**Manfred Nowak**

**What did OPCAT add to the existing mechanisms in the fight against torture?**

Torture is one of the most serious and most violent human rights violations. By deliberately inflicting severe physical or mental pain and suffering on a powerless person, the act of torture constitutes a direct attack on the core of human dignity and aims at dehumanizing the victim. Based on historical experiences of systematic torture in totalitarian societies, the international community, for good reasons, established the prohibition of torture as one of the very few human rights which are both absolute and non-derogable even in the most exceptional circumstances, such as armed conflicts and terrorism. Nevertheless, torture is practiced in the 21st century in more than 90% of all States in all world regions. During my six years as UN Special Rapporteur on Torture (SRT) I carried out official fact-finding missions on the invitation of 18 States in all world regions. In 17 of them I found evidence of torture. Sometimes these were only isolated cases, but in more than half of these countries, torture was practiced in a widespread and routine manner, usually against the poor, disadvantaged and discriminated groups for the simple purpose of extracting confessions and information as a routine measure of criminal investigations. As shocking are the conditions of detention which I found in the vast majority of prisons, police lock-ups and other detention facilities. Prison walls serve two distinct purposes: to lock a certain group of people up and to separate them from the rest of the population who have no idea and no interest to know how people are treated behind bars. The only country where I did not find any evidence of torture is Denmark, including Greenland. It is no surprise that the conditions of detention were also by far the best in Denmark, where the philosophy of detention is based on the principle of normalization.

That torture was not eradicated by its simple prohibition under international law became all too evident by the rise of brutal military dictatorships in Latin America during the 1970s. This was the time when the international community started to think about more efficient measures to combat torture. One of the ideas was to fight impunity of those who practice, authorize and tolerate torture. This philosophy was laid down in the 1984 UN Convention against Torture (CAT) which requires all 157 States parties to make torture a serious crime in their domestic criminal codes, to thoroughly investigate all allegations and suspicions of torture and to bring the perpetrators of torture to justice, even by applying the principle of universal jurisdiction. Thirty years later we have to admit that only very few cases of torture have been adequately investigated and even less perpetrators of torture have been brought to justice. Impunity of torture is as widespread as it was in the 1970s because Governments simply lack the political will to implement the Convention against Torture by taking torture allegations seriously and by conducting independent investigations against their own security forces.

The second philosophy of combating torture which also goes back to the 1970s is the idea of replacing the paradigm of opacity by the paradigm of transparency, i.e. by opening up closed detention facilities to preventive and unannounced visits by truly independent inspection bodies. This idea goes back to the Swiss philanthropist Jean-Jacques Gauthier and was promoted by the Swiss and Austrian Committees against Torture, the predecessor of the Association for the Prevention of Torture (APT), together with the International Commission of Jurists and the Government of Costa Rica. But the United Nations at this time were not interested. So we tried it in the Council of Europe, which led to the adoption of the European Convention for the Prevention of Torture in 1987. The preventive visits by the European Committee for the Prevention of Torture (CPT) became so successful that we managed to convince the United Nations Human Rights Commission in the early 1990s to draft an Optional Protocol to the Convention against Torture (OPCAT). It was a highly difficult drafting process until OPCAT was finally adopted in 2002. But the outcome is even better than its European counterpart, as OPCAT entrusts preventive visits not only to an international monitoring body, the Sub-Committee for the Prevention of Torture (SPT). It also requires States parties to establish National Preventive Mechanisms (NPMs), i.e. independent and well-funded domestic inspection commissions to carry out unannounced regular and ad hoc visits to all places of detention, to conduct confidential interviews with detainees as well as to assess the prevalence of torture and the conditions of detention. OPCAT entered into force in 2006 and the SPT held its first session in 2007, which was the year when the newly established Human Rights Council had just extended my mandate as Special Rapporteur on Torture for another term of three years. Since I am deeply convinced that OPCAT has the potential of reducing or even eradicating the practice of torture, and at the same time to significantly improve the deplorable conditions of detention in most countries, I considered it as my duty to encourage States to ratify OPCAT and to establish truly independent and professional NPMs. I also closely cooperated with the CPT and the SPT, and we had many lively and controversial discussions about the methods of conducting preventive visits and investigating practices of torture.

Even after my term as Special Rapporteur on Torture expired in 2010, I continued with my team of experts at the Ludwig Boltzmann Institute of Human Rights in Vienna and with the financial assistance of the European Union to assist selected countries, such as Moldova, Togo, Paraguay and Uruguay, in implementing my own recommendations after my fact-finding missions and in setting up professional NPMs. In my own country, Austria, I served as head of one of six visiting commissions of the Austrian NPM and carried out a wide variety of preventive visits to prisons, police lock-ups, psychiatric hospitals, old peoples’ homes, migration detention facilities, and special institutions for juveniles and persons with disabilities. In my new function as Independent Expert to lead the Global Study on Children Deprived of Liberty, I will again closely cooperate with the CPT, the SPT, NPMs and other detention monitoring bodies with the aim of drawing attention to the sad fate of far too many children and juveniles behind closed doors, of combating the practice of detaining children, and of improving their conditions of detention.

My conclusions are mixed: I still consider OPCAT, the SPT and NPMs as one of the best tools in preventing torture and improving conditions of detention. At the same time, I see a strong tendency of many governments to establish NPMs which are not fully independent, which are not professional, which lack the necessary financial and human resources and which seem to be more a fig leaf than an effective monitoring body. This means that much remains to be done by the SPT, the newly appointed SRT and civil society organisations, such as APT, to ensure that OPCAT is truly implemented and filled with life. I congratulate SPT to its 10th birthday and wish it above all to be empowered with the necessary financial and human resources to effectively fulfil its important mandate and mission.

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