Convention against Torture -30th Anniversary Celebration, 4 November 2014

Panel 2: Implementing the Convention`s provisions by State Party

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As a member of the United Nations Subcommittee on Prevention of Torture, I am honored to be part of the celebration of the 30th anniversary of the adoption of the United Nations Convention against Torture - particularly bearing in mind the existing synergy of the Committee against Torture and the Subcommittee on Prevention of Torture in their efforts to contribute to global eradication of torture and other cruel, inhuman or degrading treatment or punishment.

The Convention against Torture is exclusively concerned with the eradication of torture and other forms of ill-treatment. The main objective of the CAT is to lay down obligations to all 155 States Parties of this treaty to establish and exercise jurisdiction over the crime of torture. In the CAT, the preventive functions are almost entirely delegated to the States Parties. Furthermore, the CAT requires the States Parties to take other measures, including education, training and increasing the capacities of law enforcement officers; reviewing procedures and practices on a regular basis; prohibiting forcible return (*refoulement*) to countries where a person may face torture; inadmissibility of statements made under torture; prompt, impartial and comprehensive investigation of allegations of torture; and redress to torture victims, including their rehabilitation.

The prohibition of torture is absolute and non-derogable. Article 2 of the Convention against Torture stipulates that the use of torture cannot be justified under any circumstances and obliges the States Parties to take effective measures to prevent torture. However, all relevant psychological researches demonstrate a general inclination of individuals to commit acts of torture when certain conditions are met. These are the situations when persons are solely at the mercy of their captors and interrogators. It suggests that the answer to the prevention question lies in the realm of rules, standards and systems, rather than it being the question of the morality of the correctional institutions staff or just choosing the right employees. Professor Sir Nigel Rodley correctly once emphasized that torture “is a crime and, like many other crimes, is a crime of opportunity.”

In this context, it is understandable that nowadays torture is commonly not perceived as systemic treatment by the state authorities or as practice organized and sanctioned by the authorities. But, it is obvious that there are many individual cases of torture. Those individual cases of violence which are tolerated by the competent authorities, considering their intensity, frequency and continuity become systematic torture or ill-treatment.

Countries have a clear obligation to investigate all particular acts of torture and all other forms of ill-treatment whenever there is an arguable claim or any other indication of torture or ill-treatment, even without an express or formal complaint. It means that the States should effectively fight impunity and systematically demonstrate the effectiveness of the implemented measures. Ending impunity for torture is a crucial obligation of the States Parties, along with the redress opportunities for victims of torture. The preventative content of this reparation should be emphasized with the requirement of cessation and non-repetition, which are the key dimensions of redress.

Although it has been 30 years since the adoption of the Convention against Torture, the detainees still face a number of the deficiencies in the procedural safeguards relevant for their protection against torture and other ill-treatment: notification of detention to relatives; access to a lawyer (including contacts with the lawyer from the very beginning of detention and the presence of the lawyer during interrogation); as well as the independent medical examination.

## In most countries, forensic and medical departments are closely linked with the authorities; doctors and other medical staff work inside the security or prison sector. In his last report, Mr. Huan Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, noted „they may have conflicted loyalty between their employer and their professional obligation to report torture or ill-treatment, out of fear of jeopardizing their employment or other reprisals”. Further, he added “Forensic science has a key role to play regarding the obligation of States to investigate and prosecute allegations of torture or other ill-treatment, especially with regard to individual responsibility and the fight against impunity”. Accordingly, the States Parties should organize the work of the forensic and medical departments outside the security or prison sector.

During the visits to the States Parties, the SPT noted the significant deficiencies in keeping the registries on coercive measures as well as conducting the disciplinary sanctions and the medical exams. States Parties should pay full attention in order to eliminate this deficiency. Effective medical and forensic documentation can bring evidence of torture and other ill-treatment to light so that perpetrators may be held accountable.

The CAT and the SPT found in their reports that the issue of State intimidation and reprisals against the citizens reporting torture and ill-treatment is a matter of serious concern. Mr. Grossman, Chairperson of the CAT concludes: “The ability of individuals to complain against their own States for violations by the States themselves embodies an important and crucial step toward realizing human dignity”.

There is a clear connection between torture, ill-treatment and corrupt practices in a number of countries. Effective torture prevention must tackle corrupt practices and the SPT notes that its preventive work seems to be more challenging, particularly in those States with higher levels of corruption where torture and ill-treatment were less likely to be discovered.

One of the most important obligations of States Parties is to achieve the full cooperation with the relevant treaty bodies. Although the States Parties have very clear Convention commitments, the SPT has experienced increasing delays in being provided with the information and facilities, which are required to undertake visits efficiently. For the first time, the SPT found it necessary to suspend one of its full visits, to Azerbaijan, due to repeating problems in securing immediate and unimpeded access to places of detention.

We may be satisfied with the number of the States Parties to the Convention against Torture and its Optional Protocol. Today, there are 74 State Parties to the Optional Protocol. However, I take this opportunity to highlight the burdensome lack of resources in the UN Human Rights Office which constrained the SPT to only three full visits last year and other three this year. Frankly, this number of visits is far too few too enable the SPT to properly fulfil its mandate.

Finally, I would like to point out that the Convention against Torture and its Optional Protocol are not “just a source of abstract legal obligations”. After 30 years, the goal is to get the States Parties to accept the spirit of the Convention against torture. Synergy of the Committee against Torture and the Subcommittee on Prevention of Torture, which work closely with the National Preventive Mechanisms, results in effective measures aimed at making torture and ill-treatment less likely, if not inexistent.