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Monitoring places of detention and the role of preventive monitoring

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In light of the growing number of OPCAT ratifications, the role of civil society monitoring in monitoring of places of detention is subject to renewed discussion and has seen restrictions due to a misguided interpretation by some states of NPMs (National Preventive Mechanisms) constituting an exclusive monitoring body.

Also, OPCAT ratification and the designation of an NPM is often seen as a final aim and the end of the process in torture prevention. In fact, however, the establishment of such an institution is only one of the measures required under international law in order to prevent and address allegations of torture and ill-treatment. Various measures, a sustained commitment and a multitude of actors are needed in order to address such abuses.

The establishment of NPMs has resulted in some misunderstandings as to the supplementary role of both institutions.

In those countries where an NPM has not yet been established, civil society monitoring is vital in order to provide for external scrutiny to places of detention. In countries of the former Soviet Union, civil society monitoring boards have in fact been the pioneers in exposing places of detention to some transparency.

Yet, even in countries where an NPM has been established civil society, organised as monitoring boards or otherwise, continue to play an important role. They should not be considered as a duplication of the work of NPMs, but as complementary and supportive to the activities of NPMs in various ways.

It is important to stress that NPMs are conceptualised as preventive monitoring bodies, ie. aimed at identifying structural deficiencies in places of detention which ought to be addressed as general risk factors for torture and

ill-treatment of detainees. At the same time, the mandate and set-up of NPMs is not well suited to pursue individual allegations of torture or ill-treatment, including in the light of the cooperative and confidential concept of NPMs envisaged in OPCAT.

By contrast, the tradition of civil society monitoring has been mainly reactive, in taking up individual cases, advocating for their investigation and prosecution, and reporting on such cases in public reports. However, frequently they have also reported on conditions of detention, including healthcare, food and other rights of inmates.

PRI would like to emphasise that only a multi-layered monitoring of the places of deprivation of liberty can bring about positive change.

A combination of preventive work (looking into more general risk factors) and reactive monitoring (taking up individual cases) is ideal in order to increase the effectiveness of monitoring of places of deprivation of liberty.

Such combination should include an analysis of the reported individual cases in order to identify risk factors and policy recommendations. Such analysis would be particularly useful in countries that lack preventive monitoring capacity. It would lead to the identification of systemic deficiencies and patterns of abuse to be addressed beyond individual complaints, and benefit inmates beyond the response to the individual case.

For example, past experience demonstrates that more often than not individual cases presented in reports by civil society monitoring boards are denied by the respective ministries, regularly stating that during the follow-up on the referred cases the individuals concerned had withdrawn their complaints. PRI would like to flag that a regular course of complaints of this kind indicates that complainants face the risk of reprisals, a practice that constitutes a systemic concern in itself.

PRI would also like to reiterate that in order to be an effective tool of torture prevention, visits need to be frequent and unannounced, and monitors must be able to interview inmates confidentially and without the presence of prison guards.

In many countries, due to the distances involved and the geographical distribution of penitentiary institutions and other places of detention, several monitoring boards are functioning. In such contexts, close cooperation and coordination is vital, including for consistent methodology and standards to be applied. This can be achieved by the establishment of coordination councils for the exchange of information and inter-regional cooperation.

The creation of networks of human rights NGOs would also be a beneficial step in order to allow for the comprehensive consideration of all data generated by the various monitoring boards and hence the identification of patterns of abuse in specific places of detention or the system as a whole.

Lastly, we would like to use the opportunity to flag that PRI in cooperation with the Association for the Prevention of Torture (APT) work on the development of a practical evaluative tool for NPMs. The developed instrument

will take into account the factors that contribute to an environment where torture and ill-treatment can arise. It will allow to identify gaps in the mandate of NPMs, their approach and methodology, and to scrutinise the progress achieved by the existing monitoring mechanisms in the fulfilment of their preventive mandates.

PRI would like to recommend to states parties:

- To continue granting NGOs access to places of detention, irrespective of whether an NPM has been established;
- For the Russian Federation and Tajikistan to ratify the Optional Protocol to the Convention Against Torture and to establish an independent NPM, following genuine consultation with civil society. The following other OSCE member states have also not ratified yet: Andorra, Austria, Belarus, Belgium, Canada, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Norway, Portugal, San Marino, Slovakia, Turkey, Turkmenistan, USA and Uzbekistan.
- For Georgia to ensure that unhindered access to places of deprivation of liberty is guaranteed to civil society organisations to conduct monitoring activities as well as to provide training to persons deprived of their liberty.
- For Armenia to properly investigate cases of torture reported by the civil society monitoring boards in places of deprivation of liberty and to hold the perpetrators accountable based on due process.
- For Azerbaijan to guarantee the independence of the NPM and to address the issue of torture in places of detention.
- For Kazakhstan to adopt the NPM law in accordance with the SPT recommendations and with the genuine involvement of civil society in the draft law discussions and refrain from the idea of forming NPM by state procurement procedures.
- For Kyrgyzstan to guarantee sufficient state funding for the independent and professional functioning of the NPM.
- For Ukraine to make the process of discussing the draft law on a NPM more inclusive and undertake close consultations with civil society.

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