**Seeking Justice for Torture: a Victim-Centred Approach**

11 – 12 April 2018

Palais des Nations, Geneva

# UN milestones in access to justice for victims of torture

Jens Modvig, MD PhD

Director, Health Dept, DIGNITY

Chairperson, UN Committee against Torture

My panel introduction will address UN milestones in the access to justice for victims of torture during the past seventy years, and also today’s solid UN anti-torture four pillar structure.

When we talk about justice for victims of torture, it is important to recall the principles for redress to victims of gross human rights violations. These principles include restitution, compensation, rehabilitation, satisfaction and the right to non-repetition. So, access to justice entails each of these five dimensions, not only a pot of money.

# Universal Declaration of Human Rights 1948

The international prohibition was first enshrined in the Universal Declaration of Human Rights adopted by the UN General Assembly 70 years ago. Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The prohibition against torture is also fundamental to humanitarian law (also known as the laws of war) Torture of civilians and other noncombatants, including soldiers who are captured or who have laid down their arms is absolutely forbidden.

# ICCPR 1966

The prohibition of torture was further consolidated in the ICCPR as a legal obligation for States parties to the Covenant. The legal prohibition of torture is obviously a basic precondition for victims of torture to claim their rights.

This ban on torture and other ill-treatment has subsequently been incorporated into the extensive network of international and regional human rights treaties. As we know, this prohibition has since been well established as jus cogens that is, it has the highest standing in customary law and is so fundamental as to supersede all other treaties and customary laws.

What more has happened in the UN to promote and strengthen the fight against torture?

# UNVFVT 1981

In 1981 the UN Voluntary Fund for Victims of Torture was established to receive voluntary contributions from governments, organizations and individuals and to provide humanitarian assistance to victims of torture and members of their families. As a part of the name, the fund is for victims of torture. It mainly supports activities which benefit victims directly, such as rehabilitation. It is important to remember that rehabilitation of torture victims s not only an apolitical health service but may produce very potent statistics about torture, perpetrators and torture methods which can be used in advocacy, including shadow reports to the Committee against Torture. So, supporting rehabilitation may entail supporting strong evidence-based advocacy to be included in the dialogue with the State in other contexts.

# UNCAT 1984

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”) was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987 after it had been ratified by 20 States.

While the UNCAT obviously builds on the prohibition of torture, the main contribution it has brought about is rather the detailed obligations by States parties to undertake specific measures of prevention of tortre. Many of these obligations are of great importance for providing access to justice for victims of torture. For instance:

|  |  |
| --- | --- |
|  | Each State party shall ensure that its authorities make investigations when there is reasonable ground to believe that an act of torture has been committed (article 12); |
|  | Each State party shall ensure that an individual who alleges that he has been subjected to torture will have his case examined by the competent authorities (article 13); |
|  | Each State party shall ensure to victims of torture an enforceable right to fair and adequate compensation (article 14).  In connection with the latter, CAT has issued a General Comment which specifies State party obligations in this respect, building on the five principles of redress, I mentioned earlier. |

Currently, 162 states have ratified the UNCAT, and here, the UN is getting valuable assistance from the Convention against Torture Initiative, CTI, led by Chile, Denmark, Ghana, Indonesia and Morocco. This initiative works for universal ratification and implementation of the UNCAT.

# UNSRT 1985

The United Nations Commission on Human Rights, in resolution 1985/33, decided to appoint an expert, a special rapporteur, to examine questions relevant to torture. The mandate was most recently extended for 3 years by Human Rights Council resolution [34/19](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/34/19) in March 2017.

It covers all countries, irrespective of whether a State has ratified the UNCAT, but visits require that the country in question has issued an invitation to the SRT.

The mandate comprises three main activities:

1. transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture;
2. undertaking fact-finding country visits; and
3. submitting annual reports on activities, the mandate and [methods of work](https://www.ohchr.org/Documents/Issues/SRTorture/methodswork.pdf) to the Human Rights Council and the General Assembly.

# Istanbul Protocol 1999

The next milestone, I would like to highlight, The Istanbul Protocol from 1999, is not a UN initiative, but it has been strongly endorsed by the UNGA, UNHRC and CAT on numerous occasions. The protocol was drafted because many complaints over torture was rejected because of lack of evidence, and those medical doctors who were asked to examine the victims, were not professional enough or not independent enough. The protocol provides detailed guidelines for how states should investigate alleged cases of torture, including how a forensic medical examination should be performed and how a report for the Prosecution and the Courts should be drafted and concluded.

# OPCAT 2006

After a ten year long pregnancy, OPCAT was born in 2006. This convention gave impetus to the UN Work against torture by bringing the dialogue with states parties from Geneva to the countries in question, and based on inspections of institutions instead of just reports.

Currently, 83 of the 162 UNCAT States parties have also ratified the OPCAT and XX national preventive mechanisms have been formed.

# The four-pillar anti-torture structure of the UN

These milestones leave us with a four-pillar structure of the UN fight against torture

CAT UNSRT UNVFVT and UNSRT. Each strengths and weaknesses. In short:

1. UNVFVT - all countries - support for CSO initiatives
2. UNSRT - all countries, including non-state parties to UNCAT - pending visit permission - naming and shaming + dialogue
3. UNCAT - states parties only - constructive dialogue in Geneva
4. OPCAT - states parties only - constructive dialogue on the ground

It is clear that these four bodies have to complement each other, and we work towards this.

An example: the four bodies together with the four NGO’s which have worked to implement the Istanbul Protocol now collaborate as an umbrella for the development of a IP supplement

The biggest challenge to justice in my experience is the security for complainants and a prompt impartial and thorough investigation. Often, we see that the number of complaints about torture are very few and that not many complainants get justice - neither in terms of rehabilitation nor in terms of justice. On the contrary, victims are dissuaded from complaining because of risk of reprisals or lack of independence and competence of the investigative authorities.

While it is important to focus on true prevention, as reflected in the OPCAT, we must not forget to ensure that the victims of torture have a basic right to redress including rehabilitation and justice. Even today, these rights are very rarely fully enjoyed by victims.