Remarks - Enhancing Visits to Places of Detention Promoting Collaboration

Claudio M. Grossman
Remarks of Dean Claudio Grossman*

Good morning everyone, and welcome to American University Washington College of Law for this conference on “Enhancing Visits to Places of Detention: Promoting Collaboration.” I would like to welcome all of you, particularly those who came from afar, to participate in this important occasion for reflection designed to promote collaboration concerning visits to places of detention. I would like to add that we are very pleased to cosponsor this conference with the Association for the Prevention of Torture (APT). This is not the first time we have teamed up with APT to convene academics, practitioners, and experts to analyze key issues related to the prevention of torture. It is very important for law schools to partner with crucial actors, not only to pool material resources, but also for the valuable contributions of knowledge and expertise from civil society that help advance the fundamental values at the heart of this conference. With that in mind, I want to thank Mark Thomson for his leadership of APT, as well as his staff for their contributions to organizing today’s event.

Treaty bodies and special procedures at the UN and regional levels are facing a situation which we may describe as a proliferation of mechanisms. There are valid reasons for this proliferation. For example, the establishment of the UN Committee against Torture, which I chair, is owed to a collective human desire to stress the value of the struggle against torture by adopting a special convention and treaty monitoring body. Similar developments have taken place with regard to disabilities, the promotion of women’s rights, and so forth.

At the same time, a proliferation of mechanisms and treaty bodies can ultimately raise issues of legitimacy, as important conditions of legitimacy include coherence and consistency in decision making. Proliferation of treaty bodies and special procedures within universal and regional systems creates the danger of conflicting jurisprudence.

For example, torture is defined as an aggravated form of inhuman treatment. If different treaty bodies offer conflicting interpretations of this requirement, the legitimacy of the prohibition will be consequently weakened. The potential for conflict alone would be enough to make the case for harmonization.

In addition to preventing possible conflicting jurisprudence, the case for harmonization is strengthened by the need to share techniques and expertise that have an impact beyond jurisprudential analysis. Numerous mechanisms and procedures deal with the conditions of places of detention, and they have developed unique knowledge in matters such as negotiating access, balancing the need of access with publicity, and influencing the situation on the ground. Greater coordination and harmonization will only strengthen their impact.

There was a time when people thought that places of detention would contribute to the rehabilitation of human beings, but I think that we now know that, unfortunately, the dire conditions in most places of detention around the world contribute to a different reality. In fact, many places of detention have become universities of crime. Still, there is tremendous public support for the proposition that locking someone behind bars is the best way to achieve the security which we all legitimately seek. However, the treaty bodies and experts in this field agree that actually achieving security is not just a matter of locking people away.

* Since his appointment in 1995, Claudio Grossman has served as Dean of American University Washington College of Law, where he is also Professor of Law and the Raymond Geraldson Scholar for International and Humanitarian Law. Dean Grossman has served as Chair of the United Nations Committee against Torture since 2008, and was first elected as a member of the Committee in 2003. He was a member of the Inter-American Commission on Human Rights from 1993-2001, where he served in numerous capacities including President (1996-97; 2001), the Special Rapporteur on the Rights of Women (1996-2000), and the Special Rapporteur on the Rights of Indigenous Populations (2000-2001).
Alternatives to detention are not only a response to the failure of our aspirations to rehabilitate individuals whenever possible. Conditions of detention also show the values of a society. From this perspective, coordination among experts answering questions such as: “What are the best practices?”, “What are the best ways to act?”, and “What can we learn from each other?,” responds not only to narrow, technical issues but reveals our general vision of the world in which we want to live. Considering the broader impact of the topic, the contributions and knowledge of governments and civil society enrich the field and are at the same time expressions of the right of legitimate stakeholders to shape society.

To help facilitate exchanges and interaction among all those interested, the law school and APT organized this conference. In addition, yesterday we hosted a meeting of experts of universal and regional treaty bodies and special procedures whose deliberations will undoubtedly enrich today’s conference.

I look forward to an exchange that will contribute to the common goal of full compliance with the obligations established under human rights law, including the prohibition against torture and other forms of cruel, inhuman and degrading treatment and punishment. I will now give the floor to Mark Thomson to share with you how this conference has been structured and our objectives for today. Mr. Thomson, you have the floor.

Remarks of Mark Thomson*

Thank you very much Claudio, and thank you to the rest of your team for organizing and preparing this meeting. Thanks also to all of you, especially people who have come from afar, for participating in today’s meeting. As Claudio said, there are now a number of bodies that visit places of detention, often with different objectives. It is also true that an increasing number of these bodies exist at the international, regional, and national levels. We are very pleased to have the participating in today’s meeting the International Committee of the Red Cross (ICRC), which has the most experience in this area at the international level, as well as the UN Committee Against Torture (UNCAT), which Claudio chairs. The most interesting development over the last ten years has been the emergence of the new Subcommittee on the Prevention of Torture (SPT), which now has 25 members, several of whom are here with us today. This is a very important new development in the prevention of torture and cruel, inhuman, and degrading treatment worldwide.

There are many other international bodies — so I will not go through all of them now — but let me just quickly make reference to some of the regional bodies. The two bodies that have the most experience regionally are the European Committee for the Prevention of Torture (CPT) and the Inter American Commission on Human Rights (IACHR). We have with us today the vice president of CPT and staff persons from the IACHR. For those who are unfamiliar, the IACHR is a regional human rights body here in the Americas that has experience visiting places of detention. At the national level, national preventive mechanisms are being developed under the Optional Protocol to the Convention Against Torture (OPCAT). These national preventive mechanisms must have a specific mandate to visit places of detention in order to find solutions to prevent further abuses taking place or possible abuses taking place in all places where people are deprived of their liberty. We will also be hearing from some nongovernmental organizations, members of the judiciary, and parliamentarians today on their experiences in visiting places of detention.

Now, as Claudio rightfully said, that is a lot of people going to places of detention. Therefore, we need to be looking at how these bodies can best collaborate, which is the purpose of today’s meeting. How can we enhance collaboration between the variety of bodies at the international, regional, and national levels to ensure that people deprived of liberty are getting the best protection we can provide? The enormity of the problem

*Mark Thomson is the Secretary General of the Association for the Prevention of Torture (APT). He has over 27 years work experience with international development and human rights NGOs. He has been the Secretary General of the APT since April 2001. He has given presentations and training on human rights and prevention of torture, in all regions of the world and has contributed to the drafting, adoption and implementation of several human rights instruments.

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Opening Remarks from Dean Claudio Grossman, Moderator

Let us begin our panel on “Promoting Safeguards Through Detention Visits.” Mark Thomson already explained the structure of the conference, with fifteen minute presentations and thirty minutes for questions and comments. In the interest of time, I will skip over lengthy introductions. However, I do want to say that I am very pleased with the level of expertise and experience represented by our distinguished panelists. The individual who will be leading off this panel is an alumna of our law school, Ariela Peralta, the Deputy Director of the Center for Justice and International Law.

Remarks of Ariela Peralta*

Thank you very much. I want to thank the Washington College of Law, Dean Claudio Grossman and the Association for the Prevention of Torture, Secretary Mark Thomson for giving the Center for Justice and International Law (CEJIL) the opportunity to participate in this important event with you all. Also, it is a great honor for me to be here because I received my master’s degree from the American University and had a great experience here as a Hubert Humphrey Fellow. I want to highlight what an extraordinary experience, personally and professionally, presenting at this conference is for me because I consider the Washington College of Law a fountain of knowledge, and, in a way, a home away from home.

Today, at the beginning of the 21st century, it is embarrassing that the practice of torture and enforced disappearance persists despite all of the steps taken by the international community to eradicate these practices. In the last 30 years, the universal and regional organizations have approved several legal instruments and put in place several complementary mechanisms in order to ensure, at the legal and monitoring levels, that torture and enforced disappearances are absolutely prohibited and non-derogable obligations. Nevertheless, torture and enforced disappearances are still widely practiced worldwide. The Inter-American Commission on Human Rights pointed out yesterday that the problems we are facing in the Americas include: large numbers of pre-trial detention, overcrowding and poor conditions in detention facilities, a lack of basic services, the use of torture for criminal purposes, structures of impunity, corruption, and a lack of transparency.

The prevention measures of these crimes could be unlimited, so I will go through some of the most important ones. My presentation will focus on the legal safeguards provided by the Inter-American System, through its legal framework and jurisprudence, to prevent disappearances and torture in detention centers. CEJIL, the Washington College of Law, and APT have
psychiatric commitment goes hand-in-hand with involuntary treatment. Yet a careful read of the CPT standards in light of the CRPD signals that these standards must be revisited. The CPT standards on informed consent begin with a non-obligatory statement: “Patients should,” — not must — “as a matter of principle, be placed in a position to give their free and informed consent to treatment.” It continues with a more encouraging statement: “The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his or her consent.”

Yet the standards fall down with the following statement: “It follows that every competent patient, whether voluntary or involuntary, should be given the ability to refuse treatment or any other medical intervention that any derogation of this fundamental principle should be based upon law and only relate to clearly or strictly defined exceptional circumstances.” I think the key word here in this final phrase is “competent.” Often times, by virtue of the fact that you are involuntarily admitted to a psychiatric institution, you are deemed incompetent. Article 12 of the CRPD states that persons with disabilities have the right to “enjoy legal capacity on an equal basis with others in all aspects of life.” It goes on to provide that “States Parties shall take appropriate measures to provide access to persons with disabilities to the support they may require in accessing their legal capacity.” This includes the establishment of:

- Appropriate and effective safeguards to prevent abuse.
- Measures that ensure that measures relating to the exercise of legal capacity respect the rights, will, and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest amount of time possible, and are subject to regular review by a competent, independent, and impartial authority or judicial body. Safeguards should also be proportional to the degree to which such measures affect the person’s rights and interests.

As such, there can no longer be a blanket determination of “incompetence” of persons with disabilities. Where necessary, persons with disabilities must be provided support to facilitate their decision-making.

**LOOKING BEYOND DETENTIONS**

My comments today have focused on persons with disabilities in psychiatric detention. However, psychiatric institutions are just one of the many places of detention where persons with disabilities are typically locked away: social care homes, colonias — or countryside asylums — that are deposits for society’s outcasts, orphanages, nursing homes, and residential rehabilitation centers are all places where persons with disabilities are detained. Ultimately, the goal of detention monitoring for persons with disabilities must be the enforcement of a state’s obligations to develop alternatives to institutionalization — in essence, to depopulate these places of detention. This will, in part, entail the creation and strengthening of community-based services and supports that persons with disabilities themselves have determined that they need and desire. We could help ensure the effective and full implementation of the rights of persons with disabilities by reformulating the CPT standards to ensure that the objective of detention monitoring is the full and active participation and integration of persons with disabilities in the community. Thank you.

**Concluding Remarks from Dean Claudio Grossman, Moderator**

Thank you, Alison, and thanks as well to the other distinguished members of the panel. In this panel’s presentations, we heard about the national experience in Lebanon, case studies of sexual harassment in prisons, and issues concerning the rights of disabled persons in places of detention and prison. The presenters gave us their candid assessment of the topics.

A common thread of the presentations was that the condition or status of an individual should not be used as an excuse to deprive her/him a priori of her/his rights. International law establishes as a point of departure that everyone enjoys all rights. Restrictions are allowed only if they are specifically authorized, and need to be justified in each case, satisfying legal tests of reasonableness. Accordingly, the sheer fact that someone belongs to a certain “category” of persons does not in itself authorize restrictions by others.
KEYNOTE ADDRESS: THE IMPACT OF VISITING MECHANISMS IN TORTURE PREVENTION

Introduction by Dean Claudio Grossman

Dear friends, I am very pleased to welcome Mary Werntz, head of the International Committee of the Red Cross’s (ICRC) Regional Delegation for the United States and Canada. Ms. Werntz’s responsibilities include the working relationships with the U.S. and Canadian governments, interfacing with the National Red Cross Society, and serving as the ICRC’s representative to the public in both countries. She brings tremendous expertise and knowledge to this critical job.

Mary has been with the ICRC since 1995. During her tenure, she has served in India, Croatia, Georgia, Azerbaijan, and Nepal. She was also posted with the ICRC in Geneva as the Deputy Head of Operations for Eastern Europe, where she was responsible for ICRC operations in Russia, Ukraine, Moldova, and Georgia.

Ms. Werntz has an undergraduate degree in South Asian Studies from the University of Wisconsin, Madison, and a masters degree in City and Regional Planning from Cornell University. Her research has focused on the Muslim populations of South Asia.

We are very pleased to have an individual with such knowledge and expertise here to share her views on the important topic that brings us together. So, without further delay, please join me in welcoming Ms. Mary Werntz.

Remarks of Mary Werntz*

As the Head of Delegation of the International Committee of the Red Cross (ICRC) in North America, I would like to thank American University, Washington College of Law and the Association for the Prevention of Torture (APT) for organizing this event which brings all of us — international, regional, and domestic visiting mechanisms — together.

I would also like to thank all of the representatives of the different visiting mechanisms present here today. It is an honor for me to deliver this keynote speech for the President of the ICRC, Dr. Kellenberger, who could not come to Washington today. In his name, and in the name of the ICRC, I would like to thank you for your contributions to torture prevention. The ICRC, as a long-standing visiting mechanism with, currently, detention activities in more than seventy countries, recognizes and appreciates that the multiplication of visiting mechanisms over the past twenty years has had a strong deterrent and preventative effect on torture. The multiplication of actors, together with the multiplication of approaches, has positively stimulated the ICRC to develop and refine its approach towards torture prevention.

* Mary Werntz is Head of Regional Delegation for the International Committee of the Red Cross. Ms. Werntz has been with the International Committee of the Red Cross since 1995 and has served in India (Kashmir), Croatia (Eastern Slavonia), Georgia, Azerbaijan, and, most recently, in Nepal. She was previously posted at the ICRC Headquarters in Geneva as the Deputy Head of Operations for Eastern Europe where she was responsible for ICRC operations in Russia (North Caucasus), Ukraine, Moldova and Georgia.
Grossman and Werntz: Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention

We should never forget why we are here today. We are here for the detainees and we are working to better protect them from torture. Every effort, every facet of what we do, should always remain true to this fundamental humanitarian objective of preventing torture wherever and whenever it occurs. Thank you.

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Keynote: Question & Answer

**Mark Thomson:** I open the floor to those of you who would like to ask questions to Mary on the clearly very comprehensive approach of the International Committee of the Red Cross (ICRC) to monitoring and to the very interesting ideas on possibilities of collaboration. Looking around the room, would anybody like to ask a particular question to Mary?

**Dean Claudio Grossman:** Maybe you can comment about the role of confidentiality, and whether she has witnessed a change in this, out of experience?

**Mary Werntz:** It is a fundamental question — the question about confidentiality — for the ICRC. The bilateral confidentiality agreement that we have with detainee authorities, but also with militaries and military action is a fundamental tool. That is why we are granted access to so many places, and why others, who use public communication, would not be granted access.

I always try to make this point. I think sometimes we are misunderstood because of this confidential dialogue, because we can’t speak about it. We do believe that directly discussing with the authorities is very often an effective way to bring about change, I mentioned incremental change. That doesn’t mean that we never speak, if we feel we have exhausted our possibilities within the framework of confidentiality then we do publicly denounce the governmental authority. It’s very rare that we do it, but when we do we use very careful terms. In that case we would step out of our relationship with the detaining authority and announce that publicly.

The hard part for us in doing that — is of course — that we are leaving people. There are not any detainees, or I don’t know of any, that say you “oh, please leave. You are not effective.” They say you are not effective. Detainees’ say you are not changing things. But they say, “please don’t leave, because nobody can come here, nobody else but you.” So it’s a very difficult decision for us to take, but we have our doctrine, which outlines when we have to make those decisions.

We depend very heavily on what we call complimentarity. We read human rights reports, the public reports, that say many of the things we are unable to say. We view that as a piece of the puzzle. We don’t have the same methodology as others have; we have our own methodology, which is also necessary. And I know the human rights actors do depend equally on what we are doing, inside. So, that’s my comment on confidentiality. I think that when people understand it properly and in the whole context, ICRC is just one actor, with one methodology. If we were the only actor it would be problematic, but the fact is that there are many actors that use many different methods, that’s why we can all achieve something.

In terms of the evolution, certainly ICRC has gone through its moments when it’s hunkered down and didn’t want to talk to anyone and then it opened way up and wanted to share its methodology with everyone. I think you’re talking about that in the sessions that you have here. I think that we — as I tried to lay out in this — we understand the benefits of broadening an approach. Where we draw the line is not talking about the details of what we see, or what we said, or what we wrote in reports, because that’s within the confidential dialogue. What we will talk about is the bigger context. There [are] a lot of conversations that go on and again, which depends on different organizations that know each other well, and understands the relationship of the European Committee on the Prevention of Torture (CPT), which I have been very involved with. Those relationships are very strong and there is a clear understanding of how its going to work. We will be cautious working with an organization that we don’t know particularly well until we are assured that our way of functioning is properly understood.

The problem with it, with confidentiality is, that if you or someone else breaks your confidentiality, it has an impact on all the other contexts. States watch us and what we are doing. So, that’s why we are careful with this notion of confidentiality. Have I answered your question?

**Dean Claudio Grossman:** Yes.

**Mark Thomson:** Ok, well, I found it interesting in your presentation when you talked about your discussions with authorities on giving them advice, changing systems, and sharing your understanding of where the problems are. I thought that was something that would be interesting to explore further. I was wondering how far those requests for support, advice, training, etc have gone? Have they gone as far as, for example, to the address the important and key issue of interrogation? Have you been asked to give advice in those situations where just because of poor training and poor resources, police forces are conducting interrogations in such a way that they are committing abuses.
Let me begin by saying that we gladly accept Mark Thomson’s invitation to continue this discussion in the future. Our organizations share core values and the law school holds this relationship with APT in high regard. Moreover, we all have a sense from this conference that we need to work harder to promote human dignity for everyone, and that is a very powerful motivation.

Additionally, I believe the points raised by Mr. Thomson are essential. Social considerations play a key role in addressing the situation of vulnerable groups, especially the poor. Democracy and the rule of law are values in and of themselves, but they are also tools to effect the change needed to achieve societies where everyone counts. Going forward, we need to strengthen them even further.

We should not accept discrimination based on any ground, including social status. We should consider expanding the notion of vulnerable groups to include the poor. The protection of vulnerable groups is an important aspect of a democracy, and groups such as indigenous populations, women, and the poor should not be precluded from participating as everyone else, fully in the fabric of society. In this hemisphere, with the contributions of the Inter-American system of human rights, the strength of democracy relies on the basic principle that everyone counts.

Another important topic from today’s conference is the relationship between international and domestic law. We must consider how the interplay between international and domestic law can promote the full realization of protections afforded to individuals in detention. The regional systems have contributed greatly to promoting this interplay, as has the universal system. As an example, we are now seeing reactions to the reports by countries that have ratified the UN CAT and the OPCAT in which they are adopting measures to decrease the risk of torture in detention. Thus, the domestic and international mechanisms can play a crucial role in reinforcing compliance with human rights obligations.

In the achievement of our common goals, the role of the secretariat of the supervisory mechanisms cannot be ignored. Often they are permanent organs while the commissions or committees of elected members are not. We need to think about ways in which there can be cross-pollination between the secretariats of the regional and universal institutions, so that they can share and learn from each other’s extensive experience. For example, members of the Secretariat of the Inter-American Commission on Human Rights (IACHR) could work for a few months with the UN and vice versa, as a step toward further institutionalizing the objective of strengthening collaboration on the prevention of torture. It could also be interesting for these individuals to participate in missions together. For instance, when the IACHR prepares to conduct a mission and needs an expert, the universal system could help identify such an expert for the Commission and vice versa. We will need to flesh out these ideas more thoroughly after we conclude this conference.

We convened today a group of individuals with tremendous technical expertise and knowledge. There are very few places where crucial actors from different national, regional and universal institutions can come together to engage in this level of exchange. Moreover, we need to translate these exchanges into concrete proposals for action. It is cause for optimism that such knowledgeable individuals are here united by the commitment to ensuring protections for all, including the weakest members of society.

In closing, I would like to thank all of the individuals who participated in today’s conference. The speakers, panelists, moderators, and keynote speaker all did a terrific job. I would also like to thank APT’s Claudia Gerez, who unfortunately could not join us in person but for a happy reason as she is expecting a baby. I would also like to thank APT’s Tanya Norton, Jean-Sébastien Blanc, and Mark Thomson.

Thank you to the students of this law school, especially those on the Human Rights Brief, which is a superb student-run publication that will produce a special issue setting forth the proceedings of this conference. Being a law student is difficult
enough with the academic demands and often the need to incur substantial debt to study law. Hence, the fact that students make the time to dedicate to these important values is even more remarkable. I am proud of what they do and of the quality of their publication. As a member and current chair of the UN Committee against Torture and former member and president of the Inter-American Commission on Human Rights, I know first-hand how valuable the Brief is for us all. It bodes well for the future of the legal profession that our institution attracts women and men with such values and deep commitment.

Our thanks also go to our Office of Development and Alumni Relations, Office of Special Events and Continuing Legal Education, to the staff in my office, and to the dining staff. The law school offers approximately seventy conferences each spring so everyone is under a lot of pressure this time of year. Nevertheless, they still treat each conference as if it were the only one. Additionally, I would like to thank the Offices of Finance and Administration, Public Relations, and Technology. Last but not least, I must thank Jennifer de Laurentiis, coordinator of the law school’s UN Committee against Torture Project, who has been organizing this conference for the past several months. Today’s conference was possible in great part due to her efforts.

I would like to invite everyone to a reception just outside of this room where we can continue our discussions informally.