



Thematic Discussions of the Commission on Crime Prevention and Criminal Justice on the implementation of the Kyoto Declaration

Panel address by Dr Alice Edwards, UN Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, entitled:

'Safeguarding the rights of victims of torture and cruel, inhuman or degrading treatment or punishment within criminal investigation processes'

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Mr Chair, Excellencies, Ladies and Gentlemen,

Thank you to the organisers for the invitation to present today.

I will be speaking from the perspective of preventing torture and other cruel, inhuman or degrading treatment or punishment within criminal legal systems; and secondly, I'll be looking at the measures needed to protect persons making allegations of torture and other forms of ill-treatment.

In both these contexts – prevention of torture and protection of torture victims – it is important to keep in mind that the power dynamics at play are different from those for other types of crimes. Most particularly, accusers may still be within the custody or under the control of the exact authorities against whom they are making such allegations. Such accusers are in a particular situation of precarity as their very safety may depend on those same

authorities. This power imbalance and inequality of arms needs special attention in criminal investigations into allegations of torture, and needs to be rebalanced if investigations and prosecutions are to proceed successfully. We cannot have an effective torture prevention system if the same authorities against whom allegations are being made are investigating themselves; there is an absolute conflict of interest in such systems.

Furthermore, authorities such as the police, law enforcement, prison and public health and medical practitioners, are important players to prevent torture. They have duties to protect the rights of all persons in society, including those under arrest, in detention or imprisonment. Where power is unchecked, there is an incentive and opportunity for abuse, corruption and torture.

Starting with **the prevention of torture side**, in the interests of time I will mention five main elements today, although there are others.

- First, police leadership and community supervision are key, both in words and deeds. For example, publishing annual policing reports and plans, endorsed by the government and potentially by parliament, is a good practice.
- Second, comprehensive consultative processes between law enforcement, local authorities and citizens helps determine the community's key problems and needs, as well as involving them in defining relevant solutions.
- Third, law enforcement and prison officials must represent the persons and communities they serve, be fairly compensated, and there must be appropriate rules regarding recruitment and promotion. My third report to the General Assembly next year will look at representative law enforcement and its impact on reducing risks of torture and ill-treatment.
- Fourth, highly qualified and trained law enforcement and other public authorities require training in torture prevention and response. The Norwegian police academy, for example, requires training in such fields as communication, emotional intelligence and human rights. They have moved from a "brawn to brain" or knowledge-based profession.
- Fifth is the need for an independent police oversight mechanism. To mention two examples, Jamaica's independent commission on investigations, INDECOM, and the

United Kingdom's Independent Office of Police Conduct are top-rate examples, which focus on mandatory reporting of serious incidents of death or injury, to independent bodies with the power and authority to investigate all serious incidents. 'Serious incidents' would include allegations of torture and other cruel, inhuman or degrading treatment or punishment.

I want to turn now to **the the protection of victims during investigations and prosecutions of acts of torture**, which will be a focus of my second upcoming report to the Human Rights Council in March of next year, and for which I have just completed a two day consultation with expert practitioners last week.

As mentioned, independent oversight bodies such as those in Jamaica and the United Kingdom, possess the power and authority to carry out investigations into allegations of torture and are equipped with inquisitorial powers. They are at arms lengths, because they are not made up of serving police or law enforcement officers. Where it is not possible to establish a civilian-only body, because naturally, police and law enforcement possess some of the best investigative skills and training and a society may not want to lose such expertise, I would recommend a moratorium of a minimum of five years between their retirement or resignation of their employment contract, before they are able to be recruited to these independent bodies. Such bodies also need to be properly financed and empowered to operate through a statutory basis, with reporting to parliament and the public on their activities.

This important element of independence is also extremely relevant for the broader administration of justice, requiring independent prosecutors, independent medical personnel carrying out tortures-specific medical reports, and of course an independent judiciary.

Turning now to the very topic we are discussing today, the protection of accusers and victims, and the importance of safe complaints procedures. Too many cases collapse or do not even begin because of victims' fears and lack of trust in the criminal legal system. This is especially pronounced where detention and other places where persons are deprived of their liberty lack transparency. All such facilities should be open to scrutiny and visits by a broad array of

actors, including lawyers, NGOs, as well as parliamentarians and independent visiting bodies such as National Preventive Mechanisms established under the Optional Protocol to the UN Convention against Torture, who should be able access such locations at any time. The protection of persons making allegations of abuse or torture against State authorities is especially complex when they have made an allegation and remain in prison. In many prisons we have 'suicide watch' for persons at risk of suicide; we should be thinking about similar arrangements for persons who have made allegations of torture while respecting their rights. They also need special safeguards, for example, to ensure that their complaints are not exposed to others – officers and prisoners alike – within the prison. Suspending or removing the officer against whom allegations of torture or other inhuman treatment have been made is a good practice.

Accusers need to be protected *before, during and after* any investigation and prosecution, should the case proceed to trial. Ireland, for example, requires all complainants to be kept informed of the status of the investigation through civilian liaison officers. Argentina, and similarly in Guatemala and Chile, goes even further and allows the victim to engage with the investigation team and to make suggestions of where the investigators could turn their attention, and they can also ask to appear before a judge at any point. They are active participants in the process, and this builds trust and confidence.

Pursuant to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, access to trauma counselling and rehabilitation is a right (art. 14), and must start as early as possible after a complaint is made or a victim is identified. This is not only to protect and assist in the complainant's own mental health, but they will also become better and more reliable witnesses in court proceedings, through what is quite often a very long process. Trauma, if left untreated or neglected, can lead to serious ramifications including the risk of memory loss, amongst others. Additional protections that have been put in place in a number of countries include victims' advocates, access to lawyers for victims, being able to provide testimony from another room or using remote technology, and so forth. My Human Rights Council report will document a number of good practices in more detail.

The final area I wanted to speak about today, is how we deal with victims and witnesses who are being interviewed for the purposes of a torture investigation and prosecution. What are the best practices in terms of collecting evidence and in particular their testimony? We have the revised Istanbul Protocol¹ on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which supports the independent collection of forensic, physical and psychological evidence by qualified and trained practitioners. We also have a new tool, the Mendez Principles² on Effective Interviewing for Investigations and Evidence Gathering, which looks at how to interview the accused as well as victims and witnesses within criminal justice systems, through humane and non-coercive interviewing, allowing and ensuring interviewees are treated with dignity, by qualified and rights-respecting investigators, and this practice of structured interviews allows them to tell their story and for investigators to be able to collect as much information and evidence as possible. I give a nod also to the UNODC e-learning module,³ on the same interviewing techniques, as well as the Convention against Torture Initiative's⁴ training module on investigative interviewing for criminal cases.

All of these standards I've mentioned today derive from obligations under the UN Convention against Torture, especially articles 12 and 13, which require impartial and prompt complaints and investigations into all allegations of torture. The Convention also explicitly imposes obligations to protect victims and witnesses against ill-treatment or intimidation because of making a complaint or providing evidence (article 13). Furthermore, the revised Standard Minimum Rules for the Treatment of Prisoners mandate investigations into complaints of torture or ill-treatment (Nelson Mandela Rules 34, 57 and 71).

¹ Revised Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022): <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>

² https://www.apr.ch/sites/default/files/publications/apr_PoEI_EN_11.pdf

³ UNODC e-learning platform: <https://elearningunodc.org/>

⁴ Convention against Torture Initiative, Training Tool No. 1/2017, Investigative Interviewing for Criminal Cases (2017): https://cti2024.org/wp-content/uploads/2021/01/CTI-Training_Tool_Investigative-Interviewing.pdf Also available in 15 languages.

For successful investigations and prosecutions, there needs to be an A to Z approach. For my upcoming report, I am hoping to provide more good examples to add to our library of standards.

I conclude by a few words in respect of the protection of 'reporting persons' or whistle-blowers which is a seemingly neglected area in the context of protection in respect of torture cases. It is equally important that those reporting, such as, police against other police, prison officials against other prison officials, bystanders, and other victims, are protected against reprisals, intimidation, or other retaliatory measures such as loss of employment or demotion. Some countries including Kenya and Uganda, have introduced mandatory reporting requirements whenever there is an allegation of torture or where they witness such acts.

It is important that overall we build a culture within all public authorities of anti-torture, human rights, prevention and zero tolerance.

Thank you very much Mr. Chair.