Preventing torture in places of detention through systems of regular visits - Monitoring, documentation and research

Concept paper

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I. Introduction

Despite its prominent position in the hierarchy of norms, torture continues to be practised in about two thirds of the countries worldwide – in many cases routinely and systematically[1]. In 2002, with this fact in mind, the *Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* was adopted with an overwhelming majority at the UN General Assembly. The purpose of the Optional Protocol is to prevent torture and other cruel, inhuman or degrading treatment or punishment. To this end, the Optional Protocol advocates the establishment of a system of regular visits to be undertaken by independent international and national bodies to institutions where persons are deprived of their liberty. This new instrument will enter into force, when it has been ratified by 20 states. As of March 2005, it has been signed by 33 states and ratified by six.

Whilst the international community is awaiting the coming into force of the Optional Protocol, serious efforts are being made to promote state ratification and to prepare for the establishment of the independent *national* preventive mechanisms (NPM) and the *international* preventive mechanism (the Sub-Committee to the UN Committee against Torture). In this process, it is crucial that the experience of existing national and international monitoring mechanisms is analysed and assessed so as to extract valuable findings that can influence the formation of the OPCAT mechanisms. Similarly, existing tools for documenting torture and experience with their application should form part of the process of preparing for the establishment of the new preventive mechanisms.

With the overall aim of promoting the realisation of the OPCAT, the Rehabilitation and Research Centre for Torture Victims (RCT) will host an international conference entitled "Preventing torture in places of detention through systems of regular visits" in Copenhagen on 25-27 May 2005. Addressing this challenge requires not only the study of existing systems of visits to places of detention, but also an analysis of the legal framework behind the systems and study of current approaches to the documentation of torture and other forms of ill treatment. The conference will provide a platform for a cross-disciplinary and inter-institutional analysis and sharing of experiences in the above fields, and it will seek to address these overall issues by focussing on five main themes:

1) Existing international monitoring mechanisms
2) The Optional Protocol to the UN Convention against Torture
3) Existing national monitoring mechanisms
4) Medical documentation of torture in places of detention
5) Prevention of torture in places of detention through research

The conference will address the theme of prevention of torture, the problems of places of detention and the possibilities for transformation presented by the adoption of the Optional Protocol with the help of international experts, scholars, practitioners and partner organisations in the South. The overall objective is to contribute to systematising current available knowledge on themes with direct relevance

[1] An analysis carried out by RCT's documentation centre based on the CIRI dataset, Amnesty International's Report 2004 and the US State Department's report of human rights practices 2003 shows that incidences of torture or ill treatment are reported in 165 countries, in 97% of cases in state custody that is police detention or prisons.

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to the implementation of the Optional Protocol and the prevention of torture. Via analyses of diverse international and national experiences of documenting and preventing torture in places of detention the conference will attempt to extract lessons and make recommendations that will be of value to countries preparing to sign, ratify and implement the Protocol. In addition, by bringing experts from different areas and locations together the conference aims to facilitate networking and the constitution of a critical mass of scholars and practitioners that can advocate for the prevention of torture in ever stronger terms. Finally, the conference aims to identify gaps in the existing knowledge about prevention of torture in places of detention and to point towards ways of filling these gaps by way of research and intervention.

The purpose of the present concept paper is to focus the conference by providing a brief outline of the history, the current status and the key challenges that lie ahead for each of the five thematic areas mentioned above. The concept paper will hopefully serve as an indication of the direction of the conference and the issues to be discussed.

II. RCT and the prevention of torture and organised violence

The present conference is the 2nd international conference on the prevention of torture hosted by RCT. The 1st conference - *Prevention of Torture and Organised Violence in the 21st Century* - was held in 2001 in collaboration with partner organisations in the South[2]. The conference marked the extension and refocusing of RCT's mandate in the direction of human rights oriented development work in the South with a specific focus on the prevention of torture and organised violence. The conference was part of the development of RCT from a solely health and victim oriented organisation to an organisation where rehabilitation and prevention are seen as complimentary strands in the fight against torture and organised violence. The conference itself was remarkable for its range and the diversity of perspectives represented. It addressed issues such as the definition and limitations of prevention activities, the role of NGOs in relation to the state and civil society, changing patterns of (in)security, policies of prevention and finally possibilities for police and prison reform.

Since 2001 RCT and its partners have consolidated the development of the prevention of torture and organised violence as a key focus area. This area has three major aims:

1) To strengthen the use of legal and other preventive mechanisms.
2) To strengthen documentation and prevention of torture and inhumane treatment in prisons and other places of detention.
3) To contribute to securing that Danish law and practice lives up to the relevant conventions.

RCT operates with three interrelated approaches to prevention: The *health professional approach* (documentation and prevention in places of detention); the *human rights approach* (the use of human rights norms and systems in the prevention of torture); and the *international co-operation approach* (capacity building of civil society and development of co-responsibility with state institutions to ensure compliance with the international legal norms). Parallel to these three pillars, the prevention programme is grounded in, and contributes to, research and knowledge generation.

RCT today defines its work in relation to four key populations: Populations exposed to inter- and intra-state conflict; persecuted populations; persons deprived of their liberty; and tortured and traumatised

[2] See Ronsbo, H. and Rytter, T. (2001) "Prevention of torture and organized violence in the 21st century," background paper for conference *Torture and Organised Violence – reassessing the strategy* 24-26 January 2001, RCT.

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refugees, migrants and illegal aliens. The category *persons deprived of their liberty*, comprises those persons who are seemingly most at risk of becoming victims of torture or organised violence be that in prisons, police detention centres or in non-state forms of detention (for example abduction by guerrillas, terrorists or vigilantes).

It is against this background that RCT seeks to promote the signing, ratification and implementation of the Optional Protocol in order to prevent torture in places of detention. It is one of RCT's aims to facilitate the establishment of national preventive mechanisms, which will be mandated to carry out regular visits to any place of detention with a view to documenting torture, preventing the continued practice of torture and improving prison conditions.

The major development for RCT since the prevention conference in 2001 has been the expansion and increased significance granted to research. With this in mind and given the obvious need for further research in this field, the 2005-conference seeks to contribute to the systematisation of knowledge about the prevention of torture in places of detention and to the exchange of knowledge between researchers and practitioners across regions.

The remainder of this paper introduces the themes of the conference: International monitoring mechanisms; The Optional Protocol to the UN Convention against Torture; national monitoring mechanisms; medical documentation of torture and ways in which research on places of detention and interventions in them can play a role in preventing torture.

III. Existing international monitoring mechanisms

The protection of human rights, and more specifically the struggle against torture, has since the 1970´s developed in two opposite directions. The first approach is based on *combating impunity* by prosecuting perpetrators of torture. The philosophy is that through legal proceedings one can break the vicious cycle of impunity, which would in itself have a preventive effect. A proponent of this philosophy is the UN Convention against Torture (UNCAT). The second approach is based on *independent visits to places of detention*. The philosophy is that torture is best prevented by establishing a relationship of trust with the relevant authorities. The Optional Protocol to the UNCAT is based on this latter philosophy.

The prevention of torture poses a challenge for several reasons. One particular challenge is presented by the striking contradiction that torture is an act, which is inflicted by the state, either actively or at least with its consent, yet at the same time, it is that very same state, which is responsible for eradicating and preventing the practice of torture. Dr Malcolm Evans has described the challenge of preventing torture as follows:

> *"Prevention requires the active engagement of the State. Since most violations of human rights come about as a consequence of State action, prevention requires an intrusion into the laws and legal system of the State itself. Moreover, since many violations are the result of direct acts by State agents – such as police, armed forces, etc.…-, it requires penetration into the very heart of the State's system of power and control. In essence, the prevention of human rights abuses requires persuading a State to change fundamental aspects of its relationship with its citizens. This is a very threatening undertaking and is more likely to be successful if there is a relationship of trust between those concerned. Unfortunately, much of the international protection of human rights is based on allegations of breach and results in condemnation. It is confrontational in nature and thus renders the task of prevention even more difficult."* [3]

[3] Dr Malcolm Evans, *Visiting mechanisms and the protection of human rights* (1999), p. 23.

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Conducting independent visits to places of detention may be a way of altering such State structures and practices, and hereby preventing the use of torture. Such independent visiting mechanisms have been established at the international, regional and national level.

At the *international level*, there are several bodies that are mandated to conduct visits to places of detention (i.e. visiting mechanisms). Under *international human rights law*, there are two categories of visiting mechanisms: UN Treaty-based mechanisms, such as the Committee against Torture (art 20) and the Human Rights Committee, and UN Charter-based mechanisms, such as the Commission of Human Rights and the Special Rapporteur on Torture. The distinguishing feature of most treaty-based mechanisms is that they are responsive to information submitted to them. An exception to this is the UN Committee against Torture, which has a mandate and capacity to conduct investigations – on its own initiative - into allegations of the systematic practice of torture. This may involve a visit to the state concerned. However, the Committee cannot undertake regular visits to places of detention, nor can it visit places of detention unless there is an allegation of systematic use of torture.

Under *international humanitarian law*, which applies in times of armed conflict, there are also several visiting mechanisms.[4] One of the most important mechanisms is the International Committee of the Red Cross (ICRC). In times of war or occupation, the ICRC is authorised to go to all places where protected persons may be, including to places of internment and imprisonment (e.g. prisons, barracks, police stations, transit centres)[5]. In these places, the ICRC checks that the right to life, the physical integrity and dignity of prisoners of war and civilian internees are respected and that they are not subjected to torture. In comparison to the mechanisms established under human rights law, the ICRC has no mandate to operate in times of peace, but may only operate in times of war and occupation.

At the *regional level*, regular visits to places of detention have been conducted by the European Committee for the Prevention of Torture (CPT) under the Council of Europe since 1989[6]. The Committee is authorised to visit, at any time, all places where persons are deprived of their liberty[7] (e.g. police stations, administrative detention centres for foreigners, disciplinary premises and hospitals). The purpose is to see how detained persons are treated and, if necessary, to recommend improvement to States. Co-operation with the national authority is at the heart of the Committee's work, since the aim is to protect persons deprived of their liberty rather than to condemn States for abuses. The reports of the Committee are therefore confidential, and may not be made public, unless the State in question fails to co-operate or refuses to improve the situation in the light of the CPT's recommendations.

As illustrated above the existing visiting mechanisms vary in terms of mandate, scope and coverage. The question is whether, and to what extent, the existing bodies have succeeded in preventing or reducing the prevalence of torture and other forms of ill treatment. Have any of the bodies had a sustainable impact on the legal system and power structures of the States? What lessons can be extracted from the practice of the existing bodies and possibly be applied to the new OPCAT bodies? What "model" is best suited to lift the burden of preventing torture in places of detention? Is it possible to identify key features which are integral to a successful visiting mechanism? These are just a

[4] The system of Protecting Powers under the Geneva Conventions (1949), the International Fact-Finding Commission under the 1st Additional Protocol to the Geneva Conventions (1977), the International Committee of the Red Cross, etc. The ICRC's legal base is the four Geneva Conventions of 1949 and the two Protocols of 1977.
[5] In situations of non-international armed conflict visits require the consent of the conflicting parties.
[6] Within the Inter-American system of Human Rights, similar visiting mechanisms have been established.
[7] The Mandate of CPT: "The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.", cf. *Art. 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

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handful of questions, which could and should be considered when addressing the issue of preventing torture in places of detention.

IV. The Optional Protocol to the UN Convention against Torture (OPCAT)

While the existing visiting mechanisms – each within their mandate – may contribute to the prevention of torture and ill treatment, only a few of them conduct visits on a routine basis and in a non-confrontational environment. What is more striking is that none of them link the national and international level, which could ensure continuity and ultimately provide greater impact.

In order to strengthen the protection of persons deprived of their liberty, by non-judicial means, the UN member states adopted the Optional Protocol to the UN Convention against Torture (OPCAT) in 2002. The OPCAT seeks to establish a universal system of visits to places of detention - based on the European model of CPT - by introducing a dual visiting mechanism, which links the national and international level, and hereby seeks to bridge the gap within the existing systems.

The Optional Protocol introduces a system of regular visits undertaken by independent and complementary national and international bodies to places where persons are deprived of their liberty in order to prevent torture and ill treatment. The new instrument is ground-breaking, because whereas some of the existing mechanisms act after torture has occurred, the new system would intervene beforehand to prevent torture. Furthermore, while several of the existing mechanisms publicly condemn states in a climate of confrontation, the new system would assist states through a confidential process of open dialogue and cooperation. The OPCAT is also unique in prescribing a complementary inter-relationship between preventive efforts at the international and national level, which aim to ensure the effective and full implementation of international standards at the local level.[8]

The *international* arm of the OPCAT will consist of a Sub-Committee on Prevention of Torture. This body, which is yet to be established, shall consist of ten members initially elected by the State Parties. The Sub-Committee will have a mandate to visit all places of detention of the State Parties and make recommendations to them regarding the protection of persons deprived of their liberty. The Sub-Committee will also advice and assist the State Parties in their establishment, and maintain direct contact with the national preventive mechanism and offer them training and technical advice[9].

The *national* arm of the OPCAT will be composed of the so-called national preventive mechanisms, cf. article 3 of the OCPAT, which states that:

> *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).*

Part IV of the OPCAT sets out the State Parties' obligations in respect of the national preventive mechanisms (NPMs). The OPCAT does not prescribe any particular form that the national preventive mechanisms must take. The states are therefore free to choose whatever type of mechanism they find most appropriate in their particular context. All national preventive mechanisms must, however, fulfil certain criteria (guarantees) in order to ensure non-interference from the State, notably: functional

[8] Inter-American Institute of Human Rigths (IIDH) and Association for the Prevention of Torture (APT), *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A Manual for Prevention*, June 2004.
[9] OPCAT, article 2 and Part II-III (art. 5-16).

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independence, capabilities and professional knowledge, gender balance and adequate representation of ethnic and minority groups. In order to ensure the independent functioning of the NPMs, the State Parties are responsible for ensuring that the necessary resources are made available to the NPMs. Finally, when establishing the mechanisms, the State Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights (the so-called "Paris Principles").

Once established, the national preventive mechanisms will have the following powers:

> (*a*) To regularly examine the treatment of the persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other 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 other 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 Optional Protocol will come into force when twenty countries have ratified it. As of March 2005 thirty-three countries have signed the Optional Protocol and six countries have ratified it. Several of those countries that have signed and ratified the OPCAT are now considering ways in which they can prepare for implementation, notably the establishment of the national preventing mechanisms.

As only very few states have ratified the Optional Protocol it is still too early to say anything decisive about the composition and types of mechanisms that will be established at the national level. As regards the international arm of the OCPAT, the Sub-Committee, the OPCAT states clearly what expertise its members should have, notably proven professional experience in the field of 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. As regards the national bodies, the OPCAT is silent in this respect. However, inspiration can perhaps be drawn from the European Committee for the Prevention of Torture (CPT), which has stated that:

> *"The experience of the CPT's first year of activity has shown that although lawyers and experts in human rights constitute an indispensable component of the CPT, persons coming from other professions, and in particular medical doctors and experts in penitentiary systems, play a decisive role in the Committee's operation, especially in the course of visits."* [10]

When each individual state is to establish or designate its national preventive mechanism(s) several questions arise. How should the *process* of designation of the NPM be carried out? Should the States consult broadly with key actors in the field of torture prevention? Should NGOs engaged in torture prevention seek to become part of such national mechanism or should they rather stay out so as to maintain their role as independent watchdogs? Should the states designate a single mechanism or several mechanisms? How does one best ensure functional independence, professional knowledge, gender balance, adequate representation of ethnic and minority groups as well as national coverage? These are just some of the questions, which we hope will be addressed in the course of the conference.

[10] 1st General Report on the CPT's activities covering the period November 1989 to December 1990. paras 87-88.

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V. Existing national monitoring mechanisms

At the *national level*, several states have established mechanisms, which monitor the conditions and circumstances of persons deprived of their liberty. These include Ombudsman institutions in for example Denmark, Poland, Colombia and Russia; Parliamentary Commissions in Switzerland; Human Rights Commissions in India, Nepal, Uganda, Senegal, South Africa, Austria; NGOs in Bulgaria, Georgia, Burundi, Uruguay, Morocco, Albania, Serbia[11]; and Independent Monitoring Boards (IMB's) in England and Wales.

These so-called *domestic visiting mechanisms* (DVM) differ in terms of their mandate, powers, degree of functional independence, leverage vis-à-vis the government, resources and expertise. In some countries national mechanisms exist in parallel to other organisations, which have critical, reform oriented mandates. For example in the UK the Prison Reform Trust, the Howard League for Penal Reform and the Independent Prisons Inspectorate all perform tasks that also have a more or less watch-dog function. The variety of mechanisms currently in use raises a number of questions. To what degree do existing mechanisms live up to the criteria established by the OPCAT for national monitoring mechanisms? How do existing mechanisms see themselves and situate themselves in relation to the OPCAT? How are organisations nominated to participate in a mechanism? What expertise is required? Are existing mechanisms aware of the implications of the OPCAT?

In order to flesh out these challenges two of the examples that will be taken up at the conference are introduced below, namely the Independent Monitoring Boards (IMB) in England and Wales and the Danish Ombudsman's Office.

Independent Monitoring Boards (IMB's)
Until 2003 the independent watchdogs for prisons in England and Wales were known as Boards of Visitors. In an attempt to re-emphasise the independence of these bodies whilst at the same time uniting them with the Visiting Committees for Immigration Removal Centres the Independent Monitoring Boards concept was launched on 8th April 2003. Like its predecessor IMB's consist of lay volunteers attached to specific prisons (and immigration removal centres). Around 1800 volunteers are attached to 137 prisons and 9 immigration removal centres. They operate independently of the institutions they are mandated to scrutinize, have unlimited access and submit annual reports to the Home Secretary. Members make regular visits and are mandated to talk with prisoners and staff. The Home Office state that special qualifications are not a prerequisite to become a member. Members are appointed by the Home Secretary and training is given[12]. As well as conducting visits board members meet regularly as a team and may participate in the meetings of prison staff committees[13]. The Home Office estimate that board activities take an equivalent of four half days per month.

Scrutiny of the annual reports of Boards reveals that the work of the Boards does not always go unhindered by the authorities. Not unsurprisingly boards do on occasions meet resistance to their activities[14]. A closer look at difficulties of collaboration could reveal important lessons about the relation between visiting mechanisms and state authorities of value to OPCAT implementation.

[11] For further information on the mentioned national monitoring mechanisms please see the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – A Manual for Prevention, Inter-American Institute of Human Rights (IIDH) and Association for the Prevention of Torture (APT), 2004.
[12] Some of the above information is collated from http://www.homeoffice.gov.uk/justice/prisons/imb/index.html
[13] See for example Annual Report of IMB for Bedford Prison July 2002-June 2003
[14] See for example Annual Report of IMB for Blundeston Prison July 2002– June 2003. Note: 5 members of this board were magistrates which raises some questions about the representivity of the boards.

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Whilst organised nationally the IMB's are essentially local mechanisms and this raises particular issues in relation to the OPCAT. Further complicating the picture is the existence of the Prisons Inspectorate which conducts inspections and submits reports to the Home Secretary at the national level. The Inspectorate is staffed by a Chief Inspector plus a staff or around 32 people. The relation between the IMB's and the Prisons Inspectorate regarding the demands of the OPCAT demands further attention.

Denmark's Office of the Ombudsman

The Office of the Ombudsman of Denmark was established in 1955 to oversee the administration of state and local authorities. The Ombudsman, who is elected by the Parliament, is empowered to control that the rights of citizens are respected by the administrative authorities. Citizens can submit complaints to the Ombudsman and he is mandated to investigate cases on his own initiative. The Ombudsman also has a particular mandate to inspect institutions, where persons are deprived of their liberty, such as prisons, detention centres and psychiatric hospitals. The Ombudsman himself and members of his staff also participate in commissions and committees established by Government. The present law governing the Ombudsman Institution was adopted in 1997.

The Ombudsman's office has a 50 year history and in all that time inspections of state institutions where persons are deprived of their liberty has been a core aspect of the work. The Ombudsman sees it as his "particular duty" to maintain an awareness of the conditions of places where persons are more or less held against their will[15]. Since 1997 the inspections aspect of the Ombudsman's work has been expanded and penal establishments are targeted for systematic inspections. A typical inspection culminates in an exchange of views with the Management of the establishment. On average, the Ombudsman's Office conducts 25 inspections every year, and every single institution within the Prison Service (Kriminalforsorgen) has been inspected at least once since 1997.

In 2003 the Ombudsman's Office received a total of 3.956 complaints from citizens and took up another 177 cases on his own initiative. The Office dealt with 106 complaints pertaining to prison and remand centres. 76 cases were rejected whilst 18 resulted in recommendations without critique and 12 recommendations were made with accompanying critique of the authorities. In the same year 10 cases relating to conditions in places of detention were examined on the Ombudsman's own initiative.

In relation to OPCAT, the Office of the Ombudsman is envisaged to play a central role. In May 2004, the Danish Parliament decided unanimously that Denmark should ratify the OCPAT.[16] In the initial proposal for ratification[17], the Minister of Foreign Affairs foresaw that the Office of the Ombudsman should fulfil the role as National Preventive Mechanism. The final decision about the composition of this mechanism was, however, postponed following after a debate in the Foreign Affairs Committee.[18] This debate arouse amongst others as a result of a petition presented by RCT, which emphasises that the coming mechanism should have a multidisciplinary composition with expertise in three key fields: legal/administrative law, human rights and medicine[19]. Whereas it is clear that the Ombudsman's Office has extensive experience of monitoring and documenting prison conditions and operating as a kind of national mechanism there remain questions about how close the current arrangement matches the demands of OPCAT. It could perhaps be argued that a combination of mechanisms, which comprises lawyers and experts in human rights, experts in penitentiary systems and medical doctors with expertise in documentation of torture, would carry more weight.

[15] Parliament's Ombudsmans Report 2003: 929
[16] Parliamentary decision no. 129 dated 19 May 2004.
[17] Proposal for Parliamentary decision presented by the Minister of Foreign Affairs, 19 February 2004, FT A 6169.
[18] White Paper on Denmarks's ratification of the OPCAT, Foreign Affairs Committee, 29 April 2004.
[19] This is also recommended by APT in "OPCAT – A Manual for Prevention" (2004), p. 97.

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The conference offers the opportunity to discuss these issues and extract important lessons about the relevance for other countries of the Ombudsman's experience with prison inspections.

VI. Medical documentation of torture

The medical profession has a clear history of involvement both in treating victims of torture and documenting torture's incidence. Many of the most established treatment and research centres for torture victims today have their origins in small groups of medical professionals. The publication in 2002 of Peel and Iacopino's book *The Medical Documentation of Torture* marked a watershed in the institutionalisation of knowledge about a much needed emerging field of medical expertise. Building on the development of the Istanbul Protocol, alternatively known as "The Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment of Punishment" the book compiles articles by leading medical professionals in the field of medical documentation. Amongst other themes it addresses the problem of torture, the role of medical evidence in international tribunals, visits to prisoners and prison documentation, history taking and various forms of examination.

The Istanbul Protocol was published in 1999 and is an important tool in the work of documenting infringements of rights of torture victims. The Protocol contains international guidelines for examination and documentation of suspected torture cases and for reporting the findings to the relevant authorities. It also provides an overview of the relevant international conventions that apply. Several organisations work on popularising the Istanbul protocol globally aiming to promote knowledge of the Protocol not only amongst the legal and medical professions, but also amongst politicians, government employees, teachers, journalists and the population in general. Medical doctors or other health personnel conducting examinations of persons deprived of their liberty who may have been at risk of torture should be specially trained in this field, especially given the fact that lack of expertise and inexperience may well result in increased suffering for the prisoner at the hands of the authorities. The Istanbul protocol can be used for training purposes. Like other standardised instruments, however, the Istanbul Protocol faces challenges in relation to worldwide implementation. Serious questions need to be raised about the possibilities and limitations of standard solutions to complex local problems.

Documentation of torture and other human rights abuses are crucial to fighting torture. Medical documenttation distinguishes itself from other forms of documentation by virtue of the fact that a medical evaluation is included in the description. This can include medical evaluation of psychological and physical after-effects of torture amongst prisoners and evaluations of other factors related to health.

In the context of discussions about the setting up of national visiting mechanisms the expertise of medical doctors may be relevant. To what extent should medical expertise feature in bodies established to monitor places of detention? How does medical knowledge complement other forms of documentation and inspection? What particular challenges face doctors involved in proposed national visiting mechanism? We can envisage challenges of independence / neutrality, risks to personal safety of local doctors, and the double role the medical practitioner is put in when faced with sick, ill or injured prisoners, not least if it can be surmised that injury or illness is due to the deliberate actions or negligence of the authorities. The challenge lies both in the duty of care of the doctor and the expectations of prospective patients. Participation in such inspections may well present a wealth of ethical dilemmas for medical practitioners. These are some of the issues that the OPCAT raises in relation to the medical profession. At the same time it would seem foolish to sideline the expertise that has been built up over the last two decades in the area of medical documentation of torture and human rights abuses in places of detention.

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These are some of the questions that this section of the conference hopes to thematise. The conference will revisit existing means and models of medical documentation (Istanbul Protocol); minimum requirements for medical documentation under the OPCAT; experiences with the Istanbul Protocol and the development of a uniform gender-sensitive documentation tool (Istanbul re-visited).

VII. The role of research in the prevention of torture in places of detention

"Serious research that provides new knowledge in the area of incarceration is very scant" (Morris, in Weiss and South 1998: 4[20]). Despite the fact that prison studies have exerted tremendous influence on the social sciences (e.g Michel Foucault's *Discipline and Punish*, 1977 and Erving Goffman's *Asylums,* 1961) the field is surprisingly under-researched especially when it comes to studies of prisons outside of industrialised countries. The majority of prisons research has been dominated by sociological studies of prison life in industrialised countries. Most criminological and penological studies are concerned with trends, systems, ideas or policy. Whilst practitioners have been active in the field of penal reform in non-industrialised countries for some years, there is extremely little substantial research-based literature on prisons, especially at the level of prisoners' or prison guards' situated experience or utilising intensive field-based methodologies. Not only are truly international perspectives under-represented in the literature; developing countries are systematically excluded from comparative studies[21]. Prisoners themselves, are largely neglected or when studied are seen not in terms of relations and dynamics of everyday life, but as abstract entities effected by experiences of prisonisation and mortification. Prison guards and administrators are likewise neglected. Given this lack of scientific knowledge about prisons, on what basis can we develop effective strategies to prevent torture, inhuman and degrading treatment?

In a brief concluding section on the political control of prison systems, Dünkel and Van Zyl Smit, in their edited volume *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions*[22], point to the variety of supervisory bodies that exist from ombudsmen, to lay member boards, to regional inspection bodies and non-governmental organisations. They conclude however that there remain "major gaps in the legal and political control of prisons generally" (829). "The ideal", they claim "would be to have an international system of inspections and reporting that would feed into international political debate about imprisonment, but at this stage this seems unlikely" (829). It could perhaps be argued that the Optional Protocol is a step in this direction, a step that pragmatically acknowledges the necessity of developing local mechanisms at the national level, which all relate to a shared international standard. It is unclear, however, what an international political debate about imprisonment, would look like given the absence of knowledge about prisons of an international scope. Comparative prison studies are rare, especially comparative studies that look beyond industrialised nations. Comparative studies rest, of course, on the possibility of finding a shared point of comparison. In the case of many developing countries' prison systems we lack even the most basic knowledge of prison practices and dynamics. Given this situation, there is an important need for intensive, locally contextualised studies that might provide the groundwork for thinking about supervisory bodies and inspection mechanisms or even of other forms of intervention, that whilst cognizant of international standards are locally relevant and realistic. The point here is that before we can have an international political debate, we need a solid base in which to ground the debate. Perhaps at this point the most appropriate way forward, would be at the regional level (the regional prisons workshop held in

[20] Weiss, R.P. and South, N. (1998) *Comparing Prison Systems. Toward a Comparative and International Penology*. Amsterdam: Gordon and Breach Publishers.

[21] See Jefferson, A.M. (2004) Confronted by Practice: towards a critical psychology of prison practice in Nigeria. Ph.D. dissertation, Copenhagen University.

[22] 2001, published by Kluwer Law International, The Hague / London / Boston.

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Guatemala in 2004 provides one model for this[23]). The need for ongoing and innovative research is clear.

Research on prisons and places of detention has in itself a clear and obvious role in the quest to adequately document, what goes on in such institutions, whether the focus is on the abuse of prisoners, the dynamics of practice, the organisation and structures of prisons, the laws governing practice or whatever. At the same time as gathering material and data about such institutions and the actors implicated in them, research also has an analytic element, whereby explanatory models and conceptual tools for understanding prison practices are being developed in ongoing conversation with empirical material. This is vital, not least to complement and help make sense of the wealth of descriptive and denunciatory material amassed by non-governmental and reform organisations.

Research also has the potential to perform evaluative analyses of for example ongoing interventions designed to bring about change in such institutions (e.g. monitoring visits) and to assist in the identification, development and implementation of good practice.

In contrast to visits by inspections teams, research often involves repeat visits over an extended period of time, where the researcher engages in day to day relations with implicated actors that include both prisoners and prison staff. Such contact and the fact that it occurs over an extended time span has the advantage of offering insights into the way such institutions change through time. There are many dilemmas and difficulties involved with conducting research in such sensitive sites as prisons and places of detention but internationally recognised scholars have demonstrated that it is possible and have often linked their academic research with an activist agenda.

Research cuts across the three dimensions of prevention work that RCT's policy emphasises (health, human rights and international co-operation) and can be a contributor to the prevention of torture by revealing and documenting precisely and analysing carefully the logic(s) of the practices of places of detention (see also Jefferson in RCT's annual report 2004 on research as prevention).

The above remarks can be summarised in point form as a response to the question: What can research offer documentation and monitoring of places of detention?

1. Research involves the systematisation and collation of already existing knowledge
2. Research consists of the development of new knowledge.
3. Research reveals the empirical reality
4. Research develops explanatory models and conceptual tools to help us understand practice
5. Research enables us to evaluate the value of different methods and forms of intervention
6. Research can inform, problematise and legitimate particular forms of intervention/advocacy

VIII. Conclusion

This concept paper has introduced the themes of the conference and attempted to highlight some of the challenges associated with preventing torture in places of detention. It is the hope of the authors that this will help direct the attention of participants in the conference such that the output of the conference is maximised. By bringing together scholars, practitioners and activists from across disciplines and across the world, it is our expectation that the challenges can be confronted in an innovative, constructive and forward looking manner, and the foundations for ongoing discussions can be established.

[23] Regional workshop on prisons and sustainability, Guatemala, 4-8th October 2004.

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