

Independent monitoring of human rights in places of detention

Background Paper

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Table of contents

1. Introduction 4
2. Historical developments in the fight against torture 5
3. The torture prevention system 7
4. Monitoring human rights through visits 8
 - 4.1 What is meant by preventive monitoring visits? 8
 - 4.2 The role of medical doctors during preventive monitoring visits 9
 - 4.3 Can monitoring visits be harmful to the cause of human rights? 10
5. International and national organisations conducting monitoring visits 11
 - 5.1 Independent external monitoring at the national level 11
 - 5.2 International monitoring mechanisms 12
 - 5.3 Bodies established under the optional protocol to the UNCAT 12
6. Monitoring places of detention in the middle east and north africa 14
7. Issues to be addressed in the seminar 14

1. Introduction

Torture is one of the most serious violations of international human rights as it is the most direct and brutal attack on the very essence of human dignity. The practice of torture is so fundamentally at odds with the notion of civilized life that it is prohibited at all times, under all circumstances. The prohibition of torture is universally recognised and enshrined in all the major international human rights conventions and it is also a firmly rooted principle of customary international law.¹

Although torture has been outlawed universally for over half a century, torture continues to be practised in about two thirds of countries worldwide. In many cases torture and other forms of ill-treatment are used routinely during criminal investigation, in the fight against terrorism, in armed conflict or simply as a tool in ordinary law enforcement. The reasons for inflicting torture are as diverse as the methods applied. Most often, torture is inflicted to extract a confession or to obtain information, to punish certain acts or beliefs, or simply to intimidate

1) The prohibition of torture is also a peremptory norm of general international law, binding on all States whether or not they are parties to the treaties that prohibit torture.

and harass a particular ethnic, religious or other population group.

At the international level, efforts to eradicate torture have taken place for several decades both at the inter-governmental level and within the international human rights community. In the Middle East and North Africa (MENA), civil society has been a key actor – and in some cases the only actor – in the fight against torture. For many years, civil society organizations and, more recently, National Human Rights Institutions have engaged in the struggle against torture by documenting and denouncing acts of torture and by rehabilitating the victims of torture. The struggle of human rights actors has recently started to bear fruit in several countries of the region, where governments have agreed to open-up places of detention to independent scrutiny and have started to engage in a dialogue with civil society about torture prevention.

Given the recent developments in international law with the adoption – and the coming into force – of the OPCAT, and given the existence of NGOs and the emergence of National Human Rights Institutions in the MENA region which are engaged in torture prevention through monitoring places of detention, the present seminar will focus on the preventive aspect of torture eradication: *Monitoring Human Rights in Places of Detention as a Means to Prevent Torture*.

With the overall objectives of exchanging knowledge and experiences as well as strengthening the existing systems and practices of monitoring places of detention in the MENA region, the seminar will address these overall issues by focusing on three main themes:

- 1) Gaining access to places of detention
- 2) Conducting detention monitoring visits
- 3) Bringing about change

The seminar will address these themes with the help of experts and practitioners mainly from the Middle East and North Africa and from some other regions. By analysing diverse experiences of documenting and preventing torture in places of detention and an on-site monitoring visit to a place of detention in Jordan, the seminar will attempt to extract lessons and make recommendations in order to further enhance the existing approaches and methods in detention monitoring. By bringing experts and practitioners together from different countries in the MENA region, the seminar also aims to facilitate networking and possibly to establish a regional network of organisations engaged in detention monitoring.

The purpose of the present background paper is to focus the seminar by providing a common reference point and a shared pool of knowledge about the torture prevention system, monitoring through preventive visits, international and national monitoring mechanisms and medical documentation of torture. Finally, the paper attempts to formulate some of the many questions which the seminar will seek to address. This background paper will hopefully also serve as an inspiration for the formulation of the other background papers and an indication of the direction of the seminar and the issues to be discussed.

2. Historical developments in the fight against torture

Over the years, the horror of torture has led governments and civil society across the world to take action against it. Already in the 1970s, it became clear within the human rights community that the mere prohibition of torture and the traditional methods of monitoring States' compliance with this prohibition were not sufficient to combat torture. There was not, however, agreement

about the most appropriate means to terminate and prevent torture. Consequently, the struggle against torture has since developed in two different directions.

One school of thought regarded impunity as the major root cause of torture and, therefore, sought to *combat impunity* by prosecuting perpetrators of torture. The philosophy behind this is that the criminal prosecution of torturers will break the vicious cycle of impunity and thereby have a significant preventive effect. This strategy led to the adoption of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1984. This legal instrument obliges States to make acts of torture offences under domestic criminal law punishable by appropriate penalties, to thoroughly investigate every allegation of torture, and to bring the perpetrators to justice.

The other school of thought aimed at preventing the occurrence of torture instead of only reacting after the misdeed had been done. The focus was placed on the non-accusatory, non-judicial systems of *preventive visits to places of detention* – that is, those places where most acts of torture occur in practice, such as police stations and prisons. This approach is based on the philosophy of the International Committee of the Red Cross (ICRC) that the very fact that an independent international body may conduct unannounced visits to all places of detention may have a deterrent effect and thereby help prevent torture. This strategy led to the adoption in 1987 of the European Convention for the Prevention of Torture and in 2002 of the Optional Protocol to the UN Convention against Torture, both of which establish systems of independent visits to places of detention.

Although these two schools of thought may not appear reconcilable, history has

shown that the effective eradication of torture cannot be achieved by adopting one approach only. On the contrary, a sustainable effort to bring torture to an end requires a multi-faceted approach, which includes denunciation and prosecution as well as prevention.

The role of medical doctors

The medical profession has a long history of both participating in torture and rehabilitating the victims of torture. There are numerous accounts by victims explaining how they were examined by doctors during torture to see if they were “fit for flogging” and could sustain another round of torture. There are also testimonies of victims describing how doctors have participated directly in torture, e.g. by forcing toxic doses of medicine on the victim. Although in some cases doctors participate willingly in torture, most often they are either coerced or “persuaded”, by threats or otherwise, to participate in such unethical acts. In either case, this practice is not only a criminal offence, but also a gross contravention of medical ethics and the antithesis of the role of the medical doctor.²

The medical profession has long taken a strong stance against individual doctors’ participation in torture. The medical profession has also been heavily involved in the treatment and rehabilitation of victims and has been a catalyst in the development of the anti-torture movement. Since the bifurcation

2) Cf. the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by General Assembly Resolution 7/194 of 18 December 1982. See also the Declaration of Tokyo adopted by the 29th World Medical Assembly, 1975.

of the anti-torture movement in the 1970s, medical doctors have contributed not only to bringing perpetrators to justice by producing proof for trials, but also to preventing torture through preventive visits to places of detention.

3. The torture prevention system³

State Parties to international conventions, such as the Convention against Torture, have committed themselves to take effective legislative, administrative, judicial and other measures to prevent acts of torture.

In spite of this, the practice of torture is still widespread and is even becoming more so since the beginning of the new millennium. It has therefore become clear that no single or isolated measure alone will eradicate torture and ill treatment. Only a system of mutually reinforcing elements provide enough protection against torture, because only such a system allows for checks and balances in the powers exerted by detaining authorities. This, therefore, assures that the security and well-being of persons deprived of their liberty does not only depend on one single authority.

The system of prevention consists of three main elements:

1. A *legal national framework* prohibiting torture and providing fundamental safeguards
2. An effective *implementation* of this framework

3) The present chapter is based on and includes extracts from the publication "Monitoring places of detention: a practical guide", Association for the Prevention of Torture (APT), 2004, available in English, French and Arabic at www.apr.ch/component/option,com_docman/task,cat_view/gid,58/Itemid,59/lang,en/

3. Effective *control mechanisms* which monitor the implementation.

The three elements are interrelated (Figure 1).

An effective monitoring mechanism at the national level consists of three elements:

- Internal Inspections
- Judicial inspections
- Independent external monitoring through visits.

Most jurisdictions provide for some form of internal and judicial inspections. But because they lack independence from the authorities in charge of places of detention and investigation, these inspection mechanisms need to be complemented by independent monitoring. The acceptance of external monitoring visits has gained ground during the last decades, but in many jurisdictions this remains one of the weakest elements in the torture prevention system. The seminar will therefore focus on this particular element.

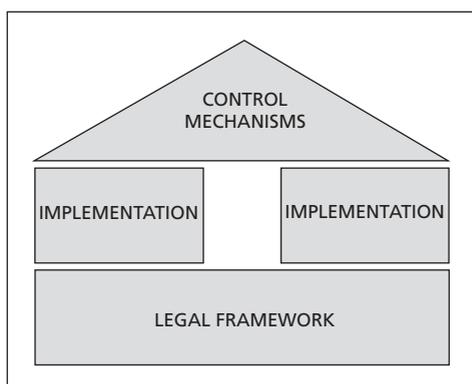


Figure 1. The three main elements in the system of prevention.

4. Monitoring human rights through visits⁴

Many national human rights institutions, NGOs, charity-based organizations, parliamentary committees and lawyers do visit places of detention from time to time. These visits have different objectives, ranging from supervision of the execution of sentences and the investigation of complaints to providing legal aid or delivering humanitarian or spiritual support. Some of these organizations also visit places of detention with the purpose of monitoring the treatment of detained persons in a systematic manner. These types of visits are called preventive visits.

4.1 What is meant by preventive monitoring visits?

Preventive visits are specific in nature. They seek to prevent torture and ill-treatment before it happens and improve conditions under which detained persons are held through two mutually-reinforcing means:

- Constructive dialogue with officials, based on detailed recommendations derived from an independent and expert analysis of the detention system using first-hand information; and
- Deterrence, based on the increased likelihood of detection in the future through first-hand observation, which perpetrators cannot so easily avoid by intimidating detainees not to file formal complaints.

The UN Special Rapporteur on Torture has explained the importance of preventive visits as follows:

4) Chapter 4 and 5 are based on and includes extracts from the publication “Monitoring places of detention: a practical guide”, APT, 2004, available in English, French and Arabic and “Establishment and designation of national preventive mechanisms”, APT 2006, available in English and French at www.aptc.ch

“The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention. ... Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed.”⁵

The preventive nature of these visits therefore distinguishes them in purpose and methodology from other types of visits that independent bodies may carry out to places of detention. For instance, a “reactive” visit is triggered only after a specific complaint of a violation is received by a complaints body at its office outside the place of detention. Reactive visits generally seek primarily to solve the specific problem of the complainant, or to investigate and document the case in order to prosecute and punish perpetrators.⁶ Another example would be “humanitarian” visits, providing goods or services directly to detainees to improve their condi-

5) UN Special Rapporteur on Torture, 2006. Report to the General Assembly, UN Doc. A/61/259 (14 August 2006), paragraph 72.

6) Reactive visits can, as a side-effect, also contribute to prevention, through increasing transparency and accountability in places of detention, but this is different from a programme of visits conducted with the primary objective of prevention.

tions of detention or to rehabilitate survivors of torture.

Preventive visits, on the other hand, are proactive, part of a forward-looking and continuous process of analyzing a detention system in all its aspects. Multidisciplinary teams of independent experts carrying out preventive visits gather first-hand observations and speak confidentially with detainees and staff. They scrutinize the physical facility, rules and procedures, and the adequacy of any safeguards, in order to identify the elements that lead, or might lead in the future, to conditions or treatment amounting to ill-treatment or torture. This information is then assessed against national, regional and international standards and best practices, leading to specific and practical recommendations addressed to the authorities best able to implement them (at the institutional, regional and/or national level). These recommendations constitute the basis for constructive dialogue with the authorities. Follow-up discussions and visits allow verification of implementation, and further refinement or elaboration, of the recommendations. The preventive visits and the process of dialogue seek to achieve improvements for all members of a detainee population, for the place of detention as a whole, and for the overall system of places of detention in the State.

Because preventive visits aim to achieve improvements over time, regular repetition is a key element of any effective scheme of monitoring places of detention for the prevention of torture and other ill-treatment. Repeated visits to a given place of detention:

- enable the visiting team to establish and maintain a constructive ongoing dialogue with detainees and authorities,
- help to chart progress or deterioration in the conditions of detention and treatment of detainees over time,

- help to protect detainees from abuse, through the general deterrent effect of the continuous possibility of outside scrutiny,
- help to protect detainees and staff from reprisals against individuals who have cooperated with the visiting body on previous visits.

4.2 *The role of medical doctors during preventive monitoring visits*

Preventive visits are most effective if they are conducted by independent experts from different fields of professional knowledge and expertise, including lawyers, medical doctors, psychologists and psychiatrists, persons with professional experience regarding policing or administration of prisons, social workers, etc.

Medical doctors who visit places of detention in an effort to combat torture may essentially play two different roles:

- *The medico-legal role:* To examine individuals alleging torture or ill treatment and to document the findings for the purpose of providing medical evidence in legal proceedings against alleged perpetrators of torture.⁷
- *The preventive role:* To assess the treatment of the detainees and the conditions of detention in order to provide a basis for dialogue aimed at preventing future acts of ill treatment and at improving the conditions of detention. The role of the medical doctor is to illustrate the reality of the problems in detention through a series of concrete examples.⁸

7) A detainee may wish to use the medical documentation produced about his health status to initiate a prosecution of the authorities or a particular public official. However, this is not the general purpose of medical documentation in the context of preventive detention monitoring.

As this background paper deals with the issue of preventive detention monitoring, it will focus on the preventive role of the medical doctor.

In the context of preventive detention monitoring, medical doctors have several responsibilities.

First of all, the medical doctor is responsible for examining individual detainees in order to ascertain whether or not they have been subjected to torture or other forms of ill treatment while in detention. The examinations may be initiated in response to concrete allegations or they may be conducted randomly so as to obtain a representative picture of the treatment of the persons in detention.

Secondly, the medical doctor will assess the conditions of detention, notably those of importance to the physical and mental health of the detainees, and the functioning of the health care system in the place of detention. To this end, the medical doctor will examine the health of the individual detainees, the hygiene of the premises, the access to health care, the quality of the medical treatment, etc. The findings and recommendations are often general, addressing structural issues, such as the underlying causes of the poor conditions of detention.

Finally, the visiting doctor also plays an important role as a professional advisor *vis-à-vis* the “in house” doctor in the place of detention. Many health professionals have

dual obligations (“dual loyalties”) in that they owe a primary duty to the patient to promote his/her best interests and a separate duty to the employers. In addition, there is the general duty to society to ensure that acts of torture are prevented. In this context, the visiting doctor may play an important role by advising the “in-house” doctor on how to create the necessary conditions for carrying out the primary duties in respect of the principles of medical ethics.

4.3 Can monitoring visits be harmful to the cause of human rights?

As seen above, external monitoring of places of detention is a key element in an effective torture prevention system. This does not mean that visits to places of detention do, under all circumstances, improve the human rights situation of detained persons. On the contrary, visiting a place of detention might even be harmful if a visiting institution does not have sufficient powers, for example for conducting a follow-up visit in order to assure the well-being of the persons interviewed, or lacks professional skills. Moreover, authorities might attempt to allow limited visits, for example only to certain places or certain individuals. The UN Guidelines on the effective investigation and documentation of torture and other ill-treatment known as the Istanbul Protocol⁹ ask visitors to pay sufficient attention to this danger:

8) See, for example, the 2002 CPT report on the 2000 visit to Moldova (Transnistria), § 15.

9) Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In recognition of the need to identify and implement effective measures to protect individuals from torture, an international group of experts developed the “Istanbul Protocol – Manual on the Effective Investigation and Docu-

mentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” of 1999. The purpose of the manual is to enable States to effectively document torture, hereby addressing a basic concern in protecting individuals from torture. The Istanbul Protocol is intended to serve as a set of guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.

126. Visits to prisoners are not to be considered lightly. They can in some cases be notoriously difficult to carry out in an objective and professional way, particularly in countries where torture is still being practiced. One-off visits without follow-up to ensure the safety of the interviewees after the visit, may be dangerous. In some cases, one visit without a repeat visit may be worse than no visit at all. Well-meaning investigators may fall into the trap of visiting a prison or police station, without knowing exactly what they are doing. They may obtain an incomplete or false picture of reality. They may give an alibi to the perpetrators of torture, who may use the fact that outsiders visited their prison and saw nothing.

It is therefore very important that human rights organizations negotiate the powers related to their visits beforehand and assure that they have the needed professional capacities before embarking on the monitoring programme.

5. International and national organisations conducting monitoring visits

A range of international, regional and national organizations are mandated to and do conduct preventive visits to places of detention. Some of these bodies have been established with preventive visits as the main objective, while others conduct such visits as part of a broader mandate or mission.

5.1 Independent external monitoring at the national level

In recent years, recognition that places of detention should be transparent and accountable has led to the setting up of independent domestic monitoring mechanisms, in particular during the transition process from authoritarian to more transparent rule,

for example in Eastern Europe, the Americas and Africa. These institutions have become more professional and grown in influence. Such external mechanisms can be of very different types: official institutions established by Parliament, bodies attached to a specific Ministry or civil society groups, or a mixture of these.

External mechanisms established by Parliament include *Ombudsman offices* and *national human rights institutions*. Their usually broad mandate to monitor and promote respect for human rights, combined with their power to examine individual complaints, often includes the possibility of visiting and monitoring places of detention. However, the depth and frequency of the visits may vary. In addition, visits to places of detention are often undertaken to verify specific allegations and investigate an individual complaint rather than to preventively examine and assess the conditions of detention with the aim of pre-empting future problems. An advantageous feature of Ombudsman and national human rights institutions is that they usually report publicly to Parliament and their recommendations are, thanks to the bodies' official status, viewed as authoritative.

In some countries, *special monitoring bodies* have been set up attached to a specific Ministry, often following public outcry over a specifically serious human rights violation in a prison or police station, in order to restore public confidence in the authorities. These bodies often have a double mandate both to control conditions of detention in the places under that Ministry's control and advise the Ministry on necessary improvements. Such bodies can be composed of officials, NGO representatives, independent members of civil society (lay people) or a combination of these. These bodies usually issue non-binding recommendations.

Sometimes these are published in the form of reports.

Finally, in some countries, *national human rights NGOs and civil society organizations* have managed to get authorization and agreement to regularly monitor places of detention. Monitoring by civil society is usually characterized by a large degree of independence from the authorities. The findings and reports of civil society organizations often receive a great deal of publicity precisely because of their independence and the perception that this makes the findings more frank. However, the legal basis for monitoring can often be weak, based on a written agreement with the different ministries, or even an individual minister, who leaves the monitors dependent on the political will of the authorities. In some countries lack of funding even for travel costs can make the task of consistent monitoring almost impossible for such independent groups.

5.2 International monitoring mechanisms

The *International Committee of the Red Cross (ICRC)* was the first to receive such a mandate to conduct preventive visits at the international level, in the context of armed conflicts, to visit prisoners of war. Later, the mandate was extended through the right of initiative, allowing it to visit detainees, with the agreement of the concerned government, during internal strife or tensions. ICRC's recommendations may also cover common-law detainees.

Most existing international mechanisms entitled to visit places of detention function essentially in a reactive manner, and carry out on the spot visits following receipt of information of torture or ill-treatment (e.g. UN Special Rapporteurs, Committee against Torture). Few have the mandate to regularly and proactively carry out visits (e.g. Special

Rapporteur on prisons and conditions of detention in Africa). These mechanisms can only carry out on-site visits with the authorization of the State concerned.

Two international bodies work on a radically different basis. The *European Committee for the Prevention of Torture (CPT)* was, in 1987, the first body set up specifically to carry out preventive visits to places of detention. Upon ratification of the Convention, States Parties accept visits of the CPT at any time to any place where persons are deprived of their liberty. As of 2007, the *UN Sub-Committee on Prevention of Torture* is also able to carry out regular visits to places where persons are deprived of their liberty in the State Parties to OPCAT. Both of these explicitly preventive mechanisms have been inspired by the visiting methodology and approach of the ICRC.

More information on the different international and regional visiting mechanisms is available in Annex 1.

5.3 Bodies established under the Optional Protocol to the UNCAT

Preventive visits have gained a significant boost with the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT) in June 2006. This international treaty creates for the first time a global system for preventive visits at both the international and the national level.

The OPCAT is different in nature from optional protocols to other international treaties. It does not establish an individual complaint mechanism (which already exists under UNCAT Article 22). Instead, it seeks to prevent torture and other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies. As such, the OPCAT is designed to help States implement their inter-

national obligation to prevent torture under UNCAT Article 2.

The mechanism consists of two mutually reinforcing pillars, the international Subcommittee on Prevention of Torture and the National Preventive Mechanisms. These bodies will work together to conduct regular visits to all places of detention in all States Parties and will make recommendations to the authorities to establish effective measures to prevent torture and ill-treatment and to improve the conditions of detention of all persons deprived of liberty.

As of April 2007, 34 States have ratified the OPCAT and another 30 States have signed it.¹⁰ Unfortunately, up to this date, no State from the Middle East and North Africa has signed the protocol, even though most States of the region are State Parties to the UNCAT.¹¹

UN Subcommittee on Prevention

The Subcommittee has the mandate to conduct visits to places of detention and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other forms of ill-treatment. In regard to the National Preventive Mechanisms, the Subcommittee is mandated to advise and assist in their establishment and offer them training and assistance in order to strengthen their capacities.

Unlike other UN mechanisms, the Subcommittee on Prevention of Torture is not required to seek a State Party's consent to

any specific visit to the State's territory as such consent follows from the ratification of the OPCAT. Once in the territory, the Subcommittee has the right, among others, to access any place of detention, to move freely and to hold private interviews with detainees of their choice.

The Subcommittee will initially consist of ten members and after the 50th ratification this number will increase to twenty-five. The members are required to have professional experience in the field of the administration of justice, in particular criminal law, prison or police administration or in various fields relevant to the treatment of persons deprived of their liberty.

The States Parties to the OPCAT elected the first Subcommittee in December 2006.¹² The Subcommittee will start its visiting programme in 2007.

The National Preventive Mechanisms

States Parties under the OPCAT are obliged to designate or create one or several National Preventive Mechanisms (NPM). The OPCAT sets out fundamental requirements but allows some flexibility concerning the institutional nature of its mechanisms. The institution(s) designated as NPM have access to all places of deprivation of liberty, which include among others prisons, police stations, and military detention facilities, deportation centres for immigrants, juvenile centres and psychiatric hospitals hosting involuntarily placed patients. Similar to the UN Subcommittee, they have among other

10) An updated overview of the status of ratification of the OPCAT is available at www.apt.ch.

11) Non-State parties to the CAT: Oman, UAE, Iraq and Sudan.

12) A list of the members is available at www.ohchr.org/english/bodies/cat/opcat/index.htm

powers the right to visit all premises in a place of detention, examine the treatment of the detained persons, receive any relevant information and conduct interviews in private with detainees of their choice. Authorities are obliged to examine the recommendations of the NPM and enter into a dialogue with it on possible implementation measures.

The OPCAT thereby sets for the first time internationally binding minimum standards for powers and guarantees for national visiting bodies. These standards can also be relevant as guidelines for organizations mandated to conduct preventive visits based on other laws or regulations.

6. Monitoring places of detention in the Middle East and North Africa

The monitoring of places of detention as a means to prevent torture is an issue which has been given limited attention in the Middle East and North Africa in comparison to other regions. While several States in the MENA region are parties to the UN Convention against Torture (UNCAT),¹³ none of them have yet signed the Optional Protocol to the UN Convention against Torture (OP-CAT). Furthermore, only one State in the MENA region has invited the UN Special Rapporteur on Torture to conduct a country visit. This visit occurred in Jordan in 2006.¹⁴

However, several States have established National Human Rights Institutions,¹⁵ some of which are mandated to monitor places of detention and hereby prevent human rights violations. Several of these institutions have

published findings on prison visits in their public annual reports. The institutions of Morocco and Jordan, moreover, have published special reports about prison conditions.

Nevertheless, national human rights institutions are frequently denied access to other places of detention, such as police stations, detention facilities under the responsibility of security service or the military.

A wide range of human rights NGOs and lawyers have been given access to places of detention in their capacity as legal counsel of individual detainees, and they conduct announced visits to places of detention, some on a fairly regular basis, and others less frequently and subject to the approval of the responsible Ministry.

Some States have created Ministries of Human Rights and tasked them with monitoring human rights in places of detention. While these Ministries are by definition not independent, their visiting methodology is nevertheless inspired by the approach developed by independent organisations. An important difference, however, is that their reports are not made public and they can therefore not be subjected to public scrutiny.

7. Issues to be addressed in the seminar

General issues

- Which organisations in the MENA region do conduct monitoring visits to places of detention and how can they support each other?

13) States Parties to the UN Convention against Torture in the Middle East and North Africa: Algeria (1989), Bahrain (1998), Egypt (1996), Israel (1991), Jordan (1991), Kuwait (1996), Lebanon (2000), Libya (1989), Morocco (1993), Qatar (2000), Saudi Arabia (1997) Syria (2004), Tunisia (1988) and Yemen (1991), cf. www.ohchr.org/english/countries/ratification/9.htm

14) www.unhcr.ch/hurricane/hurricane.nsf/view01/77FA33549DED8C125719D004A236E?opendocument

15) National Human Rights Institutions in the MENA region can be found in: Algeria, Egypt, Iran, Jordan, Morocco, Palestine, Tunisia and Qatar, cf. www.nhri.net/nationaldatalist.asp

- What is the difference between an “accusatory” approach based on denunciation and a “cooperative” approach based on dialogue? Which approach works better in which context? Can the same organization apply both approaches?
- Is it possible to identify key features which are integral to a successful visiting mechanism?
- Which lessons can be drawn from national monitoring bodies from other parts of the world and international organizations and how could these lessons be transferred to the MENA region?
- What is the difference between an “accusatory” approach based on denunciation and a “cooperative” approach based on dialogue? Which approach works better in which context? Can the same organization apply both approaches?
- To what extent have domestic visiting bodies succeeded in preventing or reducing the prevalence of torture and other forms of ill treatment?
- Have any of the domestic visiting bodies had the success of bringing about legal reform or reform of institutional practices?
- Which strategies are successful in pressuring governments to ratify the OPCAT? What lessons learnt regarding other ratifications campaigns (e.g. International Criminal Court) can be transferred to the OPCAT?

Gaining access to places of detention

- How did these organisations gain access? Which powers and guarantees do they have? Which lessons did they learn?
- What strategies can actors in the region use in order to lobby for access for international monitoring bodies to the region?
- What are the minimal powers and guarantees needed to assure that monitoring will not do any harm?

Conducting detention monitoring visits

- How to collect information during a visit.
- What kind of attitude visitors develop in dealing with the administration of the place of detention.
- How can visitors protect detainees against reprisals?
- How can visitors attend to the special needs of vulnerable groups?
- To what degree is medical documentation of torture used during visits to places of detention? How is it used? What are the advantages? And the challenges?

Bringing about change

- What can organisations do, if they do not obtain sufficient powers to monitor places of detention? How can they moni-

Annex 1:

Table 1. *International and regional visiting mechanisms. (See next page)*

International mechanisms		
Type	Legal basis	Characteristics
<i>UN Subcommittee on Prevention</i>	Optional Protocol to the Convention against Torture (OPCAT), 2006	<ul style="list-style-type: none"> • Visits to States Parties to the Protocol • Established for the purpose of conducting preventive visits and advise State Parties on the establishment on National Preventive Mechanisms • Acceptance of visits without prior consent upon ratification or accession to OPCAT • Preventive periodic visits possibility of one follow-up visit • Unlimited access to any place where a person is deprived of his/her liberty • Confidential reports possibility for the State to authorise publication or for the committee to publish in case of a failure to co-operate • Annual report to CAT • Direct contacts with national preventive mechanisms.
<i>UN Thematic Procedure</i> <ul style="list-style-type: none"> • Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions • Working Group on Forced or Involuntary Disappearances • Working Group on Arbitrary Detention. 	Resolutions of the United Nations Commission on Human Rights	<ul style="list-style-type: none"> • Prior agreement by the State concerned • Occasional visits to places of detention in order to assess country situations in relation to their mandate • Recommendations issued on the basis of information communicated to the Rapporteur and verified, or following visits carried out in the country concerned • Recommendations without binding character for States • Public reports presented at the session of the UN Human Rights Commission.
<i>Committee against Torture (CAT)</i>	Article 20 of the UN Convention against Torture of the United Nations (UNCAT) (1984)	<ul style="list-style-type: none"> • Visits only to States Parties to the Convention¹⁶ • Visits only in the case of “systematic torture” • Authorisation by the State concerned • Confidential procedure.
<i>Sub-Committee to the Committee against Torture¹⁷</i>	Optional Protocol to the Convention against Torture (OPCAT)(2002)	<ul style="list-style-type: none"> • Visits to States Parties to the Protocol • Will be established for the purpose of conducting preventive visits • Acceptance of visits without prior consent upon ratification or accession to OPCAT • Preventive periodic visits possibility of one follow-up visit • Unlimited access to any place where a person is deprived of his/her liberty • Confidential reports possibility for the State to authorise publication or for the committee to publish in case of a failure to co-operate • Annual report to CAT • Direct contacts with national preventive mechanisms.

International mechanisms		
Type	Legal basis	Characteristics
<i>International Committee of the Red Cross</i>	On the basis of the Geneva Conventions (1949) for situations of conflict. On the basis of an agreement with the State for other situations.	<ul style="list-style-type: none"> • Monitoring of conditions of detention targeted at persons arrested and detained in relation to a situation of conflict or internal strife. In certain situations, monitoring extends to other categories of persons deprived of their liberty • In the situation of an international conflict, the States Parties to the conflict are obliged to authorise visits to military internees and civilian nationals of the foreign power involved in the conflict • In other situations, visits are subject to prior agreement by the authorities • Permanent and regular visits during a situation of conflict or strife or its direct consequences relief or rehabilitation activities with the agreement of the authorities • Help to restore family links • Confidential procedure and reports.
Regional mechanisms		
Type	Legal basis	Characteristics
<i>Inter-American Commission on Human Rights</i>	American Convention on Human Rights (1978) American Declaration of the Rights and Duties of Man (1948) ¹⁸	<ul style="list-style-type: none"> • Country visits, including to places of detention, to States Parties to the Convention or the Declaration • Each visit negotiated with the State concerned • Public reports about the country situation.
<i>Special Rapporteur on Prisons and Conditions of Detention in Africa</i>	Following the Kampala Declaration, established by a Resolution of the African Commission on Human and Peoples' Rights (1996)	<ul style="list-style-type: none"> • Visits to States Parties to the African Charter on Human and Peoples' Rights • Visit only after agreement of the State concerned • General assessment of conditions of detention and treatment • Reports are published after integration of comments and observations of State authorities concerned.
<i>European Committee for the Prevention of Torture (CPT)</i>	European Convention for the Prevention of Torture (1987)	<ul style="list-style-type: none"> • Visits to States Parties to the Convention • Established for the purpose of conducting preventive visits • Unlimited access: at any moment to any place where a person is deprived of his or her liberty • Periodic and ad hoc visits ("required by the circumstances") • Reports theoretically confidential, but their publication has become the rule.