



Check against delivery

'Closing the gap: setting an agenda for eradication'

**Remarks by the OMCT Secretary General
On the occasion of the 30 years anniversary of the UN Convention Against Torture
November 4, 2014**

Excellency's, ladies and gentlemen, dear colleagues and friends,

It is a great honour to address you on the occasion of the 30th anniversary of the UN Convention Against Torture. Anniversaries such as this one are rare opportunities to take stock of our successes and failures, to revisit and re-energize our determination in putting the Convention into reality.

I am going to speak to you about the implementation gap persisting thirty years after the adoption of the UN Convention Against Torture. I will do so from the perspective of the principal civil society network against torture having worked for three decades on its domestic implementation and accompanying civil society organisations in the access of the CAT to trigger anti-torture reforms.

(1) Taking stock on the state of implementation:

On a positive side we see successes in countries notably in relation to new laws and institutional reforms. These advances coincide or correspond with genuine legal and institutional reform processes in state parties to the Convention. It is thus vital for us at the OMCT to use genuine transition processes in order to anchor the Convention Against Torture domestically.

The second significant change is the mobilization of civil society in the fight against torture. Some twenty years ago when OMCT started to facilitate direct access of local organisations towards the CAT the reporting process was western dominated and elitist. Today domestic actors from north and south access and use the Conventions implementation mechanisms. This evidences powerfully the emergence of a global movement against torture, the empowerment and democratisation of civil society and constitutes itself a key condition for effective implementation.

For this reason OMCT launched earlier this year a global initiative mobilizing and coordinating civil society towards the UN Committee Against Torture, and accompanying partners in their dialogue with state institutions on follow-up implementation.

(2) Targeting the eradication of torture:

First, it is evident that the so-called 'implementation gap' is today the number one challenge in the fight against torture. It is also this implementation gap that challenges the very integrity and credibility of the international system for the freedom from torture. We could hardly envision a stronger and more solid legal foundation in the fight against torture yet sadly we have despite all advances not moved significantly from legal prohibition to real eradication.

Torture can have many contexts and facets ranging from torture as a tool of political repression, to the intimidation of communities, to the regular ill-treatment of criminal suspects, minority or marginalized

communities or again in the context of conflict and counter-terrorism. What unites these different scenarios, however, is typically the logic of 'us' versus 'them', which is a key component in the sliding dehumanization underlying torture. Torture is characterized often by un-imaginable cruelty and suffering. It destroys personalities, and leaves human beings traumatised and scattered for life. Torture severely affects the fabric of society and where it is systematic it terrorizes in the true term of the word societies and communities. It also distorts the rule of law and our state institutions. Ultimately, where there is torture there is no rule of law, where there is the rule of law torture can have no place. It is this very paradox of firm legal obligation on one side and continuous practice on the other that needs to be addressed.

The term implementation may sound slightly sanitized and abstract as if the question is a matter of nuance or technicality. To be clear, implementing the Convention requires technical know-how. But it is above all an obligation of results and a clear commitment for the 'eradication of torture'.

This is so because torture is rarely coincidental or the result of the 'bad apple'. It is largely institutional, the product of policies or the lack thereof, and a lack of capacity or willingness to follow through on remedies, especially when its victims may not appear sympathetic. The good news, however, is that we cannot only 'implement' but also 'eradicate torture'.

(3) Ensuring qualitative legal and institutional reforms:

Building effective legal and institutional frameworks is an important pillar of implementation. This is even more important as torture places a burden on the rule of law. The lack of transparency, its cloud of secrecy, the false perception of the protection of the corps spirit, the perception of 'the other', all this can make the fight against torture a real litmus test for the rule of law.

Legal safeguards, such as immediate access to lawyers, judges or independent medical expertise, or that increase transparency over closed institution, are fundamentally important. Equally important is the effective criminalization of torture in line with the Conventions requirements. The requirements of national preventive mechanisms under the Optional Protocol, too, provide a new tool to fight against torture. The reports of the Committee Against Torture, amongst others, are replete with recommending such safeguards and institutional changes.

This is all conventional wisdom. Unfortunately the reality differs as institutions lack independence or resources, operate outside a rule of law culture, or face corruption – all preventing reforms to produce real change. In others the judiciary jurisdiction is limited (for example when dealing with intelligence or other actors).

The real test is not criminalization as a form of implementation but its application and subsequent prosecutions. We have seen examples in which the transfer of authority over arrest and detention from prosecuting to judicial authorities have de facto only changed the recipient of potential bribes but not in a reduction of detention or better safeguard against abuse. While all systems provide remedies on paper, very few of those have effectively been used to remedy torture. The same goes for national preventive mechanisms, which can play a useful role in the eradication of torture, but that are – just like many national human rights institutions – at times lack independence, resources and at times even a genuine human rights culture.

We urgently need legal reforms but it is insufficient without a qualitative impact. An often-neglected point in this regard is how to ensure that legal change goes with real culture transformation.

(4) Refocusing attention on accountability and institutional cultures:

Building an institutional culture against torture is not an easy task, especially when dealing with closed institutions. It has often to do with complex police or penitentiary reforms that transform from a 'police force' to a 'police service', or that transfer authority over custody from ministries of interior to justice with the aim of humanizing prison life.

But culture change also has directly to do with the question of accountability. Nothing prevents better than accountability and nothing maintains the practice of torture more than the knowledge that the torturer will not go punished or face consequences. This is not only a point of principle. I have worked in many transition contexts in which I have seen promising legal reforms failing due to an unwillingness to confront the difficult topic of impunity. A few points of consideration:

First, we need political will to tackle impunity and a sea-change in the way we look at accountability. I remember the testimony of a former police inspector general in India who challenged the common premise seen in many countries that police, military or intelligence personnel have to be protected from prosecution. He told us: "We are told that we need to protect the morale of the troops. I never quite understood why protecting a rapist, a torturer should be good for the morale of the troops".

Second, we need evidence-based research on why investigations are hardly ever successful, whether for reasons of institutional independence and set-up, culture or undue legal bars to investigations, be they immunity, indemnity, good faith, state secrecy or other doctrines that impede accountability. Research by some of our members provides insights into the factors that impede investigations and innovative independent mechanisms of investigations.

Third, we have to work more with prosecutors. It does not require a human rights lawyer to tackle torture. Torture is a crime and the fact that it is committed by the state, and/or in the name of protecting our security makes it only worse and more serious – not more acceptable. We need prosecutors who see it as their inherent ethical responsibility to fight the crime of torture.

Fourth, the fight against torture concerns all of us. It is not only an issue for technicians. One of the key lessons learned is that we have not sufficiently mobilized the public to support anti-torture reforms. We are dealing with a legal document that is based on values and we can be more creative in fostering public support in the fight against torture. A good practice has been our experience in using arts, music, including Rap, Graffiti to gather general support to the cause against torture. Far more could be done here also in the North in which the fight against terrorism left dangerous traces in the potential acceptance of torture.

(5) Civil society as a key constituency for reform and implementation:

Fostering the rejection of torture in society is intrinsically linked to reinforcing, supporting and enabling civil society organisations to document and report on torture, to provide victims with assistance and support in pursuing justice and accessing rehabilitation.

Civil society is also crucial in providing expertise on anti-torture reforms and a forceful advocate for the implementation of the Convention and the Committee's recommendations. The Convention system with its reporting, inquiry and complaint procedures itself remains a mute tool if civil society cannot provide information, access and engage them, and ultimately there is no dynamic on follow-up implementation if not for a mobilized civil society taking interest in the process.

In fact, authoritative studies on the impact of human rights treaties reveal two factors for success:

First, situations in which ratification or reporting coincides with a comprehensive legal and constitutional reform process - firmly incorporating the Convention into domestic law;

Second, situations in which treaty ratification or reporting has led to a constituency building of civil society coming together to articulate policy reforms and vindicate rights. In other words support to civil society and constituency building has to be centre stage in any credible implementation strategy. We see real impact where broader coalition building is taking place, and when this goes beyond 'anti-torture organisations' to include those working with vulnerable communities, child or women rights issues. We encourage the Convention Against Torture Initiative to ensure civil society partnership and support to civil society. The ability for civil society to work on torture is also a baseline for any meaningful ratification of the Convention.

(6) Supporting an enabling framework and protecting anti-torture activists:

One of the most important impediments to the implementation of the Convention is the shrinking space that many organisations working on torture face in today's world.

It is the reality thirty years into the Convention Against Torture that we face multiple cases in which our network member working on torture face harassment, persecution, arrest or defamation campaigns. In fact two of the members of our own General Assembly have been or are presently imprisoned because of the work they are doing to fight torture, one member has been killed four years ago, two had to be temporarily relocated this year because of imminent threats, another faces proceedings for having submitted information to the UN Committee Against Torture.

This, too, is an alarming implementation reality.

For anti-torture reforms to be credible there needs to be dialogue with and not harassment of defenders working on torture. In cases where this is not done, states also deprive themselves of the rich expertise that anti-torture organisations possess for the implementation debate. I was six months ago in Kenya on a follow-up mission on the implementation of the Convention Against Torture and it was remarkable to see the enormous contributions that Kenyan civil society provided to the constitutional and legal reforms over the last years on torture. But it has been equally disturbing that they face threats and defamation when tackling the issue of impunity.

We should be clear on occasion like this: it is the function, amongst others, of civil society organisations to speak out even under the risk of raising issues that may 'hurt, shock or disquiet' to use the famous language of the European Court of Human Rights. We witness with concerns in some countries a tendency of dividing civil society in 'good' and 'bad' depending on whether they provide services or whether they document, report on torture and provide advocacy for reforms.

(7) Special attention for risk areas of torture, including counter-terrorism

History teaches us that are heightened risks for torture and impunity requiring special vigilance and policies to counter these risks. Let me only mention two concerns here:

First, we know that torture is targeting some communities more than others, notably those who are stigmatized, marginalized, minority communities, women or children, or migrants. The fact remains today that the risk of torture is – including in Europe – far higher for let's say a young Roma man than for others, and so is the likelihood that he or she will be able to access effective remedies. Eradicating torture and implementing the Convention Against Torture should require a special focus in the years to come. The increase of social tensions of resources amongst others is likely to further exacerbate tension that is likely also to result in torture and other human rights violations. As a consequence, implementation strategies have to be designed for such communities, including access to justice programs, anti-discrimination policies and the representation of minority communities within law enforcement and judiciary. It is these

communities that also need to be enabled to participate in the domestic and international debate on torture. This is an area that the OMCT will seek to address increasingly in the coming years.

Second, national security crisis, threats of terrorism, pose particular challenges to the freedom from torture. While not new this area has become a global concern post 9-11. We have also seen the falling of the myth that democracies cannot design policies of torture. Terrorist threats need to be addressed but within the rule of law and not outside. We have to look into ways to withstand the regular temptation in counter-terrorism legislation to reduce key safeguards creating heightened risks of torture and impunity, we have to ensure above all that all actors, including intelligence officers, are duly democratically and legally accountable. Finally, if we do not wish to develop two sets of victims and start distinguishing between 'good' and 'bad' victims of torture we need to stay principled in providing remedies and reparation for torture victims.

(8) A new dynamic bringing the proceedings of the Committee Against Torture home:

Finally, let me turn to my last but very important point:

We cannot address the question of implementation and eradication without speaking about the fundamental role of the Committee Against Torture itself. To start with all implementation mechanisms of the Committee – reporting, inquiry procedure and individual complaints – play a fundamental role in the fight against torture and have to be reinforced and supported.

In our experience targeting all three procedures we can see in particular the positive impact that litigation can have, the importance of reporting when society is mobilized and states are willing to use reporting as a true stocktaking and dialogue, and we have also seen positively the effect of the inquiry procedure which we hope to see reinforced and used more frequently.

It is the complaint function that needs to be integrated into initiatives such as the Convention Against Torture Initiative mentioned today. The right to remedy and reparation is of fundamental importance to the fight against torture and experience shows that litigating torture is often an uphill battle. Providing a specialized international remedy is often the only avail for victims of torture. The commitment to a victim centred approach as often proclaimed by states but should then also include a commitment to the complaint function under article 20 of the Convention.

The question of implementation concerns also the question of how state parties engage with the Committee Against Torture. We see a good number of countries with long-overdue or non-reporting status. To give you but one example: Bangladesh has ratified the Convention Against Torture in 1999, but so far not submitted any report. Others may report on a regular basis but engaging in very limited fashion in real implementation. I remember vividly going to a Central Asian country years back six months after the report by CAT was issued. The Government Working group having been established to submit and present the report was already abolished as the process was concluded with the hearing in Geneva. This shows that for many states engagement in the reporting process is more seen as an administrative obligation or exercise. This risks undermining the credibility also of the global human rights infrastructure if we are not taking steps to remedy this situation.

What we need is a new energy and dynamics to bring the Convention and its implementing mechanisms home. I suggest a three-fold strategy of access, communication and follow-up:

First, mobilizing civil society and government structures within the reporting process taking the process more serious as a real stocktaking;

Second, ensuring visibility of the Committee's proceedings. A group of NGOs has started to regularly web-cast the session – though we believe that this should be ultimately an OHCHR obligation. Today, OMCT is launching a new dedicated blog on the CAT, we had very positive experiences last year – with Danish support – to train journalists in parallel to the sessions, we are piloting this session with domestic screening events in countries reporting to CAT. Social media, new technology allow reaching out beyond a selected few. We believe far more could be done and we would be happy to work with states and the Office of the High Commissioner in this regard.

Third, ensuring follow-up to the recommendations on the domestic level. Follow-up missions by organisations such as OMCT, engaging in national anti-torture consultations and round-tables, with the aim of using the recommendations of the Committee of entry points for substantial reforms are all best practices that we would be happy to share.

If we are not re-energizing on the implementation of CAT recommendations we are going to produce an increased level of frustration and disillusionment into the global system of human rights protection. Countering this tendency also requires a greater coherence with procedures, such as the Universal Periodic Review, that should become not alternative processes but tools for the follow-up and implementation of CAT recommendations.

Finally, we believe that the Committee plays a fundamental role also in relation to setting a high standard in the interpretation of the Convention. We welcome the recent general comment on article 14 and hope that similar general comment will help to clarify the interpretation of other principles, such as the outdated comment on the non-refoulement principle. The CAT has played an important innovative role in relation to the mainstreaming of child rights and gender issues and a good number of other aspects. We hope that it will also remain in the coming years a progressive actors giving guidance on the implementation of the Convention.

Conclusion: towards a re-commitment to eradicate torture

Thirty years ago the international community committed unequivocally to the eradication of torture. At its basis was an understanding that the human dignity of each individual is sacred. As much as the Convention represents a legal commitment it is based on fundamental values.

In a world in which new divides build up between east and west, north or south, and non-state actors exercise authority over territories denying the very validity of the universal value protected by the Convention Against Torture it is ever more important to stay principled. Neglecting our global values or giving in to the temptation of double standards would be the single biggest mistake in the fight for freedom from torture.

Moving to eradication needs to be our common objective. The instruments and know-how are there.

In order to move forward we have to follow a holistic approach to torture, reinforce civil society as a prime constituency and to do much more to bring the recommendations of the UN Committee Against Torture home. Civil society is ready to play its role in this.

Geneva 4 November 2014