

# THE ASSOCIATION FOR THE PREVENTION OF TORTURE (APT) AND ITS RELATIONSHIP TO THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE (ECPT)

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## 1. The association

The Association for the Prevention of Torture (APT) is a non-governmental organisation based in Geneva, Switzerland. Its mission of international scope addresses the prevention of torture and ill-treatment, as these are prohibited by a number of international norms. APT and its predecessor-organisation, the Swiss Committee against Torture (CSCT) began to operate in 1977. The founder, the Genevan banker and humanist Jean-Jacques Gautier decided that it was not sufficient to feel deep disgust for the plague of torture, but that something had to be done against it, something to prevent it through an officially acknowledged system of visits to all places of detention. The idea that one could not be limited to condemnation and repression of already perpetrated torture, but that it was necessary to go further, to disclose the mechanisms that may lead to torture and ill treatment and intervene there, obviously was too appallingly simple. It took quite an amount of perseverance to persuade the right people to do the right thing.

After many efforts, the CSCT and the International Commission of Jurists finally presented a draft Convention to the Parliamentary Assembly of the Council of Europe which led, in 1987, to the adoption of the "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment" (ECPT). Today more than 30 European countries are parties to the Convention, allowing the Convention's body, the "European Committee for the Prevention of Torture" (CPT) to visit all places where persons

deprived of their liberty are held. Would the States allow such incisive interference into their sovereignty? This was the main challenge to the promoters of the system of visits as well as the main objection raised by so many busy politicians. The answer is: they would. Today the Convention is being enforced.

In a world that seems to care little for the integrity of the individual, the sole task of preventing torture and ill-treatment may seem titanic – added to the the tasks of denouncing and of helping the victims that other NGOs are committed to. But with well targeted efforts and clear action criteria, small steps in the right direction can be taken and others can be stimulated to do likewise.

As an association under Swiss law, APT is very much based on its members, who are an increasing number of persons from all over the world. They are all committed to the simple idea of prevention and contribute by spreading the idea, by supporting APT's action through networking in their own country or simply by participating with their annual contribution or supporting APT's fund-raising activities, thus helping to maintain the organization's independence.

The objective of APT is the prevention of torture through:

- a) promoting a system of preventive visits, carried out by a treaty body on a national, regional or universal level as well as promoting the implementation of existing systems;
- b) catalysing the general reflection about other preventive tools on a national, regional or universal level;
- c) identifying risk categories: persons, situations or professions, in order to analyse the mechanisms that lead to torture and ill-treatment and thus to propose corresponding preventive remedies;
- d) awareness raising and interdisciplinary training for various professionals and NGOs concerning the various existing means of prevention;
- e) establishing country reports (so far mainly on Europe, due to the European Convention) and following up the CPT's work in European countries in collaboration with national and regional NGOs.

It goes without saying that these objectives are constantly discussed and adapted. While APT is celebrating this year its 20th anniversary and can proudly show the results of its commitment, the view towards the future is both demanding and challenging. Undoubtedly, there is no way of circumventing the process of concentration of forces, deepening of collaboration and merging of efforts aiming towards similar or complementary goals.

## 2. Preventing torture

### 2.1. *Identifying risk categories; populations, situations and actors*

The question as to whether torture is a State policy or not is a moot point. It is much more important to know what the authorities' reaction is to this phenomenon of torture or ill-treatment within their own State borders: does a clearly-stated commitment against torture translate into a clearly-executed political will?

Experience shows that, irrespective of the fact whether torture or ill-treatment is a systematic State policy or not, it is usually the "marginals" of society that are tortured. The definition of a "marginal" may vary from one society to another: it may be refugees, illegal migrants, but also people pertaining to an ethnic or religious minority, it may be people perceived as professing an "enemy" ideology, or belonging to another country or race, etc. In other words, States (as well as NGOs, of course) can often identify in advance who is more likely to become a victim of torture and do something to prevent it.

As far as preventive identification of risk situations and risk periods is concerned, there are of course particular situations of detention where classifying the risks may become a difficult task, for instance in centres where illegal migrants or refugees without the right of asylum are held expecting repatriation or in psychiatric wards. But in cases of criminal detention one can roughly divide a detention period into four phases: arrest – interrogation – preventive detention pending investigation – detention once the person has been sentenced. Torture and ill-treatments are more likely to occur at the initial phase, i.e. (police) custody, where and when the first interrogations take place, and less during preventive prison detention and even less after the detainee has been sentenced. Therefore safeguards should be mainly aimed at functioning during the high-risk period.

One should here mention also the situation of armed conflict, since the question as to what the APT does in cases of armed conflict regularly arises. Clearly, armed conflict is a high-risk situation, and the best prevention here would be to avoid these situations. When we are talking about prevention, we are ideally placing ourselves before the act, and therefore also before the outbreak of armed conflict. Although the APT does not at all exclude utopical goals it cannot claim to cover all risk situations by itself.

The case of armed conflict is covered by the detention work of the ICRC, which, in the context of our reflections, could be considered

as a preventive mechanism tailored especially for these exceptional situations.

## *2.2. Prevention by focusing on the victims: prison visits, ombudspeople, other mechanisms*

Most of the preventive work today is done through visits to places of detention, and as pointed out earlier, we are not only referring to prisons. From the very beginning of its work, the APT has concentrated its efforts on places where people are deprived of their liberty and over which the State has direct or indirect control; the European Committee for the Prevention of Torture does the same.

The aim of these visits can be simply to see physically the detainees, and therefore avoid ill-treatment or disappearances, because they are no longer anonymous. It can also have the scope of reporting on detention conditions – bad or inhuman detention conditions can be paramount to ill-treatment – and raise the issues before the competent authorities, and, if need be, in public. Finally visits can have a monitoring function and therefore act as a deterrent for possible perpetrators of torture and ill-treatment.

Many countries today have national in-built protection mechanisms, such as human rights ombudspeople that have the right to visit prisons. There are also specific prison ombudspeople, people in charge of safeguarding human rights within the Ministry of the Interior or within the national police-structure. On a more informal level, certain countries let NGOs or religious groups function as prison monitors. The representatives may not establish systematic reports but are more likely to intervene on behalf of individual cases.

In Europe, the European Committee for the Prevention of Torture, the treaty body of the European Convention, carries out visits to places of detention (refer to the article by Rod Morgan also in this issue). A similar system is currently being negotiated at the United Nations, in the form of a draft Optional Protocol to the UN Convention against Torture. The UN Convention foresees a Committee against Torture (CAT) which receives reports from the State parties and examines them. The Optional Protocol would create a Sub-Committee to the CAT which could visit detention places and make recommendations in a similar way as the European Committee. It goes without saying that the APT is not only at the origin of this idea but also follows the developments very closely.

### *2.3. Prevention through dissuasion: punishing the perpetrators*

Impunity for the perpetrators of torture is a serious hindrance in the struggle to extirpate the plague, yet it is well known that impunity is wide-spread and that many torturers keep doing their dreadful job only because they are reasonably secure that their crimes will be unaccounted for. Many efforts are undertaken to stop this direct cause of the continued perpetration of torture. The United Nations established mechanisms like the Special Rapporteurs on Torture and on Summary Executions or the Working Groups on Forced Disappearances or Arbitrary Detention. There is much to be done in this field, also for international and national NGOs. The discussion on a permanent International Penal Court, currently taking place, may have an important impact on the prevention of torture and impunity, as well as on the questions of the right of victims to reparation.

### *2.4. Prevention by eliminating loop-holes*

Procedural mechanisms regulating arrest, detention and investigation, rules of detention, restrictions on incommunicado-detention, collective or individual rehabilitation programs, rules concerning the personal integrity of the person deprived of liberty (habeas corpus for instance) etc., may certainly be a very effective means of prevention of ill-treatments. Efforts to improve such mechanisms and to eliminate loop-holes are to be made on a national level. Thus the national NGOs are once again challenged. Obviously networking amongst them and close collaboration with NGOs acting on an international level is extremely important for the exchange of information, comparisons, new suggestions and the support and follow-up of their work.

## **3. Opportunities and limitations**

As in any legal system, laws and rules can only work if there is basic good-will and good faith. The most perfect law does not change anything unless it is supported at the operational level. It is also impossible and impractical to foresee all the loop-holes. But, at the same time, there is a certain amount of additional prerequisites for a successful preventive action against torture.

First of all the stated political will must not only be lip-service but must be translated into concrete action, which needs to be very strict. There is absolutely no room for attitudes that belittle certain

so-called “minor” transgressions committed by State agents. Such attitudes can only be perceived as condonation by the hierarchy and would therefore be conducive to further abuses. This is even more true where the highest political and judicial authorities of a State start defining the difference between tolerable and prohibited forms of torture or ill-treatment.

Torture and other abuses are often shrouded in a veil of secrecy. This is not only detrimental for the victims but it also encourages the perpetrators. A clear policy of transparent information to and from the civil society, to the families of the detainees and other interested groups, such as human rights NGOs or the press, is a way of avoiding situations that may generate ill-treatment in the medium term. It acts as a deterrent and provides input for an external monitoring, which, if done in a spirit of constructive dialogue, can only prove to be a help in the authorities’ endeavours to prevent torture and other ill-treatment.

The conclusion is obvious: other prerequisites for the successful prevention of torture are freedom of speech and true democracy. And “democracy” does not only mean the formal political democracy – more or less free elections do not necessarily come along together with guarantees of the rights of detainees – but it means openness to dialogue. The State authorities must be able to accept criticism as well as the NGOs and other members of the civil society must be willing to make constructive criticism. This also means willingness to cooperate on both sides with the goal of eliminating the dichotomy “it’s them against us”.

Lastly, one also has to be realistic: if torture and ill-treatment are due to risk factors like lack of infrastructure (bad detention conditions, lack of personnel, lack of adequate training for investigation officials and prison personnel etc.) there will always be a problem of financial resources for many countries. This problem is often coupled with popular considerations as to the necessity to establish priorities for State expenditures, where very often the detainees are at the bottom of the list of the priorities.

#### **4. APT and the European Convention for the Prevention of Torture today**

In 1977, the founder of the APT started spreading the idea that specific preventive tools were needed in the struggle against torture. Today, twenty years later, the European Convention is enforced, the European Committee for the Prevention of Torture is at work, and

its achievements are quite remarkable. A very important goal of APT's efforts has been reached, but it is a partial success. APT's work does not stop here: other tools of prevention, on a universal level and in other regions than Europe are on its schedule, as well as the implementation of the European Convention itself. This entails gathering information on the condition of detention in the countries party to this Convention, it also means establishing a network of local NGOs, training them on how to use and help this unique mechanism and, more generally, generating awareness on the work of the European Committee for the Prevention of Torture (CPT).

Here are some highlights of APT-work aiming to assist in the implementation of the European Convention:

a) Research and publication of reports on conditions of detention in countries party to the ECPT: many reports have been produced by APT since the CPT started its work, lately with a special focus on the new member States to the European Council. Wherever this is possible, such reports are a result of collaboration between APT and the local NGOs. Now that many of the member States have been visited more than once by the CPT, the follow-up of such visits becomes more and more important, as well as reports especially tailored to the recommendations made by the CPT and its implementation by the local authorities. The risk-analysis (cf 2 a) as well as the analysis of the information already available, has also lead the APT to narrow down the subject of such reports; this is also done after discussions with the Secretariat of the CPT in Strasbourg.

b) Training for NGOs and other partners: Since 1989 (i.e. since the CPT started its work) APT multiplied its efforts to create a network of locally acting NGOs and other partner-organisations. After the first five years of activities of the CPT, a seminar was held in 1994 at Strasbourg, where some hundred participants from about twenty countries of Central, Eastern and Western Europe gathered. The Acts of this seminar have already become a handbook for NGOs acting in this area. Amongst others, they contain a catalogue of practical suggestions towards the implementation of the ECPT. One conclusion of the Strasbourg seminar was that it would be useful to organize follow-up seminars in different parts of Europe. APT scheduled two such seminars in 1997. One is to be held in September in London, in partnership with the British Institute for Human Rights, for the countries of Northern Europe. The other one took place in Oñati, in Basque country, together with the

International Institute for Sociology of Law, in April, and gathered participants from Cyprus, Greece, Italy, Malta, Portugal, San Marino, Spain and Turkey. Of course the question as to the similarities of problems and findings in countries of southern Europe was raised there, but quite quickly dropped, the only obvious common pattern being that the Convention is still quite unknown in southern Europe. The holding of regional seminars has already proven to be a good choice: the size of the seminar permits a more thorough dialogue between the different national partners to the CPT, a valuable comparison of experiences. And the fact that experts, official partners of the CPT as well as the unofficial ones come together to listen, talk and to develop common strategies towards improving the effect of the preventive action caused by the ECPT, is in itself a guarantee for an outcome of high interest. The Oñati seminar fulfilled its expectations, the Acts of the seminar, published in Spanish and English, will be a further helpful document for all those interested in the implementation of the ECPT.

Yet another instrument to further implementation will be the APT Manual on the ECPT which is planned as a series of pamphlets on various aspects of the European Convention, such as its functioning and the various means of supporting the CPT before, during and after its visits to the member States. The first parts of the manual, which is meant to be very flexible and open to adaptation when needed, should be published this year.

## **5. APT's action not limited to Europe**

We have already shown that, as proud and happy APT may be about the success obtained with the ECPT, it may consider this only a partial success. Prevention of torture must become a main issue universally. Thus APT is promoting the draft Optional Protocol to the UN Convention against Torture which should provide for a universal system of visits to detention places quite similar to the one enforced by the CPT in Europe. APT is today also trying to explore other venues. In its regional programmes, especially in Africa and Latin America, reflections are being promoted on how prevention can have even better regional solutions, more adapted to local needs and circumstances. What may work well in Europe, may also work elsewhere, but better mechanisms may be discovered, other criteria considered. This is why APT is pursuing a closer cooperation with regional human rights bodies such as the African Commission on Human and Peoples' Rights.



The approach of an institution like the Foundation for International Studies at the University of Malta, taking advantage of its boarder situation between regions and cultures and considering the boarder situation more a link than a separation, may be very helpful for APT's main purpose: that of spreading the idea that prevention is crucial also in the struggle for human rights. It can help to identify partners across boarders who will work together in view of a genuine, culturally and politically accepted concept for prevention of torture on national and regional scales.

The academic institutions play an important role in developing and disseminating such concepts, but also in the practical implementation of existing instruments of prevention. But there are also the NGOs which have a crucial role to play in the prevention of torture. They are the ones that can monitor and identify the risk categories and the risk situations on a national level. Whether they will then limit themselves to denouncing their findings or commit themselves to the more complex and consuming task of cooperating and seeking dialogue with other partners and with the authorities (and, where possible, with the supranational bodies of prevention of torture) is a matter of effectiveness, strategy and of available forces. Dialogue and cooperation may be useful to all sides involved, especially if each protagonist is clear about the respective roles and identities. An NGO will never have the same reasoning nor way of acting as a State authority, and this is correct if it is to be useful. However, considering that NGOs are representative of certain opinions, currents and priorities within the civil society and that they indeed have the means of specializing and knowing more, States would do well to listen carefully and cooperate with them. For the real changes are not those imposed from outside, but they come from within the countries.

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