

Human Rights



Correspondence School

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Lesson Series 50

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Summary

This lesson introduces the Optional Protocol to the Convention against Torture, which came into force in June 2006. The Protocol requires countries to establish national mechanisms to visit places of detention. In this way, the Protocol is a preventive approach towards eliminating torture.

The lesson examines cases of torture in various Asian countries and discusses the use of the Optional Protocol in effective torture prevention strategies.

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THEME: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Issue

Torture is considered a serious crime and a terrible act of human rights abuse. Yet, it continues to be practiced with impunity by law enforcement and state officials. A key cause of this impunity is the lack of effective legislation criminalizing the practice of torture. Without such legislation, torture victims are unable to seek redress or obtain remedies.

Visiting places of detention are important in any useful torture prevention strategy. Such visits can monitor not only torture, but all forms of abuse. Detained persons are vulnerable to many human rights violations, and are dependent on the detention authorities for their basic needs.

The Lessons

Lesson 1 discusses the significance of visiting places of detention in the prevention of torture.

Lesson 2 provides an overview of the Optional Protocol to the Convention against Torture.

Cover photograph of the Victoria Prison, Hong Kong. Source: Nick Cheesman, 2006

Lesson 1

Using recent cases of torture from several Asian countries, this lesson discusses the significance of visiting places of detention in torture prevention.

A. Routine torture

Torture is unfortunately all too common throughout Asia, whether practiced by the military or the police. Among the primary places where torture and ill treatment occur are places of detention. These can include high security prisons, juvenile detention centres, police lock-ups and so forth. The following cases are only a few incidents of custodial torture that have been documented recently by the Asian Human Rights Commission (AHRC).

On 3 February 2007, 33-year-old Ali Nawaz died due to the torture he suffered in the Malir central jail of Karachi, Pakistan. Nawaz was detained with two of his friends by an officer at the Gadap police kiosk at a highway on January 18. The officer demanded that they pay him 5000 rupees, or else they would be falsely charged. Unable to pay the sum, the men were taken to the Gadap police station, charged with stealing telephone wires and tortured. On January 26, the three men were sent to the Malir central jail, where they were again asked for money, this time a sum of 20 000 rupees. When Nawaz protested, one jail official began to brutally assault him.

While Nawaz's two friends were produced before the Judicial Magistrate Court of Malir on February 2, Nawaz was not present. His friends told his family that Nawaz was unable to come as he was severely injured from torture. When his family arrived at the Malir jail, they were told by an officer that unless they paid the 20 000 rupees, they would receive Nawaz's dead body. Early the next morning, Nawaz's brother received a call asking him to collect Nawaz's dead body from the Malir jail. When he did so, he saw severe torture marks on his back, neck, head and legs [See AHRC UA-046-2007, 9 February 2007].

In a report published by the Asian Legal Resource Centre (ALRC), sister organization of the AHRC in February 2007, titled 'The criminal justice system of the Philippines is rotten', 110 cases of disappearance, extrajudicial killing, arbitrary arrest and torture are documented. In one of the cases, 11 persons were brutally tortured and subsequently falsely charged following their arrest on 14 February 2006. They were severely beaten on different parts of their body, including the genitals. Some of the victims were thrown into a pit and had soil, garbage and other matter dumped over their heads. They were also electrocuted. The victims were tortured

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to force them to admit responsibility for a raid of a military camp in Cabiten, Mankayan, Benguet on February 10. However, a rebel group had already admitted responsibility for the raid [See *article2*, vol. 6, no. 1, pp.106-109].

An earlier report published by the ALRC in August 2006, ‘Lawless law enforcement & the parody of the judiciary in Bangladesh’ documented cases of police and military brutality in that country. In one case, 18-year-old Rashed Ullah was arrested with five others during a police raid in Chittagong on 29 June 2006, and taken to the Hathazari police station. There the police assaulted Rashed until he fell into a coma. He was thereafter taken to the police station health complex, but died within 10 minutes of arrival [See *article2*, vol. 5, no. 4, p. 53].

Both Bangladesh and the Philippines are parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits torture and requires countries to enact legislation criminalizing torture. In spite of this, torture is widespread in both countries, largely due to the lack of such legislation. This in effect grants impunity to the perpetrators, while leaving victims and their families with no effective remedies. Many victims, such as Rashed, lose their lives. The survivors are usually too scared to speak out, while the few who do raise their voices face further torture, fabricated charges or intimidation.

B. Prevention

While most countries in Asia have constitutional provisions against torture, and many have even ratified the Convention against Torture, the above cases make it clear that the practice of torture has by no means been eliminated. This is largely due to the lack of domestic legislation criminalizing the use of torture (see HRCS Lesson Series 28 for a comparison of national legislation on torture). Apart from the absence of legislation, there are other political and social factors that allow impunity and torture to flourish (see HRCS Lesson Series 41 for a detailed study of torture in various Asian countries).

The Convention against Torture requires states to enact laws making torture a criminal offence and ensure that mechanisms exist for making complaints and seeking redress. Its Optional Protocol (OPCAT) requires states to establish mechanisms to visit places of detention. This is a practical measure towards reducing torture and improving conditions for detainees; in other words, the Protocol helps governments to fulfil their obligations under the Convention against Torture. Apart from physical torture and pain, many detainees suffer from a lack of adequate food, medical attention and sanitary conditions. Although there are many guidelines and standards regarding the treatment of prisoners and detainees, these are rarely met in the majority of Asian countries (see HRCS Lesson Series 31 for details regarding prison conditions in three Asian countries). Many places of detention are by definition closed to the outside world and persons deprived of their liberties are vulnerable to all forms of

ill treatment. Furthermore, respect of their fundamental rights and needs depends exclusively upon the authorities in charge. Regular visits can therefore improve the transparency within detention centres, which in turn will reduce the levels of abuse.

Not only are such visits crucial for the immediate well being of the detainees, but sustained monitoring and documentation generated by the visits can be used to address systemic issues. In this way, the visits serve a short term as well as long term purpose. In the immediate sense they can help to deal with problems faced by the detainees, while over time they can work towards effective torture prevention strategies.

The OPCAT is a preventive strategy to eliminate torture. It focuses on cooperation and collaboration with government institutions and promotes constructive and less adversarial ways of ensuring compliance.

Questions For Discussion

1. Are you aware of specific instances of torture in your country?
2. Are there any independent monitoring bodies visiting places of detention?
3. Discuss how visiting places of detention can help a state in preventing torture. What are the limits of such visits?

Lesson 2

This lesson provides the key provisions of the Optional Protocol. The full text can be accessed at <http://www.ohchr.org/english/law/cat-one.htm>.

Overview of OPCAT

The OPCAT was adopted on 18 December 2006 at the 57th session of the UN General Assembly. It entered into force on 22 June 2006. As of March 2007, 57 countries had signed the Protocol, while 33 had ratified or acceded.

The Subcommittee, as established under the OPCAT, will be the first international expert body with jurisdiction to carry out inspections of detention centres with the express objective of preventing torture. The dual approach of OPCAT, encompassing international and domestic strategies, can ensure more effective torture

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prevention.

Although the preventive mechanisms designated under the OPCAT will focus on the prevention of torture and other forms of ill-treatment, this does not exclude the possibility for the mechanisms to have a broader mandate. Indeed, they should take into account other related human rights violations that persons deprived of their liberty may be subjected to.

Civil society and concerned groups should play a key role in raising public awareness regarding the usefulness of the OPCAT, as well as establishing national mechanisms.

Objectives

Article 1

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.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty... These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Places of detention can include police stations, security force stations, pre-trial centres, remand prisons, prisons for sentenced persons, juvenile centres, immigration centres, centres for detained asylum seekers, psychiatric institutions and places of administrative detention. It is important that the definition of detention be as inclusive as possible, and take into account local realities.

Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;*
- (b) In regard to the national preventive mechanisms:*
 - (i) Advise and assist States Parties, when necessary, in their establishment;*
 - iii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;*
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;*
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;*
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.*

The three main responsibilities of the Subcommittee are hence to visit all places of detention, to assist and advise governments and national preventive mechanisms, and to integrate with existing mechanisms.

The Subcommittee is mandated to carry out regular and follow up visits to any place of detention within the jurisdiction of State Parties. Its advisory function relates to assisting countries with the establishment and functioning of national preventive mechanisms. Furthermore, the Subcommittee can work directly with these national mechanisms by offering training or other services. It should also coordinate with UN bodies, as well as regional and international groups working on torture related issues.

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Article 13

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

Article 16

- 1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.*
- 2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.*
- 3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.*
- 4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee.*

State obligations

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid out in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;*
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture*

and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 14

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

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4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

The ‘Principles’ refer to the Paris Principles, which set out criteria for the effective functioning of national human rights institutions and provide an important resource for the establishment of national preventive mechanisms. However, this in no way means that the preventive mechanisms should only take the form set out by the Paris Principles.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture, cruel, inhuman or degrading treatment or punishment;*
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;*
- (c) To submit proposals and observations concerning existing or draft legislation.*

The national preventive mechanisms are hence given the same mandate as the Subcommittee, to conduct regular visits to places of detention and to make recommendations to improve the treatment and conditions of detainees. It is important to note that this includes but is not limited to torture; their rights to adequate food, medicine and to receive visitors for instance, can also be monitored. Furthermore, they may submit proposals and comments regarding legislation related to torture, thereby giving them an opportunity to shape domestic policies and procedures.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Questions For Discussion

1. Discuss the strengths and weaknesses of the OPCAT.
2. In your opinion, what is the most effective form for a national preventive mechanism to take?
3. Are there organizations in your country already working towards similar objectives, which can work together with such a national preventive mechanism?
4. Is your country a party to the Convention against Torture? If yes, discuss initiating a campaign for the ratification of the OPCAT. If no, discuss initiating a campaign for the ratification of the Convention against Torture.