact a particular detainee without the presence of a third party.

The Board has the power to conduct unannounced and unimpeded visits.

Reports and Recommendations

Commissions are bound to report to the Human Rights Advisory Board about each visit concluded. These reports have to contain in particular facts regarding the investigations, but also measures and recommendations, which the commission considers should be mentioned.

The Human Rights Advisory Board eventually draws up an annual report of its activities, including the activities of the Commissions. Each report consists of findings, conclusions and recommendations.

Recommendations of the Advisory Board are sent to the Federal Ministry of the Interior and they appear in the annual security report of the Government to the National Council.

The work of the Commissions and of the Advisory Board is undertaken on a confidential basis, but the Board may address the public by informing them about its activities and by expressing concern over certain issues or developments.

Miscellaneous

The Advisory Board meets about 8 times per year. It does normally not deal with individual cases.

In order to have a dialogue on the activities of the Advisory Board with civil society, a meeting between (NGO-) members of the Advisory Board, members of the Commissions and NGOs, is organized by the secretariat approximately twice a year.

Supervising judge of Costa Rica

The figure of the Supervising Judge of Costa Rica was created during the 1998 penal procedure reform.

Mandate

The Supervising Judge is mandated, according to the Criminal Procedure Law to visit detention centres with the objective of monitoring the respect of the fundamental and penitentiary rights of people deprived of their liberty.

Composition

Eight judges are fulfilling this mandate in Costa Rica. They are named according to standards and procedures required for a professional career in the judicial branch.

Visits

According to Article 458 of the Criminal Procedure Law, judges have an obligation to visit places of detention. The Judge can carry out visits individually, to any detention facility. Sometimes, public prosecutors, public defenders, the Ombudsman Office or NGOs, can also accompany him.

The supervising judge undertakes visits to pre-trial detention facilities, to prisons, to police stations, to hospitals and psychiatric institutions.

He can conduct unannounced visits. Although the law provides that the Judge has to conduct visits to places of detention every six months, in practice the supervising Judge in Costa Rica tries to do it at least once a month.

Reports and Recommendations

After each visit an official report is drafted. If necessary, recommendations or corrective measures directed to the competent penitentiary or higher authority are issued. These must be based on principles of international and national law, including on the Constitution.

Reports are not published but are sent to the legislative authorities, to the Ministry of Justice and to other relevant authorities.

Miscellaneous

The supervising Judge deals with complaints filed by people deprived of liberty and provides free legal assistance to the prison population.

National Visiting Mechanisms – Categories and Assessment

Background paper for APT Seminar "Domestic
Visiting Bodies around the World: Practices and
Lessons Learned".

Walter Suntinger, 26 June 2003

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I. Introduction

1. The aim and scope of the paper

The aim of this paper is to identify, categorize and preliminarily assess different types of existing national visiting mechanisms (NVM) to places of detention against international standards and practices. This is done against the backdrop of the Optional Protocol to the UN Convention against Torture (OPCAT) which provides for the establishment of “National Preventive Mechanisms” (Articles 3 and 17-23).

The concept of NVM used here is deliberately broad in order to obtain a comprehensive picture of which bodies exist¹. Accordingly, it includes all mechanisms that have the right or possibility to visit "places where people are deprived of their liberty" (Article 1 of the OPCAT), regardless of whether their visiting power is merely a theoretical or not and of the institutional place of the visiting mechanisms.

The objective of “National Preventive Mechanisms” under the OPCAT is to prevent torture and ill treatment. This paper, however, does not limit itself to analysing those visiting mechanisms, which have been set-up with the explicit objective of prevention. In order to allow an overview over the existing mechanisms, the paper also includes mechanisms with related, albeit distinct primary objectives, such as visits based on complaints of a diverse nature.

2. Structure

The first part of this paper puts the phenomenon of NVM into an international and national context and proposes a set of assessment criteria based on the OPCAT and other international standards and best practices. Furthermore, in order to obtain a better picture of existing NVM in the light of the OPCAT, a brief survey of the extent to which different places of detention are covered by existing mechanisms is given.

In the second, main part of the document, the paper deals with seven categories of NVM. It first describes each category and then preliminarily assesses the strengths and weaknesses of each category of NVM in the light of the criteria

¹ This paper uses the term “national visiting mechanism” and not the technical term “national preventive mechanism”, used in the OPCAT; the reason for this choice of terminology is that the fact that NVM dealt with here predate the OPCAT and most of them were not explicitly set up with a view to preventing torture.

explained. Finally, the paper attempts to reach some general conclusions, having in mind the goal of ratification and effective implementation of the OPCAT.

3. Methodology and preliminary nature of research

This study is based on research of various relevant documents about international and national visiting mechanisms, academic literature on the subject matter, as well as my own experience as a member of the Austrian Human Rights Advisory Board and human rights consultant working in several, mainly European countries. Of particular importance, especially for the identification of existing mechanisms, was the work of the European Committee for the Prevention of Torture (CPT) which looks at and evaluates existing national mechanisms during its visits to countries party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). This emphasis, together with my own background, helps explain the European tilt of this paper.

I would also like to point out that this paper is only a first attempt to come to grips with the complexities of the subject matter. Areas where further work is needed include: the global dimension of the existence of NVM; a more representative selection of examples; and a refinement of the categories as well as of the assessment criteria.

II. Context and assessment criteria

1. International and national context

The idea of preventing torture and other ill-treatment through regular inspection of places of detention by independent outside organs was conceived of and conceptualized in a systematic form in the 1970s by Jean-Jacques Gautier, who had been inspired by the International Committee of the Red Cross's visiting experience. The inspection systems established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 and the Optional Protocol to the UN Convention against Torture of 2002 can be seen as consequences of Gautier's efforts at the regional and universal levels. These instruments create systems of international inspection of places of detention. During its 15 years in existence, the European Committee for the Prevention of Torture has (at least partly) met expectations that it would play a pioneering role and become a source of inspiration and point of orientation for similar undertakings. More importantly, the recently adopted Optional Protocol to the Convention Against Torture goes one step further by, not only establishing an

international visiting mechanism, but also an obligation to create national visiting mechanisms, and by specifying the essential characteristics of these mechanisms.

However, already before and parallel to the above mentioned developments at the international level, there were efforts at the national level to create diverse forms of oversight of prisons and other places of detention in order to regularly control the conditions of detention and the treatment and rights of detainees and/or to ensure public trust in the prison/police system. These national visiting mechanisms have been developed within a particular national legal, political, cultural context, be it as a purely national undertaking or with inspiration from international standards and practices. Some mechanisms have been the result of changing attitudes towards prisoners and a greater human rights awareness in general while others have been created as a response to a particular human rights crisis, which prompted political leaders to act. Other mechanisms were set up as part of a restructuring of state institutions during a transition phase from autocratic to democratic rule. This cultural context, broadly understood to encompass legal and political cultures, must be taken into account when trying to understand the conditions of functioning of national visiting mechanisms and their effectiveness².

2. Sources and criteria of assessment

Sources of standards

The origins of the international standards, which are relevant to NVM, are recent. In chronological order, the relevant instruments are:

- The **Paris Principles (PP)**, the "Principles relating to the status and functioning of national institutions for the promotion and protection of human rights", adopted by the first international workshop on National Institutions for the Protection and Promotion of Human Rights in Paris in 1991 and welcomed by the United Nations General Assembly (UN GA) in Res. 48/134 in 1993. The Paris Principles are the main normative framework for evaluating national human rights and ombudsman institutions³ and are referred to in Article 18 (4) of the OPCAT.

² See also APT, *The Impact of External Visiting of Police Stations on Prevention of Torture and Ill-Treatment*, Geneva, January 1999, p.18.

³ See International Council on Human Rights Policy, *Performance and Legitimacy: National human rights institutions*, Geneva 2000, p.106 et seq.

- The **European Committee for the Prevention of Torture**, whose reports increasingly deal with existing mechanisms at the national levels in Europe, has developed criteria in its recommendations to States⁴.
- The most detailed standards are found in the **Optional Protocol to the UN Convention against Torture**, adopted by UN GA on 18 December 2002. The APT has prepared a detailed analysis of the OPCAT standards on national visiting mechanisms⁵.
- Furthermore, existing visiting and human rights monitoring institutions have developed **best practices** for the promotion and protection of human rights which can be used for evaluative purposes.

Criteria and standards for assessment

- **Legal basis of the institution and its mandate:** The criterion that a national mechanism has a mandate which is "clearly set forth in a constitutional or legislative text" is found in the Paris Principles (Principle 2). An empirical study on the performance of national human rights institutions found that this at first sight formal criterion was very relevant for the public legitimacy of an institution⁶.
- **Composition of the visiting mechanism:** This is a fundamental criterion in the instruments mentioned above. While the Paris Principles speak of "pluralistic representation of the social forces involved in human rights work", the OPCAT states that members shall have the "required capabilities and professional knowledge" and demands "gender balance and representation of ethnic and minority groups". From CPT practice we know of the fundamental importance of having a multidisciplinary approach to the problems encountered during visits.
- **Mandate:** The OPCAT most explicitly outlines the various aspects of a NVM's mandate which should include: (1.) the authority to examine the treatment of persons deprived of their liberty; (2.) the authority to make recommendations to the relevant authorities; and (3.) the authority to submit proposals concerning pertinent legislation to state bodies (none of the international standards require States to have just one NVM with a mandate that covers all

⁴CPT, 12th General Report, CPT/Inf (2002) p.15, para. 50 (regarding police); CPT, Report to Andorra, CPT/Inf (2000) p.11, para. 25 (regarding police), para. 52 (regarding prisons).

⁵ APT, Implementation of the Optional Protocol to the UN Convention against Torture, National Preventive Mechanisms, November 2002, www.apr.ch.

⁶ See International Council on Human Rights Policy (FN 3), p.57.

places where persons are deprived of their liberty, but rather Articles 3 and 17 of the OPCAT leave it to the States to have "one or several" visiting bodies).

- **Regular visits and visiting powers:** In order to fulfil this mandate, the visiting mechanism must have and exercise the power to regularly visit places where people are deprived of their liberty. It must have access to all places, all persons (including the right to conduct private conversations with these person), and all relevant documents in such institutions.
- **Strategic approaches to human rights monitoring:** The overall methodology of visiting closed institutions should be embedded in a more strategic human rights monitoring approach, based on a thorough analysis of the causes of the violations and problems encountered. This lesson is borne out of practical human rights work, not only at the national level⁷, but also in the field of human rights work in international (peace-keeping) missions⁸.
- **Reporting:** NVM should report to the authorities as well as to the public, and - according to the OPCAT- this at the very least should assume the form of an annual report. This criterion of publicity is essential for maintaining legitimacy.
- **Authority of the visiting body and relations with the authorities:** The underlying concept of visiting mechanisms is one of co-operation and constructive dialogue. A component of this concept is that visiting bodies have powers to recommend changes, to which the authorities have an obligation to respond.
- **Resources:** NVM shall have available to them "the necessary resources" (OPCAT) and "adequate funding" (PP).
- **Security guarantees:** Persons or organizations communicating with the NVM must be protected against any sanctions (OPCAT). Of equal importance is the protection of persons belonging to the NVM against reprisals.
- **Guarantees of independence:** The independence of the visiting body is a final criterion, which is encompassing in several respects. This must be guaranteed in relation to the functions of the NVM, its composition, appointment procedure, personnel, premises, and financial basis. Independence should not only exist, it should also be seen to exist.

⁷ See *ibid.* p.71 et seq.; where the structurally similar question of reacting to complaints vs. more systematic, priority conscious approaches are discussed in the context of national human rights institutions.

⁸ See Karen Kenny, *Human Rights Monitoring: How to do it and lessons learned*, Psychler/Paffenholz (eds.), *Peacebuilding, A Field Guide* 2001. Kenny uses the term "diagnostic monitoring" in this context.

III. Places of concern ("places where people are deprived of their liberty")

The categories of NVM described above are potentially active with regard to all "places where people are deprived of their liberty" (Art 1 OPCAT), i.e. prisons, police holding centres and police stations, psychiatric institutions and military detention centres. The following brief overview looks at the phenomenon of national visiting bodies from a different perspective, taking the places of concern as point of orientation.

1. Prison system

As previously mentioned, the prison system is unsurprisingly the area where the majority of existing mechanisms were developed. Outside involvement and control of prisons by Visiting Boards were created at the beginning of the 20th century in the UK. These early systems were based more on a general welfare idea, as opposed to those bodies with a more professional and focused human rights approach, which developed later.

Furthermore, the supervisory judge function most commonly found in Spain and the countries of Latin American was instituted in the course of the reform of the penitentiary system from the 1960s onwards. In some countries, the visits of judges to remand prisons is foreseen, but rarely practiced.

2. Police system

It is interesting to see that police monitoring mechanisms were a relatively late development, beginning in the 1980s in the UK. The 1990s saw other countries, such as South Africa, the Netherlands, Hungary and Austria establish police monitoring systems. Visits by the judiciary to places of police detention are possible in some countries, but rarely practiced in a systematic way.

3. Psychiatric institutions

Psychiatric institutions were at the margin of human rights concern for quite some time⁹, but gradual change in attitudes has also occurred in this field. However, it would seem that the idea of external monitoring of psychiatric institutions is little developed, as mainly internal inspection systems within the responsible

⁹ The European Court of Human Rights has found violations of the right to personal liberty in a number of cases against the Netherlands in the 1970, in which an attitude of carelessness for the human rights of mentally ill persons was apparent. The Court established a set of criteria for the deprivation of liberty of mentally ill persons.

ministry/authority can be found. Again, members of the judiciary have the right to supervise such places of detention in some countries, but this right appears to be rarely exercised. Furthermore, psychiatric institutions normally fall under the mandate of national human rights institutions and ombudsmen.

4. Military places of deprivation of liberty

The area of military detention is particularly sensitive in many countries. The only existing mechanisms in this area are, in addition to internal inspection, national human rights institutions and ombudsmen which have a general mandate to look proactively at all action by the executive.

5. Juvenile holding centres

Places where minors are held for juvenile care reasons have also not come prominently within the purview of human rights monitoring. This fact seems to be related to a lack of awareness of the unequal power structures in these institutions, which call for external monitoring. The only existing models of monitoring seem to be internal, with the governmental juvenile care authorities having a particular role.

IV. Categories – description and preliminary assessment

1. General remarks

The criteria for categorization are essentially related to the **institutional and compositional characteristics** of the visiting body. The following categories are dealt with below: internal inspection systems; outside and mixed inspection systems established within the respective ministry/authority; outside inspection by national human rights institutions and ombudsmen; and inspection by groups of Parliamentarians, inspection by the judiciary, inspection by NGOs. Lastly, there is also a category titled "Others", which encompass those bodies, which do not fall into one of the categories, referred to above, or are a mixture of more than one type of body.

It is important to stress at this point that any categorization of the complexities of existing mechanisms is somehow arbitrary, and that there is often a fine line between different categories. The categorization of the UK Inspectorate of Prisons is a case in point. Although it is a part of the UK Home Office, it has such a strong autonomous, independent status that it seems warranted to take it out of the purely internal administrative inspection systems and include it under external or mixed inspection systems.

For each category a description is given which includes a brief historical and contextual introduction, its main characteristics and a selection of examples. As previously mentioned, the selection of examples given is not (yet) representative, but rather serves illustrative purposes. On the basis of the description, a preliminary assessment of each of the categories of NVM is undertaken. This analysis attempts to highlight both strengths and problem areas.

2. Internal administrative inspection

Description

Inspection of places of deprivation of liberty by a special department of the government institution responsible for running the institution is very common and is part of the normal running of big bureaucracies, partly explicitly based on law (e.g. in the UK, Austria and Norway). Such visits take place to a varying extent and in varying quality in many countries of the world. Internal inspection mechanisms, as understood here, can also take the form of other government departments (e.g. labour inspection, social services inspectorate), which visit and inspect certain aspects of the conditions of detention related to their field of competence.

Internal inspection systems within ministries and/or respective authority or special Government inspection offices are often based on either a specific functional law (e.g. Execution of Sentences laws) or on the law governing the structure of government and/or ministries. The members of the inspection team are public officials, normally under the authority of the ministry concerned, and often include persons with a specialised knowledge for carrying out their task. The mandate of internal inspection systems includes verifying the implementation of the respective laws and government regulations, whereby they have the power to visit the places concerned and to talk with persons in private. They report to the ministry concerned, and their recommendations can have strong relevance because of their proximity to the decision makers of the institution concerned. Opinions of inspections from other government institutions (like the social service, juvenile care authorities and labour inspectorates) are enforceable in some countries.

Examples

- Greece: Although the Directorate of Inspections within the Ministry of Justice has the power to conduct visits, it does so only from time to time, and not systematically;
- Greece: There exists a legal obligation of the Ministry of Health to inspect hospitals;
- UK: At least one unannounced visit every month to each juvenile justice centre in Northern Ireland should be conducted by Juvenile Care authority;
- Norway: Visits to juvenile establishments are conducted by the Supervisory Committee from the Relevant County Governor's Office in Norway.

Assessment

Internal administrative inspection systems have been included in this paper although it was very clear from the outset that they do not fulfil the criteria of independence referred to above.

On the other hand, some aspects of the work of certain of these systems are worth consideration. These bodies have the apparent advantage of internal criticism being more easily accepted and their findings being implemented in a much more direct manner. Another aspect worth mentioning is the fact that the findings of some governmental inspections mechanisms, especially Labour Inspectorates and Social Welfare Inspectorates, can be enforced.

3. Inspection by outside/mixed body established within the respective authority/ministry

Description

This category contains a wide range of very diverse types of visiting bodies, established within the field of competence of a ministry. This category can be seen as a continuation of internal inspection systems, albeit with external elements, either in the form of outside persons or a strong autonomous status being dominant.

The idea behind the establishment of outside/mixed bodies seems to be mainly twofold: Firstly, it seeks to create independent checks on the way people in detention are treated and to provide outside advice on how the conditions of detention can be improved¹⁰. Secondly, the opening of closed institution to outside eyes is intended to ensure public understanding and trust in the institution concerned (e.g. the lay visiting systems to police stations in the UK and South Africa¹¹).

Such outside/mixed bodies were first created in the context of places for sentenced prisoners and date back to the beginning of the 20th century, e.g. the UK Boards of Visitors to Prisons. As a more recent development we also find the establishment of such bodies in the context of the police system.

These outside bodies can be further divided into the following types:

- Special autonomous inspection systems within the ministry (e.g. the UK Inspectorate of Prisons, Prisons Ombudsman Office in Argentina);
- External volunteer visiting boards/committees to specific (police and prison) institutions (e.g. board of visitors to prisons in many countries, lay visiting committees to police in UK and South Africa);
- External NGO based inspection systems (e.g. Georgian Independent Council of Public Control of Penitentiary System);
- External visiting committees in combination with general human rights advisory boards for the police system (e.g. the Austrian Human Rights Advisory Board).

The legal basis of these systems of NVM varies. It ranges from those without a formal legal basis, formed upon the recommendation of a ministry (lay visiting mechanisms to police stations in the UK) to a constitutional law provision (Human

¹⁰ See explanation of rationale of existence of the Austrian Human Rights Advisory Board, www.menschenrechtsbeirat.at.

¹¹ Explicitly mentioned in South African Policy Guidelines, Community Visitor System, para 2, quoted in APT (FN.2), p.62.

Rights Advisory Board in Austria). The most common form is the creation of such a body by ministerial decree implementing a statutory obligation (Georgia, Armenia, and the Prisons Ombudsman Office in Argentina).

Equally, there is a considerable variety with regard to the composition of these bodies:

- The visitors can be lay people from outside the controlled institution, including persons from local councils, trade unions etc. (Bulgarian Supervisory Committees to prisons, UK Board of Visitors);
- They can be exclusively members of NGOs specialized in human rights (Georgian Independent Council of Public Control of Penitentiary System);
- They can be persons recruited for their expertise in the subject matter (UK Inspectorate on Prisons, Human Rights Advisory Board in Austria).

This means that the composition varies considerably with regard to skills and (human rights) knowledge. Most of the members of these bodies are appointed by the respective authority and/or ministry, with or without an independent procedural element.

These institutions have either relatively clear human rights mandates or are more focused on the laws governing the conditions of detention.

Their visiting powers normally include access to places of detention, persons in detention (including the right to conduct private conversations) and to the relevant documents, including personal files. However, the visiting powers of some of these institutions are restricted (e.g. restriction of visits during working hours, or on access to files, as in the case of Georgia). Few of these mechanisms have the explicit task of proposing or looking at (new) legislation.

The working methods of such bodies are mainly visits to places of detention, as more focused thematic approaches do so far seem to be rare¹². The outcome of their work is usually the publication of reports and recommendations to the relevant authorities. Although these recommendations are not binding their authority seems to be derived from the professionalism of their work. Some (mainly the older institutions) do not publish any reports at all, while others publish visit, topical and annual reports.

Some of these institutions are struggling with their identity as monitors and advisors of closed institutions. There are those bodies who seem to be so close to

¹² Exceptions would be the Inspectorate of Prisons in the UK and the Austrian Human Rights Advisory Board.

the institution that they have difficulties to be seen as distinct from them (e.g. Bavarian Advisory Councils to Prisons in Germany), while others are aware of their critical role and attempt to find the right balance between monitoring and offering advice.

There is also a great variety in terms of resources available to these bodies. While some are well resourced, others function on an essentially voluntary basis.

Examples

- UK: Visitors Committee to particular immigration detention centres;
- Austria: Human Rights Advisory Board (a two-layer structure consisting of entirely external visiting commissions to police stations and jails and a deliberating board which includes members of the executive);
- South Africa: Lay visiting schemes to police stations;
- UK: Lay visiting schemes to police stations;
- UK: HM's Inspectorate of Prisons (an autonomous control institution within the Home Office with responsibility for inspecting the prison system);
- UK: boards of visitors in every prison, renamed Independent Monitoring Boards (volunteers, formerly involved also in adjudication of disciplinary offences);
- Cyprus: prison board with inspection and advice functions to minister (the members appointed by the Council of Ministers);
- Austria: Commissions for Execution of Penal Sentences (volunteers, appointed by Ministry of Justice);
- Bulgaria: "supervisory committees" for prisons, provided for by the Law on the Implementation of Penal Sanctions (members from local councils and trade unions, but not fully operational);
- Norway Prisons Act: supervisory boards (composed of a judge and at least 3 other members, appointed by Ministry of Justice) or supervisory officer, depending on the size of the prison;
- Georgia, Independent Council of Public Control of Penitentiary System within the Ministry of Justice (established by Ministerial Decree; NGO based visiting body);
- Germany: Advisory Councils in every penal institution (members appointed by regional governments);
- Argentina: Ombudsman for prisons within the Ministry of Justice and Human Rights (established by Ministerial Decree);
- Cyprus: Mental Patients Rules provide for Mental Hospital Board (members appointed by Council of Ministers, frequent visits).

Assessment

Given the wide variety of outside/mixed bodies, the assessment must be limited to some general considerations.

The greatest asset of these specialized outside visiting bodies is their particular focus on visits to places of detention, thus enabling them (theoretically at least) to obtain a thorough understanding of the situations and problems encountered. If they function in secure institutional settings and are composed of professional people, their potential for preventing abuses and improving conditions of detention is high.

It seems that the major problem with this category of outside bodies is determining their proper relationship or distance to the authorities controlled. This is directly related to the question of independence. Problems found in this respect include:

- Their mixed membership, including government officials;
- Having a formal guarantee of independence, but having members belonging to the government and being financially dependent on the authority controlled (Austrian Human Rights Advisory Board);
- The appointment and dismissal of personnel by the authority controlled without proper checks (e.g. lay visiting systems in the UK and South Africa);
- Their mixed functions of control and disciplining (e.g. formerly the Board of Visitors in UK);
- Being seen as part of the prison administration due to not taking a proactive approach to monitoring.

A second problem in this category of visiting body is related to the interpretation of their mandate and working methods. Many organs predate systematic human rights approaches to monitoring. This creates problems both in terms of the lack of required capabilities and professional knowledge as well as the multidisciplinary nature of their work (see regular CPT recommendations on training etc). Those visiting bodies meeting these requirements, such as the UK Inspectorate of Prisons and the visiting commissions of the Austrian Human Rights Advisory Board, seem to be the exceptions.

A further problem in this category of visiting bodies is the question of resources. There are still quite a few which work on a voluntary basis, while others have very few resources.

Finally, there is the problem of reporting, as many of these outside bodies do not produce any public reports, with the results that their activity is hardly assessable.

4. Inspection by national human rights institutions, including the ombudsman

Description

Ombudsmen and National Human Rights Institutions constitute a further category of visiting bodies. Although these two types of institutions have quite different historical backgrounds, their approaches and functions nowadays have come to converge so strongly that they can be treated as one category in this context¹³.

Ombudsman institutions have their origin in Scandinavia, created in the 19th century to receive complaints about maladministration. In the second half of the 20th century the Ombudsman Institution spread all over the world. Ombudsmen established in the 1990s took on more specific human rights mandates. In particular, this is true for the Ombudsman Institutions in countries in transition from authoritarian rule to democratic states based on the rule of law.

This latter development coincided with and was influenced by UN efforts to promote the creation of national institutions for the promotion and protection of human rights. The Paris Principles of 1991, adopted at the first international workshop on national institutions, constitute the normative framework against which national human rights institutions are measured (and are referred to in Article 18 paragraph 4 of the OPCAT).

A thorough assessment¹⁴ of national human rights institutions shows them as a hybrid category with many different variations: They can come as national commissions on human rights (Indonesia, India, South Africa, Uganda), they can be human rights ombudsman, commissioner for civil rights, or the type of defensor del pueblo, which originated in Spain and is part of the Latin American landscape.

The elements which tie all these variations together and give them a distinct place within the structure of state institutions are: (1) their quasi-governmental or statutory status, mostly established as part of the parliament and on the basis of a constitutional provision; (2) a mandate for human rights promotion and protection, in particular by reacting to complaints from individuals, but also by undertaking proactive human rights work, and (3) in contrast to the judiciary, the non coercive nature of their findings.

¹³ See also APT, *The Role of the Ombudsman in Latin America*, Geneva 1998, p.3.

¹⁴ International Council on Human Rights Policy (FN.3), pp.3-4.

Many national human rights institutions, including ombudsman institutions have a mandate to act on their own initiative and to visit places of detention¹⁵. Some national institutions have established specific departments for prison visits, i.e. Colombia, El Salvador and Panama etc.

National human rights institutions are most often based upon the constitution, especially when they are set up as part of a transition process. However, there are also some bodies (most often those created as a response to a human rights crisis), which were set up by Presidential Decree (Indonesia and Mexico). Usually, but not exclusively, their place within the overall state institutions is the legislative. Where this is not the case, there have been attempts to bring national human rights institutions under parliamentary control¹⁶.

National human rights institutions are either composed of a certain number of members or commissioners or are headed by one person. Most national human rights institutions are dominated by lawyers. They have a mandate to take complaints from individuals (which is especially true for traditional ombudsman institutions), although most of them can act proactively as well. Within this latter mode of action they can also visit places of detention. However, this function is not realised systematically or consistently.

National human rights institutions have wide ranging powers to investigate, including issuing of subpoenas with regard to persons and documents. The result of their work is mostly recommendations which are not legally binding, but which are often accompanied by a formalized procedure for receiving an official response, so that these recommendations can not so easily be discarded by the authorities concerned (e.g. Ghana). National human rights institutions normally produce annual reports (to parliament), while some also produce specific reports. As national human rights institutions are mostly set up within the parliament, resources are accorded to them through parliamentarian voting. Sufficiency of resources varies widely.

Examples

- Mexico: National Human Rights Commission (including a prison visiting programme); human rights commissions/Ombudsmen at states level (few active in prison visits);
- Colombia: Delegate Ombudsman for Criminal and Penitentiary Policy (department within Ombudsman Office);

¹⁵ Half of the approximately 70 national human rights institutions mentioned in State reports to the Committee against Torture have a mandate to visit/carry out visits to places of detention, in particular to prisons.

¹⁶ E.g. some of the Human Rights Commissions at the states level in Mexico have been brought under the respective state legislatures in recent years.

- Poland: Civil Rights Commissioner (has conducted regular visits to prisons and police places of detention as well as thematic studies);
- Slovenia: Human Rights Ombudsman (conducts visits to prisons);
- Spain: Defensor del Pueblo (has dealt with the prison situation occasionally);
- Ghana: Commission for Human Rights and Administration of Justice in Ghana (has conducted a systematic survey of prisons in 1995/1996 and conducts follow-up visits every year);
- South African Human Rights Commission (conduct regular visits to prisons, but also to police cells);
- Fiji: Human Rights Commission (see Annex I);
- Nepal: Human Rights Commission (see Annex I);
- Sri Lanka: Human Rights Commission (see Annex I);
- Finland: Ombudsman (has conducted regular visits to places of deprivation of liberty especially prisons, as well as thematic studies).

Assessment

Nowadays national human rights institutions and ombudsman are quite well established institutions, although many are struggling with legal and financial insecurity as well as issues of independence and, thus, with their perceived legitimacy¹⁷. The trend, however, seems to go in the direction of NHRI developing a clearer profile.

As the composition of national human rights and ombudsman institutions is dominated by lawyers, few of them fulfil the required multidisciplinary character of NVM, as demanded by the OPCAT and the CPT or the criteria of the Paris Principles in terms of representation¹⁸.

While the mandates of national human rights and ombudsmen are generally broad enough to look at the human rights of detainees, in particular the prevention of torture, and while they normally have the powers to visit places of detention, it is exactly the broadness of the mandate, which has negative consequences for their work on closed institutions. As all human rights come within their mandate, a systematic focus on rights of detainees through regular visits to places of detention is rarely found¹⁹. Only in some countries, particularly those in Latin America and Eastern Europe in recent years, national human rights and ombudsman institutions have developed a more systematic approach to conducting visits to places of detention (e.g. Colombia, Poland and Slovenia). The question of priorities given to visits is linked to the issue of (limited) resources of national human rights and ombudsmen.

¹⁷ International Council on Human Rights Policy (FN 3), p.57 et seq.

¹⁸ International Council on Human Rights Policy (FN 3), p.77 et seq.

¹⁹ See the study by APT, *The role of the Ombudsman in Latin America*, Geneva 1998.

As regards the weight given to recommendations and public reporting, some NHRI/Ombudsmen have the strength of a formalised procedure of follow-up, including the legal obligation of non-complying authorities to respond to them within a certain time.

5. Inspection by parliamentary organs

Description

The function of exercising democratic control over the executive belongs to legislative bodies in democratic states. This can be done by establishing specialized institutions such as national human rights institutions or by members of parliament themselves.

While many parliaments have the competence to look into the rights of persons deprived of their liberty and occasionally carry out visits (Denmark, Mexico etc.), some have set up specific commissions with the task of systematically visiting places of detention.

The legal basis of the visiting work of groups of parliamentarians is based on the law governing the functions/structure of parliament/internal parliamentarian or on functional laws, e.g. prison laws. These groups are composed of parliamentarians from all the parties represented in the parliament and thus mostly of professional politicians. Some have included outside experts to assist them in their task. The mandate of parliamentarian visiting groups is normally broad. Recommendations are the usual outcome of their work, but they can also advance legislative proposals. Few of them publish substantive reports.

Examples

- Switzerland: Geneva Parliamentary Commission (see Annex I);
- Switzerland: Sub-Commission for the surveillance of conditions of detention in the Parliament of Ticino;
- Parliamentarian (Legal/Human Rights) committees in several countries undertake occasional visits.

Assessment

Visiting mechanisms set up within parliaments potentially have strong authority due to the special functions of members of parliament. The mandates of the parliamentarian bodies seem to be broad enough, and it can be seen as strength of this model that the actors are undertaking legislative work.

However, the experience so far tends to show that there are several problems with entrusting parliamentarians with the task of monitoring the rights of persons deprived of their liberty and the conditions in such places.

Firstly, there is the problem of the required professional knowledge of persons who, by the very nature of their function, are generalists and not specialists. If they do not draw on outside expertise, as the Geneva "Commission des visiteurs officiels du Grand Conseil" has done, the work of these committees risks producing very general results without proper depth.

Secondly, having members of political parties as monitors might trigger a problem with regard to the politicisations of what is primarily a rights-based exercise.

Thirdly, an issue also relevant in this respect is the problem of the regularity of visits and, therefore, the sustainability of these efforts. However, as the Geneva example seems to suggest this challenge can be met if there is a clear political will to act.

Parliamentarian committees do publish reports, although not in a very systematic way. Also, and linked to what has been said above, their reports are not always as specific as would be desirable.

6. Judicial Inspection

Description

It is an accepted function of the judiciary in a democratic state based on the rule of law to control executive action on the basis of the laws of a country, including human rights guarantees.

While judicial control of the rights of persons not yet sentenced to prison terms is a core part of human rights law, the area of prisons and sentenced prisoners' rights has for quite some time remained outside judicial focus. This was partly due to a legal doctrine accepted until the 1960s and 1970s in several parts of the world that human rights do not apply to certain types of special relations between the state and the individual, e.g. to persons sentenced to prison terms.

However, this situation has changed, and in many countries members of the judicial system (judges, prosecutors) have been entrusted by law to proactively oversee whether laws governing detention and guaranteeing the human rights of detainees are abided by in places closed to the rest of society. This function is fulfilled *inter alia* by way of carrying out visits to places of detention.

Visits by members of the judicial system can take place in three areas:

- in **prisons** where **persons sentenced** to prison terms are held. The "supervisory judge", first established in Brazil, is an institution primarily found in Latin America and Southern Europe. In some of the former socialist countries of Central and Eastern Europe, prosecutors nominally have a similar function;
- in **remand prisons**, mainly by an investigative judge or prosecutor or a judge specifically mandated for this task;
- in some countries, judges or prosecutors can also look at the conditions of detention and the rights of detainees in **police detention**.

The legal basis of judicial inspection is regularly the law on the execution of sentences for supervisory judges or the criminal procedure code for inspection of pre-trial institutions. Judges normally act alone, but can call on experts for assistance. The mandate of members of the judiciary is to safeguard the rights of prisoners and the conditions of detention. However, this is normally only one part of their duty, as the supervisory judges also decide on matters related to the execution of sentences (e.g. provisional release, etc). Judges can examine complaints as well as proactively scrutinize the conditions of detention. In controlling executive action judges can issue binding decisions. The results of the work of judges are normally not reported publicly.

Examples

- Supervisory judges for prisons in Brazil, Costa Rica, Guatemala, Honduras, El Salvador, Spain, Italy, France, South Africa;
- France: visits by the sentencing judge once per trimester;
- Spain: criminal procedure code allows judges to ascertain the situation of detainees, although this right is rarely exercised in practice;
- Austria: criminal procedure code contains an obligation for specially designated judges to visit remand prisons on a weekly basis;
- Moldova: public prosecutor to visit police stations although visits are not conducted systematically in practice.

Assessment

In some countries, the judiciary has the longest tradition of legal security and independence, although surveys of the state of independence of the judiciary in the world show a problematic picture. The mandate of both supervisory judges and judges mandated to look at remand institutions seems broad enough to fulfil the previously mentioned criteria. A particular strength of judicial approaches can be seen in the binding nature of the decisions of judges and, thus, potentially making such approaches highly effective.

There are, however, several characteristics of judicial control which seem problematic in the light of the previously mentioned standards:

The mandate not only covers the examination of the treatment of prisoners, but also issues related to the execution of punishment (e.g. decision on provisional release). This mixture of functions can be problematic (as mentioned, the CPT has raised this issue with regard to the former UK boards of visitors which monitored conditions of detention and at the same time participated in decisions on disciplinary measures). This begs the question whether inmates can develop the necessary trust to complain about certain treatment when they know that their attitudes might influence judges in other matters.

In countries with a strong autocratic tradition, the judiciary and the procuracy are so much linked to the general power structure that an authentic human rights awareness has yet to be developed. In most of the former socialist countries in Europe, this is certainly a problem.

Even in countries where the institution of the supervisory judge is firmly established, their effectiveness has been put in doubt. Problems encountered in this respect include the irregularity of visits (especially in Italy) and the lack of specialization and expertise of regular judges to deal successfully with the complexities of prisons conditions²⁰.

In the context of control of police institutions by the judiciary, the problem of mutual dependence between the judiciary and police in many countries has to be taken into account. Moreover, there is no public reporting by judges.

7. Inspection by NGOs

Description

As is generally the case in the field of human rights, many initiatives regarding human rights protection and promotion come from NGOs. The area of prisoners' rights and conditions of detention has been at the forefront of the work of NGOs and other civil society groups, not only internationally, but also nationally. Visiting prisons and other places of detention by NGOs as a special type of action on behalf of prisoners has greatly expanded in the last 20 years. This is especially so in the context of countries in transition from autocratic to democratic rule in Latin America, Central and Eastern European and Africa.

²⁰ See Heriberto Asencio Cantisan, *Surgimiento de la Figura del Juez de Ejecucion de la Pena*, March 2003.

It is difficult to give any general characteristics of NGOs as their diversity is great. NGOs are regularly established as legal entities on the basis of private association laws in the countries concerned, and decide on their mandate themselves. In many countries, NGOs have access to closed institutions on the basis of an agreement with the authorities concerned, partly based on enabling laws. Mandates and working methods of NGOs also vary greatly. Some NGOs carry out systematic visits to closed institutions, and have developed very professional methods of empirical research, including the use of questionnaires. The results of NGO work are typically public reports with recommendations, while the authority of NGO work and recommendations is strongly linked to their (perceived) professionalism.

Examples

- Burundi: Association Burundaise pour la protection des droits humains et des personnes detenues (formed after the merger of two organizations, one of which was specialized in prison work; conducts regular visits to places of detention);
- Central and Eastern European countries: Several NGOs who are members of the International Helsinki Federation for Human Rights have developed special programmes for visiting closed institutions; Of particular relevance are the Polish Foundation for Human Rights, Hungarian Helsinki Committee and the Bulgarian Helsinki Committee;
- Uruguay: Servicio, Paz y Justicia.

Assessment

Nowadays, the work of NGOs is widely recognised and accepted. However, problems of legal and other security are phenomena known in many countries, while the work of NGOs in closed institutions depends on the consent given by the state authorities, which can be withdrawn. The problems faced by the Hungarian Helsinki Committee when it sought to continue its Police Cell Monitoring Programme beyond the year 1996 are illustrative in this respect²¹.

With regard to working methods, much can be learned from the experiences of some NGOs monitoring closed institutions. By taking a more victim-and, thus, human rights-based perspective, they have been particularly creative in introducing more systematic ways of monitoring, based on a broader strategic approach.

²¹ Ferenc Köszeg, Monitoring Detention by the Police: Experiences with civilian oversight of law enforcement agencies, in APT/COLPI, The Prevention of Torture in Central Europe, Acts of the Seminar organised by the APT and COLPI in Budapest, Hungary, 18-19 June 1998, February 1999, 28-29.

The weight of NGO recommendations generally seems to be lower than those of state institutions, whose functions are based in law and therefore have higher formal acceptance. However, this generalization must be qualified in the case of highly professional organizations.

8. Others models

Finally, there are visiting mechanisms, which do not fall within one of the above mentioned categories which constitute a mixture of different models. Examples include:

- The Brazilian system of community councils, which has features of both a specialized outside body and judicial system of control. It is based on the national law of execution of sentences, and the members of these councils come primarily from NGOs. However, during their first year of their existence the Councils are presided over by a supervisory judge and, after this period, they report monthly to the supervisory judge (see Annex I);
- The Paraguayan model of an inter-institutional commission, consisting *inter alia* of the ombudsman.

V. Concluding remarks

1. A wide variety of national visiting mechanisms

There is a wide variety of what can be seen as national visiting mechanisms falling within the scope of the Optional Protocol to the UN Convention against Torture. This wide variety is linked to diverse legal, political, institutional and cultural traditions within which they have to be seen. In recent years, there has been a clear trend from poorly focused and more humanitarian approaches of monitoring to more systematic human rights approaches, which have been influenced by rapidly developing international standards and practices. The work of specialized NGOs and, in particular, the European Committee for the Prevention of Torture merits special mention in this regard.

2. Mostly falling short of satisfying some basic criteria

What also seems to be clear is that very few of the existing mechanisms are yet in full compliance with international standards, in particular those of the Optional Protocol to the UN Convention against Torture. This is certainly not a surprise given the fact that the origins of international standards are recent and that States have often taken minimalist approaches when setting up visiting institutions, especially when they had to ward off criticism of their human rights record or to show to the international community that they were willing to act.

3. Security

A lack of security is a primary issue for many NVMs. In some cases, representatives of NVMs are confronted with threats to their lives and physical integrity. In many others, NVMs have to deal with problems of legal and financial security of their bodies. This seems most pressing in those mechanisms, which have been set up specifically as outside/mixed organs dealing with the treatment of detainees and conditions of detention. This seems less of a problem in institutions, which have already acquired a clearer profile, such as national human rights institutions and ombudsmen.

4. Independence and proper distance to the controlled institutions

The single most important criterion and the greatest problem area is the (lack of) independence of the monitoring institutions. The question of independence is related to the issue of proper distance of the body to the controlled institutions.

While this problem is obvious with internal inspection systems, it is also apparent in the case of outside/mixed visiting organs, and, to a lesser degree, with national human rights institutions. The issue of determining the proper distance to the controlled institutions is difficult and not yet well understood. There is little academic research on the issue, although it also turns up in other contexts of practical human rights work, such as in the field of international human rights missions.

5. Effective and efficient working methods based on multidisciplinary approaches

A further major criterion revolves around the proper methods and techniques to fulfil a preventive function and to fully understand the complexities of situations in closed institutions, so that a proper cure can be formulated on the basis of a good diagnosis.

A lack of regularity, onesidedness of perspectives and a lack of a clear human rights focus are commonly encountered and detract from the overall goal of the exercise. This is a problem, which plagues all of the categories of national visiting mechanisms discussed. Specialized NGOs and some outside visiting mechanisms have developed particularly interesting approaches to monitoring closed institutions.

6. Not all places of concern are covered equally

What has also become clear is the fact that existing NVM do not yet cover all places where persons are deprived of their liberty in the sense of Article 1 of the OPCAT. Most exist within the prison system, while there are fewer in the police institutions and fewer still in psychiatric institutions, military institutions and juvenile care centres.

7. Reforming national visiting mechanisms in order to meet international standards

Although this preliminary assessment tends to show that only a few national visiting mechanisms are yet in full compliance with international standards, it seems that at least some would only need a small amount of reform. The proper selection of persons and, in particular training on methodology of visits etc., would go a long way to strengthen existing NVM.

8. Approaches when ratifying the OPCAT

When ratifying the OPCAT, States might be tempted to simply designate existing national institutions as those under the OPCAT and adopt a minimalist approach in order not to have to reform or set up (new) institutions. A further problem in this context could be that States might be tempted to designate certain NVM and use them to exclude others, especially NGOs, from visiting closed institutions.

It follows from this paper that different models have different strengths and weaknesses and that a system, which combines different models, drawing on each model's strength, would be the most appropriate way to advance. The question of establishing or designating NVMs has to be answered within the particular national context.

Agenda

Domestic Visiting Mechanisms around the World: Practices and Lessons Learned

July 2nd – July 4th 2003, Palais Wilson, Geneva, Switzerland



Objective of the seminar



Within the context of the recently adopted Optional Protocol to the Convention against Torture, the seminar aims to enable representatives from a variety of existing domestic visiting mechanisms to places of detention, to share experiences and draw lessons on methodology, functioning and effectiveness of different types of domestic visiting mechanisms.

It is expected that lessons from these practical experiences will be instrumental to the set-up of national visiting bodies as foreseen by the Protocol and thereby contribute positively to the ratification and implementation of the this new treaty, of which article 1 states:

“The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

Wednesday, 2. July

13.30 – 15.00

OPENING AND INTRODUCTION

Mr. Bertrand Ramcharan, Deputy High Commissioner for Human Rights, Office of the High Commissioner for Human Rights

Mr. Mark Thomson, Secretary General, Association for the Prevention of Torture (APT)

Introduction of participants

15.00 – 15.40

AN ATTEMPT TO ASSESS DIFFERENT TYPES OF DOMESTIC VISITING MECHANISMS

Introductory note by **Mr. Walter Suntinger**, Austrian Human Rights Advisory Board

15.40 – 16.00

Coffee break

16.00 – 18.00

HOW TO ENSURE INDEPENDENCE OF VISITING MECHANISMS?

PANEL DISCUSSION AND OPEN DEBATE

Mr. Krassimir Kanev, Bulgarian Helsinki Committee

Mr. Malick Sow El Hadj, Human Rights Committee, Senegal

Mr. Roy Murillo, Supervising Judge, Costa Rica

Chair: **Mr. Orest Nowosad**, National Institutions Team, Office of the High Commissioner for Human Rights

EVENING

18.15 - 20.00

RECEPTION

with representatives of International Organisations and Diplomats based in Geneva

Thursday, 3. July

9.00 – 10.40	LESSONS ABOUT PREPARING AND CONDUCTING EFFECTIVE VISITS PANEL DISCUSSION AND OPEN DEBATE Mr. Alain Dominique Mauris , Geneva Parliamentary Commission, Switzerland Mr. Constantine Karusoke , Uganda Human Rights Commission Ms. Patricia Ramos Rodriguez , Assistant Ombudsperson for Criminal and Penitentiary Policy, Defensoria del Pueblo, Colombia Mr. Piotr Sobota , Commissioner for civil rights protection, Poland Chair: Esther Schaufelberger , APT
10.40 – 11.00	Coffee break
11.00 – 12.30	continuation
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12.30 – 14.00	Lunch
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14.00 – 15.40	BEST PRACTICES FOR FOLLOWING – UP ON VISITS PANEL DISCUSSION AND OPEN DEBATE Mr. Pierre-Claver Mbonimpa , Burundi Association for the Protection of Human Rights and of Detained Persons (APRODH) Mr. Guillermo Paysee , Peace and Justice Service (SERPAJ), Uruguay Mr. Nimal Hapuarachchi , Human Rights Commission of Sri Lanka Ms. Radhia Nasraoui , Barrister, Tunisia Chair: Mark Thomson , APT
15.40 – 16.00	Coffee break
16.00 – 17.30	continuation
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EVENING FREE	

Friday, 4. July

9.00 – 10.40

**RECONCILING THE ADVISORY AND MONITORING
ROLE OF DOMESTIC VISITING MECHANISMS**

PANEL DISCUSSION AND OPEN DEBATE

Ms. Shaista Shameem and **Mr Naibuka Waqa**, National
Human Rights Commission, Fiji

Mr. Giorgi Chkeidze, Georgian Young Lawyers'
Association, Georgia

Mr. Ariel Cejas Meliare, Office of Penitentiary
Ombudsman, Argentina

Chair: **Esther Shaufelberger**, APT

10.40 – 11.00

Coffee break

11.00 – 12.30

continuation

12.30 – 14.00

Lunch

14.00 – 15.40

**MULTIPLE VISITING MECHANISMS ON THE
NATIONAL LEVEL: POTENTIALS AND RISKS**

PANEL DISCUSSION AND OPEN DEBATE

Mr. Mogambri Moodliar, South African Human Rights
Commission

Ms. Tania Kolker, Community Council of Rio de Janeiro,
Brazil

Ms. Indira Rana, National Human Rights Commission,
Nepal

Chair: **Barbara Bernath**, APT

15.40 – 16.00

Coffee Break

16.00 – 17.30

**CONCLUSIONS:
ISSUES AT STAKE FOR ESTABLISHING AND
ADAPTING NATIONAL VISITING MECHANISMS
UNDER THE OPTIONAL PROTOCOL TO CAT**

Chair: **Mark Thomson**, APT

EVENING:

19.00

ONWARDS GARDEN PARTY AT THE OFFICE OF APT

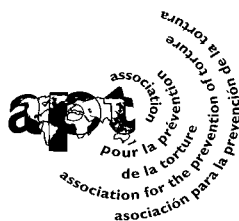
Saturday, 5. July

SIGHT SEEING IN GENEVA

11.00	Meeting in front of Noga Hilton Hotel (19, Quai du Mont-Blanc)
11.15 – 12.15	Tour on Lake Geneva
12.45 – 14.00	Lunch at restaurant “l’Hôtel-de-Ville”, old town of Geneva (39, Grand Rue)
14.00 – 16.00	Guided tour through the old town of Geneva

EVENING FREE

List of Participants



List of Participants



Guest of Honor

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The Association for the Prevention of Torture

The Association for the Prevention of Torture (APT) is an independent non-governmental organization (NGO) based in Geneva, Switzerland, since 1977.

Its primary objective is to prevent torture and other forms of ill-treatment throughout the world. To achieve this the APT:

1. Promotes monitoring of places of detention and other control mechanisms that can prevent torture and ill-treatment.
2. Encourages the adoption and respect of legal norms and standards that prohibit torture and combat impunity.
3. Strengthens the capacities of persons seeking to prevent torture, especially national actors. This is done through training (e.g. of police, NGOs, national institutions, judges, prosecutors etc) as well as providing practical guides and relevant legal advice in a variety of languages.

The APT operates as a source of ideas and expertise for a broad variety of partners in torture prevention, ranging from Governments to NGOs, UN bodies, Regional bodies (e.g. African Commission on Human and Peoples Rights, Inter-American Commission, OSCE and Council of Europe), national human rights institutions, prison authorities and police services.

The APT is the dynamo behind the drafting, adoption and implementation of: the Optional Protocol to the UN Convention against Torture; the European Convention for the Prevention of Torture; the African Commission's Robben Island Guidelines to prevent torture in Africa; as well as the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) Code of Conduct for police officers.

The APT is a member of the Coalition of International NGOs Against Torture (CINAT). It has consultative status with the UN, the Organisation of American States, the African Commission and the Council of Europe. It is recognised by the Swiss authorities as a non-profit association.

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