Introduction

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> The EHRR aims to provide an open-access international, multidisciplinary forum for the dissemination of original academic work relating to theoretical and practical research in the field of human rights.
> – EHRR Mission Statement

Given the rapid pace of recent developments in the field of prevention of torture, and the urgent need for work in this area (not least as a result of the impact of anti-terrorism initiatives and the worldwide growth in the prison population), in *Preventing Torture in the 21st Century* the EHRR aims to unite superb scholarship with excellent practice-focused work to create a global account of initiatives on preventing torture. As an open-access journal, our publications are freely available and accessible to all. This is what makes *Preventing Torture in the 21st Century* unique and what has allowed us to unite so many wonderful papers, including a selection of peer-reviewed articles to complement the papers commissioned from top scholars and practitioners in the field. While much has been written about preventing torture, this information is available only in fragmented form, much of it in costly books and journals. Given that the field is plagued by a lack of resources, it is vital that all interested actors can access scholarship about the many significant developments currently underway and so be in a position to engage with these exciting developments now, when there is momentum in addition to great need. We hope *Preventing Torture in the 21st Century* will help to fill this gap and make this much-needed knowledge available, in one place, to those who most need it and could otherwise least afford it.

Part I of *Preventing Torture in the 21st Century*[1] focused on the issue of preventing torture via monitoring and visiting places where persons are deprived of their liberty, especially in relation to two key treaties and the treaty bodies that they establish:

- the European Convention for the Prevention of Torture and the Committee for the Prevention of Torture (CPT),[2] which has been operational in Europe for over two decades, and
- the Optional Protocol to the (UN) Convention against Torture and the Subcommittee for the Prevention of Torture (SPT),[3] which has now been operational globally for over two years.

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[1] See *Preventing Torture in the 21st Century* – Part I (Special Issue 2009) Table of Contents for further details.

[2] Properly, the European Convention for the Prevention of Torture and inhuman or degrading treatment or punishment, and the Committee for the Prevention of Torture and inhuman or degrading treatment or punishment, respectively.

[3] Properly, the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, and Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment, respectively.

The first section of *Preventing Torture in the 21st Century* – Part II examined both the value and limitations of this approach to prevention of torture, and also the challenges the CPT and SPT face in their active work in the field. The second section looked ahead to this volume, discussing the global situation and the ways in which some states are moving towards legalisation of torture, largely in response to terrorist activity, rather than away from it.

In the first article of this volume, Carla Ferstman (Director of REDRESS) argues that reparations for human rights violations are inextricably linked to preventive efforts: prevention can be a form of reparation just as reparation can have a preventive effect. The Basic Principles[4] discuss the five main forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These themes recur throughout the Special Issue, especially in relation to the work of the NGOs that have contributed to this volume. Ferstman focuses on providing detailed analysis of guarantees of non-repetition, including cessation of continuing violations. In exploring jurisprudence in this area, Ferstman demonstrates that this form of reparation must have an impact beyond the specifics of particular cases and, instead, be used to inform policy, legislation and institutional measures for individual reparations awards to drive preventive efforts. To date, courts have tended to shy away from such an approach; however, as more cases are brought before national, regional or other international systems, the weight of numbers may affect a critical change in this arena.

Court cases are an important aspect of Suhas Chakma's discussion of the forms of reparation that are most commonly awarded in India. While new national legislation is being developed to prevent and punish torture and other ill-treatment in India, the country has yet to ratify the UNCAT.[5] Thus, few remedies are available for victims in India: Chakma (Director of the Asian Centre for Human Rights) argues that this has encouraged a climate of impunity, especially among law enforcement personnel in prisons, police stations and the military (Lamwaka, discussed below, identifies a similar pattern in Uganda). Although both the number and the amount of compensation awards for victims – as well as the number and severity of sentences for perpetrators – have increased in recent years, serious flaws in existing legislation and accepted procedures mean that many cases are never prosecuted and that vital documents are destroyed, including by India's National Human Rights Commission (NHRC). However, the Delhi High Court has consistently ruled in favour of the ACHR in cases concerning failures on the part of the NHRC to ensure that cases of torture are prosecuted. Over time, it is hoped that this will encourage the NHRC to consistently employ the full range of its powers in relation to both prevention and punishment of torture and other ill-treatment. This emphasises the importance of ensuring that human rights institutions are fully independent (see Kuwayama for an exploration of the impact of lack of independence in Japan). When there are systematic failings on the part of governmental human rights bodies, the work of NGOs becomes even more vital.

Sharon Lamwaka's article on the work of the African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) offers a practitioner's perspective on working to prevent torture in Africa, including in close collaboration with the Uganda Hunan Rights Commission (UHRC). Based in Uganda – where torture, according to the UHRC, is the most common of form of human rights violation – the ACTV provides training on human rights issues, particularly to law

[4] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
[5] UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment.

enforcement personnel, and treatment and rehabilitation services to victims and their families. It also undertakes research on torture and related human rights violations, works to raise awareness of human rights issues in the public sector and also civil society, collaborates with state and non-governmental organisations, and lobbies for the adoption of national, regional and other international instruments and measures to prevent torture. In relation to this varied work, Lamwaka also discusses the difficulties human rights NGOs face when working in countries plagued by poor infrastructure, paramilitary violence, and a general climate of impunity for perpetrators: often those working to prevent and punish human rights violations do so in the face of real danger. However, one of the most interesting questions this paper raises concerns a rather general issue: how to construct an academic discussion in the face of paucity of reliable published sources. While it is common sense to acknowledge that lack of reliable information about torture is problematic for practitioners, the fact that it is problematic for writers and, thus, for the wider scholarly community is not as widely recognised. However, when writers must deviate from normal practice with regard to citing sources and providing supporting evidence for the simple reason that there is none (or very little) – at least not in the public domain – publishers often respond with scepticism about the value of such work. However, this only serves to preserve the status quo: without publications, there is no body of literature to reference. The only solution is to accept these limitations, openly confronting the implications for the reliability and validity of this work, on a temporary basis, with an eye to building a solid body of literature that will allow for an effective re-assessment of earlier claims. While discussions of ground level activity cannot always be supported by appropriate references, this work carries a practical evidentiary weight when described in detail, for instance in case studies, as in this article: the lessons that can be drawn from practice, especially when situated in relation to more theoretical work presented according to normal evidentiary standards, allow for a broad understanding of preventing torture. For instance, Lamwaka offers an examination of the practical, ground-level consequences of failures to effectively criminalise torture. As seen in Chakam's paper, this presents a significant hurdle for those working to prevent torture, assist victims, punish perpetrators and, thus, ensure that the current climate of impunity is not allowed to prevail.

In exploring the Robben Island Guidelines (RIG),[6] Jean-Baptiste Niyizurugero (one of the drafters of the RIG) and Ghislain Patrick Lessène also discuss the importance of criminalising torture, focusing on the importance of full clear definitions of torture and ill-treatment: while the African Charter on Human and Peoples' Rights prohibits torture and other ill-treatment, it does not define these term and, thus, the instrument does not allow for effective prosecution of perpetrators. Narrow, restrictive definitions can be equally problematic in terms of effective criminalisation. However, criminalisation is only one aspect of the RIG. The Guidelines build on best practice from a range of similar instruments, including in relation to key safeguards for persons deprived of their liberty and also the importance of establishing national preventive mechanisms (NPMs) in recognition of the fact that monitoring often plays a major role in preventing torture and other ill-treatment. Via the establishment of NPMs, the drafters of the RIG also hope to encourage greater investment and engagement at the national level, on the part of government and civil society, in human rights issues. Ultimately, the success of regional instruments depend not only on ratifications, but also awareness of and commitment to human rights issues.

[6] The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

As Suraina Pasha argues, national human rights institutions (NHRIs) have a particularly important role in preventing torture in the Asia-Pacific region given the lack of a regional intergovernmental human rights instrument or body. To address this gap, NGOs, particularly the Asia Pacific Forum of National Human Rights Institutions (APF), have been raising awareness of the OPCAT and UNCAT, lobbying Asia-Pacific States to ratify, and providing training on the ratification process. The APF is particularly well-placed to encourage ratification as NHRIs often top the list of existing bodies to be considered as NPMs.[7] However, even when not acting under the NPM mandate, NHRIs have a critical role to play in preventing torture and other ill-treatment, including by exercising their quasi-judicial powers, as Pasha demonstrates through analysing a number of promising national and regional initiatives. Much of this analysis resonates with the key themes Chakma identifies in relation to India's NHRC. Pasha concludes by stressing the fact that the socio-political climate prevailing in both the region and individual Asia-Pacific States limits both the effectiveness and reach of preventive efforts.

Richard Harding (inaugural Inspector of Custodial Services for Western Australia) and Neil Morgan (current Inspector of Custodial Services for Western Australia, and Rapporteur of the Asian and Pacific Conference of Correctional Administrators) advanced this discussion, arguing that, in general, the Asia-Pacific region has a less developed human rights tradition than Europe – at least as far as Western notions of human rights are concerned: to a degree, Asia-Pacific States (and civil society) consider the understanding of human rights embodied by many international treaties to be at odds with 'Asian' values. Harding and Morgan argues that this is one of the primary reasons that so few states in the region have ratified the OPCAT; other key factors revolve around the fact (i) that national development initiatives and natural disasters often take precedence over human rights concerns, and (ii) that there is no 'unifying characteristic' that could drive ratification forwards in the region. Harding and Morgan look to Australia and New Zealand to explore the implications of ratification in the Asia-Pacific and Australasia. In relation to New Zealand, the authors identify the country's long tradition of commitment to human rights issues as crucial in encouraging key national actors to engage with the OPCAT framework. Australia, on the other hand, has signed but not ratified, not least because of the challenges represented by Australia federal system of government, and for both new legislation and changes to constitutional laws. The designation of an appropriate NPM is complicated by Australia's federal system: while there are a number of bodies that could together comprise a multi-body NPM, achieving effective coordination and identifying a central institution is a complex challenge. In terms of legislation, the federal system complicates the issue of ensuring that NPMs have the necessary powers and guarantees to carry out their mandate at the state and federal level. Although the authors argue that progress towards full ratification in the Asia-Pacific and Australasia is likely to be 'piecemeal and rather slow', there is reason for cautious optimism, especially if those working to encourage ratification engage with (i) concerns about how the concept of human rights behind the OPCAT fits with 'Asian' values and the emerging Asian human rights culture, and (ii) the need to render implementation feasible in places with limited economic resources and many other pressing human rights concerns, especially when these concerns involve the general population.

Instead of identifying scepticism about the nature of the human rights embodied in the OPCAT as a major challenge to ratification by Japan, Aya Kuwayama focuses on the difficulties represented by lack of agreement about the meaning of key human rights concepts – including independence, transparency and monitoring – in relation to both the effectiveness of Japan's

[7] See *Preventing Torture in the 21st Century* – Part I, especially Steinerte and Murray.

Penal Institution Visiting Committees (PIVCs) and the suitability of designating this body of institutions as part of a multi-body NPM if Japan were to ratify. Kuwayama argues that one of the major challenges that PIVCs face is the lack of consensus, including between different PIVCs and even members of the same PIVC, about the purpose of these institutions and the standards they are mandated to uphold. This has given risen to many practical problems, for instance in relation to a lack of agreed policy to minimise the likelihood of reprisals against detainees interviewed by PIVCs.[8]

Victor Rodriguez Rescia (Chairperson of the SPT) also discusses the implications of lack of agreement over key terms and issues, focusing on the fact that the American Commission on Human Rights and Inter-American Court of Human rights disagree about the forms of ill-treatment that are considered to rise to the level of torture. The problem results from the lack of comprehensive and precise definitions of torture versus cruel or inhuman treatment in the American Convention on Human Rights (see Niyizurugero and Lessène for a similar discussion in relation to African instruments). However, the paper focuses on the fact that the torture and other ill-treatment of women often assumes specific forms and is inscribed with complex meanings associated with the fact that women are often placed in multiple, intersecting positions of inequality. Thus, torture and ill-treatment of women in institutions in which persons are deprived of their liberty by the state are part of a much larger continuum of violence against women. However, while there has been a gradual move from considering only torture and ill-treatment committed by agents of the state to definitions of torture encompass acts committed with the acquiescence of the state, international instruments have largely avoided dealing explicitly with violence committed in the private sphere. Treating the public and private spheres as distinct ignores the role that socio-cultural values and norms play in creating a climate of impunity for violence, whether committed in the home or in police stations and prisons. The Convention of Belém do Pará[9] is unique in that it aims to prevent torture and other violence against women in both the public and private spheres. Moreover, the Convention's recognition of the socio-political and gendered nature of torture and ill-treatment of women offers a holistic approach to addressing not only the human rights implications of domestic violence, but also the complexities of 'ethnic whitening' and other crimes common in civil armed conflict. Given the history of the region, this offers the prospect of effective prosecution of those involved in large-scale human rights abuses under the various dictatorial governments that, until recently, held power in many States on the American continent. Rescia discusses a number of key cases that have come before the Inter-American Court of Human Rights to date, showing that, while the Convention of Belém do Pará in particular offers exciting possibilities for preventing torture and other forms of violent ill-treatment of women, many provisions have yet to be effectively enforced. Nevertheless, the inter-American system is likely to provide examples of best practice for other regions the near future.

Miriam Reventlow, Susanne Kjær and Helen McColl of the International Rehabilitation Council for Torture Victims (IRCT) present an examination of the role of medical professionals in (i) gathering evidence to document and prosecute cases of torture, (ii) gathering information about the extent and nature of torture, (iii) providing training for law enforcement personnel and those working with victims of torture, and (iv) supporting and rehabilitating survivors. Many of the authors' key arguments resonate with Sharon Lamwaka's practice-based account, especially in relation to the dangers inherent in working to prevent torture in countries where there are on-

[8] For a discussion of reprisals, see Casale in *Preventing Torture in the 21st Century – Part I*.
[9] The Inter-American Convention to Prevent and Punish Violence against Women.

going conflicts and/or a climate of impunity due to the prevalence of torture. Reventlow, Kjær and McColl focus on the importance of survivors' testimony. However, they also stress the fact that, while speaking about traumatic experiences can be therapeutic, giving testimony also has the potential to re-traumatise victims. Thus, medical professionals must be sensitive to these possibilities in rehabilitative contexts and also when documenting torture and assisting victims through the process of giving evidence in court; indeed, cross-examination is often a painful process for victims and may even be experienced as a new 'assault'. Moreover, medical professionals must recognise and address the fact that, at times, the interests of the patient may be in opposition to the requirements of evidentiary standards and processes: when treatment of victims is at stake, health professionals must be careful to put the needs of the patient first. When a medical professional's role is primarily forensic, priority may be given to following the Istanbul Protocol and other relevant standards for collecting and documenting evidence, but not at the expense of sensitive treatment of victims. An even more complex issue is the role of health professionals in helping courts to weigh testimony effectively: due to the traumatic nature of their experiences, victims of torture are often unable to provide coherent, consistent accounts of their experiences. Legal epistemological traditions place a premium on consistency and coherence, regarding them as, respectively, representing the scientific notions of reliability and validity. Medical professionals have a vital role to play in demonstrating how an individual's testimony may be affected by trauma and, thus, explicate the ways in which the 'accuracy' of torture survivors' testimony may need to be assessed in alternative ways, especially via triangulation with physical and mental evidence. The authors also tease out the ways in which giving testimony is important from both a rehabilitative and preventive perspective (for instance, awareness raising efforts aimed at civil society often rely on victims' stories). Through personal testimony, victims can contribute to the success of preventive measures: when more, and more detailed, information is available about torture – especially about the conditions that give rise to it in specific places, the individuals who perpetrate it – preventive efforts, including the work of visiting and monitoring bodies, can be targeted more effectively. Indeed, the very act of engaging with preventive measures often boosts the morale of those who have suffered torture and encourages them to view themselves as survivors, rather than powerless victims. Thus, as Carla Ferstman argued at the start of this Special Issue, rehabilitation and prevention are mutually reinforcing.

Working to prevent torture is a complex endeavour, whether it takes the form of drafting or implementation of legislative instruments at the national, regional or global level, or examining the practical challenges of working to prevent torture via monitoring of places of deprivation of liberty, providing reparations for victims, or working to prosecute perpetrators. However, in the last two decades measures to prevent torture have been steadily gaining momentum. *Preventing Torture in the 21st Century* provides a wide-ranging examination of this rapidly changing field, uniting perspectives from a range of actors and presenting them in a single, open-access publication. Thus, if there is a single conclusion to be drawn from these volumes, it is that all those working to prevent torture and other ill-treatment must share information and knowledge – practical, theoretical, interdisciplinary – in such a way that it is accessible to all. Only then can initiatives to prevent torture truly go global.