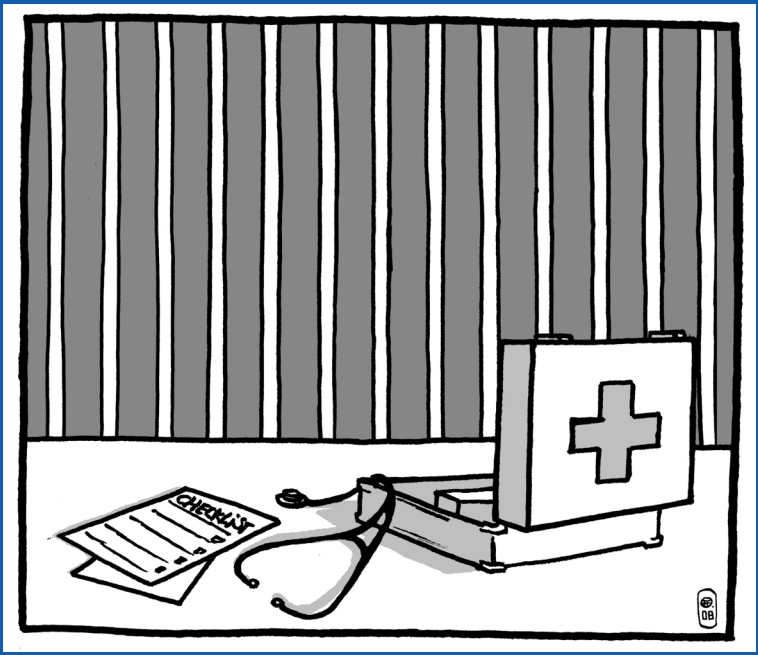
Visiting places of detention

What role for physicians and other health professionals?



apt

association pour la prévention de la torture

association for the prevention of torture

asociación para la prevención de la tortura

Association for the Prevention of Torture

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva. It was founded by the Swiss banker and lawyer, Jean-Jacques Gautier, in 1977.

The APT envisions a world in which no one is subjected to torture or cruel, inhuman or degrading treatment or punishment, as promised by the Universal Declaration of Human Rights.

The APT focuses on the prevention of torture, rather than denunciations of individual cases or the rehabilitation of victims. This strategic focus on prevention enables the APT to collaborate with state authorities, police services, the judiciary, national institutions, academics and NGOs that are committed to institutional reform and changing practices.

To prevent torture, the APT focuses on three integrated objectives:

1. Transparency in institutions
To promote outside scrutiny and accountability of institutions where people are deprived of their liberty, through independent visiting and other monitoring mechanisms.

2. Effective legal frameworks
To ensure that international, regional and national legal norms for the prevention of torture and other ill-treatment are universally promoted, respected and implemented.

3. Capacity strengthening
To strengthen the capacity of national and international actors concerned with persons deprived of their liberty by increasing their knowledge and commitment to prevention practices.

Association for the Prevention of Torture
10, Route de Ferney, P.O. Box 2267 – 1211 Geneva 2 – Switzerland
Tel: +41 22 919 21 70 – Fax: +41 22 919 21 80
E-mail: apt@apt.ch – Website: www.apt.ch

Avec le soutien de la
Loterie Romande

This publication has been made possible thanks to the support of the Loterie Romande.

Visiting places of detention

What role for physicians and other health professionals?

Visiting places of detention: What role for physicians and other health professionals?

Published by The Association for the Prevention of Torture

For copies of this publication and further information, please contact:

The Association for the Prevention of Torture (APT)
10 Route de Ferney
P.O. Box 2267
CH 1211 Geneva 2
Switzerland

Tel: + 41 22 919 21 70
Fax: + 41 22 919 21 80
E-mail: apt@apt.ch

Website: www.apt.ch

Copyright © 2008, Association for the Prevention of Torture

All rights reserved. Materials contained in this publication may be freely quoted or reprinted, provided credit is given to the source. Requests for permission to reproduce or translate the publication should be addressed to the APT (see address above).

ISBN 978-2-940337-21-7

Cover illustration by Tristan Thévenoz
Design and layout by minimum graphics
Printed by Imprimerie Villière, Geneva, September 2009

Contents

Acknowledgments

This brochure is based on interviews with various physicians specialized in visits to places of detention who responded to a series of questions that were asked by the APT. On 26 June 2007, a meeting brought together certain of these physicians to review the first version of the text. The second draft was then sent to a broader group of experts for consultation before its finalization.

We would like to thank the following people for their contribution to the production of this brochure:

Mr Jonathan Beynon, Physician, International Committee of the Red Cross (United Kingdom);

Ms Natalie Drew, Technical Officer, Mental Health Policy and Service Development team, Department of Mental Health and Substance Abuse, World Health Organization;

Dr Michelle Funk, Coordinator, Mental Health Policy and Service Development team, Department of Mental Health and Substance Abuse, World Health Organization;

Mr Erik Holst, Physician, Professor, APT board member, former Executive Vice-President of IRCT (Denmark);

Mr Krassimir Kanev, Chairman of the Bulgarian Helsinki Committee, member of the Board of Trustees of the UN Voluntary Fund for Victims of Torture, APT board member (Bulgaria);

Ms Alessandra Ménegon, Head of Unit Persons Deprived of Liberty, Central Tracing Agency and Protection Division, International Committee of the Red Cross (Italy);

Mr Cyrille Orizet, Psychiatrist, European Hospital Georges Pompidou, Paris; expert for the CPT and former member of CPT secretariat (France);

Ms Catherine Paulet, Psychiatrist, *Service médico-psychologique régional*, « La Baumette » prison, Marseille, expert for the CPT (France) ;

Ms Pau Perez, Psychiatrist, Director, Severe Trauma Unit, La Paz Hospital, Madrid; Director, Graduate Programme for Mental Health and Political Violence, Complutense University Madrid (Spain);

Mr Hernan Reyes, Physician, International Committee of the Red Cross (Chile);

Mr Jean-Pierre Restellini, Physician, jurist, member of the CPT (Switzerland);

Ms Paz Rojas, Neurologist, Director of CODEPHU, member of APT's board (Chile);

Mr Morris Tidball-Binz, Forensic Doctor, International Committee of the Red Cross (Argentina).

Introduction

For 30 years, the Association for the Prevention of Torture (APT) has promoted the idea of visits by independent experts to all places of detention as one of the most effective ways to prevent torture and ill-treatment.

This idea became a reality at regional level when the Council of Europe adopted the European Convention for the Prevention of Torture (ECPT) which led to the creation of a visiting body for Europe. This body, known as the Committee from the Prevention of Torture (CPT), is authorised to conduct unannounced visits to all places of detention in all the member states of the Council of Europe. When the United Nations adopted the Optional Protocol to the Convention against Torture (OPCAT), this idea took on a universal dimension. The innovative nature of the OPCAT, which entered into force on 22 June 2006, is its double system of visits conducted by an international body as well as national mechanisms. International visits are carried out by the new Sub-committee on the Prevention of Torture (SPT) of the United Nations, while each State Party has the obligation to establish one or more national visiting bodies, known as National Preventive Mechanisms (NPMs).

States Parties have a certain leeway concerning the type and structure of their national mechanisms, as long as the mandates, powers and guarantees of these NPMs fulfil the criteria defined by the OPCAT.[1] In this regard, independence is crucial and States Parties have to guarantee "the functional independence (…) as well as the independence of their personnel" (Art. 18 OPCAT). Not only should NPM members and their staff

[1] For a more detailed interpretation of OPCAT's requirements see the APT *Guide to the Establishment and Designation of National Preventive Mechanisms*, 2006.

be personally and institutionally independent of the authorities, but the NPMs should also enjoy financial independence.

Whilst the text is quite detailed regarding the powers and guarantees of NPMs, the OPCAT is not very specific about the composition of the mechanism. Article 18.2 of the OPCAT states only that: "The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge".[2]

Although the balance of different fields of professional knowledge is not specifically mentioned in the text, the APT has consistently underlined the importance of any visiting mechanism being multidisciplinary. However, the current trend in designating NPMs favours the selection of existing national bodies, most of which are primarily (if not exclusively) composed of lawyers.

It is within this context that the APT considered it necessary to emphasize the importance of ensuring that a variety of professional backgrounds, and in particular medical expertise, are represented within national visiting bodies.

This brochure has been produced for all mechanisms conducting regular visits to places of detention, especially NPMs within the framework of OPCAT. It aims to demonstrate the necessity of including, amongst others, physicians and/or other qualified health professionals at all levels of the mechanism: within the decision-making bodies, the secretariat and finally the visiting teams.

Only a physician and/or other qualified health professional can fully assess all aspects of a place of detention that impact upon health; discuss specific health issues with detainees and with the authorities; assess the adequacy and appropriateness of health services in the place of detention and of the care being provided; and crucially, provide essential medical expertise in the prevention of torture and ill-treatment.

[2] Art. 18.2 of the OPCAT continues to state: "They shall strive for a gender balance and the adequate representation of ethic and minority groups in the country."

PART I

Health professionals and the context of visits at the national level – generalities

There is increasing acceptance amongst States that in order to fulfil their obligations to protect the human rights of all individuals, including those deprived of their liberty, places of detention must become more transparent. The existence and/or creation of independent visiting mechanisms to places of detention at the national level are crucial for this transparency.

All types of places, where people are deprived of their liberty, should be subjected to visits by independent national bodies, not only prisons, pre-trial detention centres or police stations, but also centres for migrants, mental health institutions, centres for minors and military detention facilities.[3]

The primary purpose of regular and unannounced visits by an independent national body to all places of detention is to monitor respect for the human rights of detainees and deter violations, in particular torture and other forms of ill-treatment. Such a body also provides guidance on improving all aspects of the conditions of detention, as these conditions themselves may amount to, or contribute to, a form of ill-treatment.

A comprehensive approach to visits to places of detention requires the monitoring and documentation of possible torture and other forms of ill- treatment, including, among others, the assessment of conditions of detention (including infrastructure, water, sanitation and hygiene), the adequacy and appropriateness of healthcare, and the respect for, and protection of, human rights and judicial guarantees. Such multi-faceted assessments require multidisciplinary analysis and expertise from

[3] Art. 4.1 of the OPCAT provides the following broad definition of places of detention: "any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence."

a multidisciplinary team comprising legal, human rights as well as medical expertise.

1. The concept of preventive visits

Monitoring places of detention through regular preventive visits is a process which, over time, aims at preventing torture and ill-treatment through the first hand examination of all aspects of conditions of detention and treatment of persons deprived of their liberty. The fact that independent national visiting bodies have access to all types of places of detention, without prior notice, has a strong deterrent effect.

The UN Special Rapporteur on torture provided an excellent synthesis of the essence of these preventive visits:

> "The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention (…). Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed."[4]

The preventive nature of these visits to places of detention distinguishes them in purpose and methodology from other types of visits that independent national bodies may conduct and, in particular, from visits to investigate individual complaints filed by detainees.

[4] United Nations Special Rapporteur on Torture, UN document A/61/259 (14 August 2006), para. 72.

Characteristics of preventive visits

- **Regular rather than one-off visits**
  These visits are part of a process which means that visits to a given place of detention will be repeated at a certain frequency.
- **Proactive rather than reactive**
  These visits take place before, rather than after a specific incident. They are not carried out in response to complaints from detainees or specific incidents. They can take place at any time, even if there is no apparent problem.[5]
- **Global rather than individual**
  These visits are not aimed at responding to individual cases. Instead their objective is to analyse the place of detention as a system, and focus on all aspects related to the deprivation of liberty. The aim is to identify any element which could lead to torture or the ill-treatment of detainees, or which might lead to another type of human rights violation.
- **Based on cooperation rather than denunciation**
  The visit is a starting point for a constructive dialogue which provides concrete recommendations to improve the system in the long term.

[5] This does not prevent the national body from carrying out a visit in response to specific events.

2. Multidisciplinary national mechanisms: the importance of the medical perspective

As illustrated above, preventive visits are comprehensive, as they look at all the aspects of detention and, as such, require a multidisciplinary approach.[6] The latter must be reflected in the composition of the national mechanism, in its personnel as well as in the visiting teams themselves. In addition to the other relevant expertise, there should be **a physician or other qualified health professional in each visiting team**.

In order to form an objective analysis of the functioning of a place of detention, including the examination of the treatment of detainees and conditions of detention, it is necessary to summarise the following points of view:

1. The point of view of the authorities (including the staff);
2. The point of view of the detainees;
3. The point of view of the various members of the visiting team.

As the perception of these points of view can vary greatly depending on the professional background of the members of the visiting team, it is important to have a variety of professions.

While particular expertise in criminal justice systems and judicial guarantees will be needed, the participation of a physician is necessary to address particularly sensitive health issues related to torture and ill-treatment, to assess the health system (for example through an analysis of medical files and records and discussions with the healthcare staff in the place of detention), and to assess the impact of general conditions of detention (hygiene, nutrition, access to showers, overcrowding, etc.) on the health

[6] The UN Special Rapporteur on Torture has stated that, for NPMs, "it is of the utmost importance that States Parties (…) ensure membership from different professions" op. cit., para 71. Each General Report on the CPT's activities also contains a paragraph dealing with its composition, underlining the importance of a diversity of professional expertise among the members. The 17th General Report of activities states that "the CPT has at present a relatively good spread of professional experience within its membership. Nevertheless, there is a predominance of expertise in the field of prisons. (…) The CPT would also benefit from the presence among its members of more doctors with relevant forensic skills (in particular as regards the observing and recording of physicals injuries (…)". CPT/Inf(2007)39, para 30.

of the detained population. This medical expertise enhances the quality of monitoring which is conducted by the visiting mechanisms.

The analysis of the functioning of a place of detention also involves the examination of its compliance with international and national norms and standards regarding conditions of detention. Within this context, physicians and other health professionals can provide a specific and substantial contribution regarding the content and application of norms and standards, especially on the provision of, and access to, healthcare and on codes of ethical practice for those working in places of detention.

Nevertheless, the medical perspective should not be limited to visits. Monitoring places of detention is a process and the visit is a means not an end in itself. It provides a starting point for a constructive dialogue with the authorities. This dialogue, which is based on a visit report and concrete recommendations, aims to improve the treatment and conditions of persons who are deprived of their liberty.

A physician, or other health professional, can provide an invaluable contribution to the drafting of the report and recommendations, to the dialogue with the authorities, as well as to the follow-up of the implementation of recommendations. A medical perspective is vital in all reflections on preventing torture and improving the system and conditions of detention, including observations on legislative aspects.[7]

Finally, it is also important that a physician, or other suitably qualified health professional, is part of a visiting mechanism in order to discuss medical issues with relevant national health authorities (e.g. prison health service, Ministry of Health, etc.) or with international bodies. This is especially important for NPMs under the OPCAT, as direct contacts can and should be established between the NPM and the SPT.

Physicians and health professionals should therefore be included not only in the personnel or among the experts, but also in the decision-making body of the visiting mechanism.

[7] According to Art. 19 of the OPCAT, the mandate of the NPMs is to regularly examine the treatment of persons deprived of their liberty, to make recommendations to the relevant authorities, and to submit observations concerning existing or draft legislation.

PART II

The specific role of physicians and other health professionals during visits

Prior to the visit, important preparatory work should be carried out in order for the visiting team to optimise the time spent inside the place of detention. In particular, members of the visiting team should carefully organise their work[8] and collect all available information regarding the place to be visited.[9]

During a visit to a place of detention,[10] the physician is part of the visiting team and therefore contributes to all the activities of the delegation. He/she takes part in the initial meeting with the detaining authorities, visits all the facilities and conducts private interviews with staff and with persons deprived of their liberty.[11] He/she also participates in the final meeting and discussion with the detaining authority at the end of the visit. The role of the physician is broader than simply identifying and documenting alleged cases of torture, and extends to analysing all aspects of detention that impact on health, and the functioning of, and access to, both the healthcare services within the place of detention and community health facilities. The visiting physician must also assess and disseminate information on standards regarding ethical practice for health professionals working in places of detention.

---

[8] This includes: identification of a team leader, division of tasks between the team and ensuring that all members have the same information, as well as specific training.

[9] This includes: basic facts such as official capacity, categories of detainees, date of construction, as well as any available information regarding the staff, conditions of detention, healthcare system, and specific problems. Other available information from previous visits or from other sources should also be collected and summarised.

[10] For the visit methodology, see APT *Monitoring places of detention: a practical guide*.

[11] Detainees with whom members of the visiting team will carry out interviews in private should be randomly selected to be as representative as possible of the different categories of persons deprived of liberty on the site. The visiting team should not only talk to those persons seeking contact with them.

1. Analysis of all conditions of detention with a 'health' component

As has been stated above, the overall conditions of detention can have direct and indirect effects on the health of the detained population,[12] and in certain circumstances the conditions themselves can amount to ill-treatment, or even torture. Therefore, during the visit, the physician should analyse the public health aspects of the place of detention, including environmental factors (protection from the climate, ventilation, access to the open air, etc.), overcrowding, water and sanitation, general hygiene, food and nutrition and outbreaks of disease. Whilst these health-related aspects should also be examined by other members of the visiting team, the medical perspective provides a comprehensive analysis of the 'health dimension'.

In assessing the health aspects of the detention system, the physician can also provide a perspective on a series of issues which have an important health component. These include the assessment of measures taken for the prevention of suicides, the disciplinary system in place (including the use of solitary confinement and forms of restraint) and programmes for the rehabilitation of individuals prior to release.

Considering the potential psychological impact of (and possible abuse arising from) certain aspects of life in a place of detention, a physician can also contribute to the evaluation of specific procedures in the place of detention such as the admission and search procedures, procedures for dealing with incidents (e.g. riots and attacks) and with violent or obstructive detainees, or even the daily routine in place.

2. Identification and documentation of cases of torture and ill-treatment

While the main objective of a preventive visit is not to identify individual cases of torture or ill-treatment, it is important to accurately document any allegations that are made. In such cases, the presence of a physician is indispensable, as only physicians have the legitimate authority to assess

[12] These conditions may also affect the health of the staff working in the institution.

whether the physical and/or psychological sequelae documented are consistent with the allegations of ill-treatment. Furthermore, it is often easier for a detainee to speak to a physician, because there is an element of trust in talking with someone who is also in a position to provide professional advice and reassurance.

In cases of allegations of ill-treatment made to any member of the visiting team, the physician can be called upon to conduct a medical examination of the detainee in private in order to assess whether the physical or psychological sequelae[13] correspond to the allegations made. It is important to note that the absence of physical traces, or even psychological problems, does not signify that there has been no torture or ill-treatment.

Conducting private interviews with detainees who allege acts of torture or ill-treatment is often a sensitive and delicate procedure that requires the establishment of a relationship of trust. The latter can take time and may require many visits from the national mechanism. It is crucial to ensure that the detainee is not put at risk at any time. It therefore must be ensured that the detainee clearly understands how his/her testimony will be used. As such, the transmission of allegations should only take place with the express consent of the detainee, be it for nominative or anonymous use.

The Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a reference tool which details the medical and legal aspects of investigating and documenting allegations of torture and ill-treatment.[14]

---

[13] The European Committee for the Prevention of Torture *Psychological effect of trauma – How to conduct an interview with a detainee to document trauma symptoms*, revised document prepared by Mr Pétur Hauksson, CPT(2002)42 rev. www.cpt.coe.int/workingdocuments.htm

[14] The Istambul Protocol is available on: www.ohchr.org/french/about/publications/docs/8rev1_fr.pdf. See also *The Medical Investigation and Documentation of Torture: A Handbook for Health Professionals* – Michael Peel and Noam Lubell with Jonathan Beynon (2005). University of Essex. http://www.fco.uk/Files/KFile/MidtHb.pdf

3. Evaluation of the general healthcare services[15]

3.1 The healthcare services

Due to their expertise, physicians on the visiting team are especially qualified to provide a credible evaluation of the overall functioning of the healthcare services in places of detention. The relevance of such an evaluation can be seen from comments of the European visiting body, the CPT, which has stated that, "an inadequate level of healthcare can lead rapidly to situations falling within the scope of the term 'inhuman and degrading treatment."[16] This evaluation should therefore look at the individual care provided to detainees as well as the overall organisation of the health services. It should be stressed that while some individual cases will need to be assessed, the purpose is not for the visiting physician to provide a second opinion, nor indeed to provide treatment, but to use such examples in order to understand and advise on how to improve the system. This particular role of the visiting physician must be made clear to both the detainees and to the authorities.

As well as assessing the infrastructure and level of healthcare provision within the place of detention, the physician must also assess how the detainee can access healthcare in community health facilities in cases where he or she requires a level of care which cannot be provided within the institution itself. In addition to the provision of general healthcare, the assessment should include facilities or programmes available for people with drug/alcohol dependencies, for the elderly, and for those with any form of disability. As psychosocial problems are often widespread in places of detention, particular attention should be paid to the management of people with such conditions.[17]

---

[15] See: European Committee for the Prevention of Torture *Health care services in prisons – List of questions and themes to examine during the evaluation of a prison medical service visited by the CPT*. CPT (99)50.

[16] 3rd General Report on the CPT's activities, CPT/Inf(93)12, para. 30.

[17] See WHO/ICRC Info Sheet on Mental Health and Prisons.

Evaluation of the healthcare system

Individual care

- Access to care (including to mental healthcare)
- Quality of care provided
- Transmissible diseases (HIV, Tuberculosis, Hepatitis, Sexually transmitted Infections, etc.): mechanisms in place for prevention and management of contagious detainees
- Drug/alcohol dependence
- Detainees suffering from psychosocial problems
- Vulnerable groups (minors, women, etc.)
- Emergency procedures

General organisation of the health services

- Health facilities and equipment
- Health personnel (competencies, number and shifts)
- Medical consultations and prescribing patterns
- Management of medical records
- Drug stocks and management
- Health promotion and prevention strategies (suicide, transmissible diseases)
- Referral and access to community health facilities
- Degree of integration within the national health policy

3.2 The examination of medical records

An evaluation of the overall healthcare services requires the examination of medical records, be they records of individual patients or a representative sample of records for more general analysis. Once again, it is essential that a physician takes part, not only to access the records, but also to read and analyse their technical content.

In most national legislation/jurisdictions, access to individual medical records is governed by strict rules of confidentiality so as to protect the specific nature of the physician-patient relationship. Under normal circumstances, access to a person's medical records can only be obtained with that person's specific consent. Thus, during a private interview with

a detainee, the visiting physician should expressly request consent[18] to consult his/her medical records. In practice, it is very rare that a detainee refuses to give his/her consent.[19]

On the other hand, when the visiting mechanism wants to conduct an overall evaluation of the functioning of the healthcare services in a place of detention, it will be necessary for the physician to review a cross-section, or sample, of medical files in order to understand whether care is provided impartially and on the basis of needs, that is, without any form of discrimination. In such cases, the visiting physician has an 'audit type' function. Thus, provided the patients' personal data (name, address, etc.) are not disclosed, their express consent should not be required.

Within the context of the OPCAT, legislation designating the NPM should ideally guarantee specific access to medical records, in accordance with Article 20 b) of the OPCAT. This would be in conformity with national norms on the protection of personal data.

3.3 The interview with the doctor of the place of detention

Another reason for the inclusion of physician in a visiting team is that they can liaise on a professional basis with the physician working in the place of detention, and where necessary, with higher authorities.[20]

A physician working in a place of detention is often isolated, has a heavy responsibility and in many contexts has insufficient resources. However, the physician usually benefits from the trust of both personnel and detainees. The physician is a precious interlocutor during a visit, although he/she can initially be suspicious and perceive the visit as an intrusion. Thus the presence of a physician on the visiting team provides the possibility to have a **dialogue on an equal level** between professionals, which can build the foundations for a relationship of trust. Such a

[18] Verbal consent is usually sufficient.

[19] In some specific cases it may be necessary to obtain permission from competent authorities (including judicial) to obtain access; however this should be exceptional, for example in cases when a detainee was transferred before the visit or the person is deceased.

[20] A physician or other health professional should also participate in interviews with other staff, in particular, personnel in direct contact with persons deprived of liberty.

dialogue is not necessarily easy. However, it is essential that the physician who is a member of the visiting delegation be able to talk one-on-one with his or her colleague working in the place of detention.

The physician working in the place of detention can be a source of substantial and invaluable information (existence of potential ill-treatment, inadequate medical care, difficulties faced by the medical service in accomplishing its mission), and is a key person in implementing health recommendations made by the visiting body.

4. Standards of ethical practice in places of detention

The final role of the visiting physician is to assess the standards of ethical practice among healthcare staff in the place of detention.[21] Healthcare staff working in such environments are often confronted with seemingly conflicting responsibilities. On the one hand they have a duty to provide impartial healthcare to the detainee-patient, and on the other hand they are working in an institution in which the primary concern of the authorities is the security and safety of the place of detention. This apparent conflict, in which the physicians have simultaneous obligations to their patients, and to the system of deprivation of liberty, is termed "dual loyalty."[22]

In addition to the ethical aspects of the routine provision of healthcare, there are certain specific situations in detention in which health professionals may be confronted with "dual loyalty". These include the role of physicians in disciplinary sanctions (in particular the use of solitary confinement in any form and the use of restraints), body searches (intimate searches), death penalty, refusal of treatment and hunger strikes. Physicians in the visiting team should pay particular attention to the way

[21] For ethical standards see for example *Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment*, adopted by the UN General Assembly resolution 37/194 of 18 December 1982; the *International Code of Medical Ethics* (1949, amended 1983) of the World Medical Association, and the Declaration of Tokyo (1975) of the World Medical Association.

[22] For a full description of the issue of dual loyalty in prisons and other settings, see http://physiciansforhumanrights.org/library/documents/reports/report-2002-duelloyalty.pdf

these delicate situations are dealt with in the place of detention and whether international ethical standards are being respected. They should also assess the procedures in place in case of conflict between the director and the medical staff within the place of detention.

The overarching principle when considering the prevention of torture is that the physician shall never participate in, either actively or passively, or condone torture or any other form of ill-treatment.

For declarations and statements providing guidance on international standards of medical ethics please refer to the website of the World Medical Association (WMA).[23]

[23] www.wma.net

PART III

The profile of physicians and health professionals

As we saw in part II, it is important that physicians or other health professionals be members of the visiting mechanism and be part of the personnel of the secretariat of the visiting body. At times, it will also be necessary for these national bodies to include additional experts in their visiting teams on an *ad hoc* basis, depending on the specificities of the particular place to be visited or problems noted during an initial visit.

1. The profile of personnel on the visiting mechanism

The main quality required of all persons working with a visiting mechanism at the national level is that they be **independent**.[24] This applies equally to physicians and other health professionals, who must show both professional and personal independence. The physician or health professional should also be experienced in areas such as human relations, have a capacity for observation and analysis, and have experience of negotiation and report writing.

In addition to skills in the documentation of torture and ill-treatment, the physician should have a good knowledge of public health principles, the organisation of healthcare systems, and ideally of judicial and penitentiary systems, while experience of human rights practice would be an invaluable asset. Knowledge and training in mental health and the psychosocial consequences of torture are also important given the large numbers of people with psychosocial disorders in places of detention. This 'public health approach' of the national visiting mechanisms may best be fulfilled by **general practitioners** or physicians who have worked in public health or even formerly in places of detention. When

[24] See Art. 18.1 of the OPCAT.

the national mechanism has several physicians among its members or personnel, complementarity should be favoured, with different areas of specialisation represented.

It is also worth underlining that, in addition to physicians, the presence of suitably qualified nurses can be especially useful during visits to assess practical organisational questions (such as administration and stocks of medication, hygiene, etc).

Regardless of the profile of the physician or health professional who is a member of the visiting mechanism, it is important that they receive specific training on monitoring places of detention and, more particularly, on conducting interviews with people deprived of their liberty and on the medical documentation of torture and ill treatment.

2. The possibility of using experts

It is especially useful for national mechanisms to have the possibility to resort to experts on an *ad hoc* basis. This, however, assumes that such specialists are available in the country and that the visiting mechanism has sufficient financial resources to hire them.[25]

By using experts, visiting mechanisms can call upon different specialists according to their needs. The presence of specialists can be useful in responding to specificities of the particular place to visit (for example visits to mental health institutions require the presence of a mental health professional), to fulfil the specific objectives of the visit or to address issues encountered during previous visits that require specialist follow-up.

The presence of a **forensic doctor** can be especially useful when the objective of the visit is to document cases of allegations of torture or ill-treatment. He/she will be in a position to decide if the allegations are compatible with his/her observations. In other words, a physician with a forensic medical background is especially useful to act as an interface

[25] Article 18.3 of the OPCAT states: "The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms".

between medicine and law. It is recommendable that clinical forensic physicians be selected with good capacities in human relations, and, if at all possible, with previous experience of the documentation of torture.

The presence of a **psychiatrist** is important – even essential – for visits to psychiatric hospitals or other institutions where people with mental disorders may be involuntarily detained. For obvious reasons of credibility, they are often the only ones in a position to evaluate the individual psychiatric care provided to patients. Given the large number of people with psychosocial disorders in places of detention, a psychiatrist might also participate in visits to other places such as prisons. Where a high prevalence of mental health issues has been noted in previous visits, the inclusion of a psychiatrist in future visiting teams should also be envisaged. Finally, if the availability of psychiatrists is limited in a particular context, then a **psychiatric nurse** can also be a valuable member of a team.

National mechanisms can also make use of other specialists according to their specific needs and availability.

Conclusion

Regular preventive visits to all types of places of detention, as envisaged by the Optional Protocol to the Convention against Torture, represents an effective way of preventing torture and ill-treatment and contributes to the improvement of conditions of detention. However, for such a visiting system to be fully effective it has to be carried out by a multidisciplinary body, which includes, amongst others, physicians and other health professionals. Visiting places of detention requires a global comprehensive approach, looking at all aspects of conditions of detention. Some of these aspects, such as healthcare services, documenting cases of torture, ethical standards, can only be adequately assessed by a physician or other health professional.

We are aware that the inclusion of medical expertise represents a real challenge for emerging NPMs established under the Optional Protocol. While the possibility of hiring physicians and/or other health professional on an *ad hoc* basis for specific visits is one interesting possibility, this should not exclude other approaches. Indeed, the contribution of physicians and health professionals goes beyond actual visits as they can bring a different perspective and expertise to general discussions as well as provide specific recommendations on the prevention of torture and the improvement of conditions of detention. States should therefore be encouraged to appoint physicians and/or other health professionals as members of the NPMs. The latter should also consider including such expertise amongst the personnel of their secretariat.

Although the desired professional multidisciplinarity of visiting mechanisms should go beyond the mere inclusion of physicians and health professionals, their participation in visiting bodies constitutes an important first step in this direction.

Annex

Useful documents

- *Guide to the Establishment and Designation of National Preventive Mechanisms*, APT, Geneva, 2006 – www.apt.ch
- European Prison Rules – Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006) – www.coe.int
- *Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; Professional Training Series No. 8, Office of the United Nations High Commissioner for Human Rights, Geneva, 2001 – www.ohchr.org/english/about/publications/docs/8rev1.pdf
- *Monitoring Places of Detention: a practical guide*, APT, Geneva, 2002 – www.apt.ch
- Recommendation No. R (98)7 of the Committee of Ministers of the Council of Europe concerning the ethical and organizational aspects of health care in prisons – http://www.coe.int/t/cm/System/WCDsearch.asp
- *Medical Investigation and Documentation of Torture: A Handbook for Health Professionals*, Michael Peel and Noam Lubell with Jonathan Beynon (2005), University of Essex, Human Rights Centre – http://www.fco.gov.uk/
- The CPT standards – "Substantive" sections of the CPT's General Reports, CPT/Inf/E(2002)1-Rev.2007 – www.cpt.coe.int/en/docsstandards.htm

- United Nations Office on Drugs and Crime, Criminal Justice Assessment Toolkit (includes an assessment of all aspects of criminal justice from police, courts, prisons and alternatives to imprisonment also with a health component) – http://www.unodc.org/unodc/en/criminal_justice_assessment_toolkit.html
- WHO/ICRC Information Sheet on Mental Health and Prisons: http://www.euro.who.int/Document/MNH/WHO_ICRC_InfoSht_MNH_Prisons.pdf
- WHO Information Sheet on Supporting Countries to Establish Mechanisms to Monitor Human Rights in Mental Healt Facilities: http://www.who.int/mental_health/policy/legislation/en/

Useful links

- European Committee for the Prevention of Torture
  www.cpt.coe.int
- WHO Info Sheet on Mental Health and prisons
  http://www.euro.who.int/Document/MNH/WHO_ICRC_InfoSht_MNH_Prisons.pdf
- WHO on establishing monitoring mechanisms
  http://www.who.int/mental_health/policy/legislation/en/
- International Committee of the Red Cross
  www.icrc.org
- International Rehabilitation Council for Torture Victims
  www.irct.org
- Penal Reform International
  www.pri.org
- Physicians for Human Rights
  http://physiciansforhumanrights.org
- World Health Organization
  www.who.int

- (Health in Prisons Project (WHO Europe), Tuberculosis, Mental health)
  www.who.int/healthtopics/prisons
- Who Mind project – Mental Health, Human Rights & Legislation: A Global Human Rights Emergency in Mental Health
  www.who.int/mental_health
- World Medical Association
  (Guidance on international standards of medical ethics)
  www.wma.net

Visiting places of detention

What role for physicians and other health professionals?

A permanent system of unannounced visits to all places of detention, carried out by independent experts is one of the best means to prevent torture and ill-treatment. The Optional Protocol to the UN Convention against Torture (OPCAT)establishes a new international framework for the expansion of visits to places of detention, with the creation or designation of National Preventive Mechanisms (NPM) in each State Party.

For visits to be effective, visiting bodies should be multidisciplinary and include members of different professional backgrounds. This brochure has been produced for all mechanisms conducting regular visits to places of detention, especially NPMs within the framework of the OPCAT. It aims to demonstrate the necessity of including, amongst others, physicians and/or other qualified health professionals at all levels within the NPMs including the decision-making bodies, the secretariat and, finally, the visiting teams.

Only a physician and/or other qualified health professional can fully assess all aspects of a place of detention that impact upon health; discuss specific health issues with detainees and with the authorities; assess the adequacy and appropriateness of health services in the place of detention and the care given; and crucially, provide essential medical expertise in the documentation and prevention of torture and ill treatment.

Association for the Prevention of Torture
10, Route de Ferney, P.O. Box 2267 – 1211 Geneva 2 – Switzerland
Tel: +41 22 919 21 70 – Fax: + 41 22 919 21 80
E-mail: apt@apt.ch – Website: www.apt.ch

ISBN 978-2-940337-21-7 **CHF 15.–**