

Human Rights Brief

Volume 18
Issue 4 *Spring 2011 Special Edition*

Article 4

2011

Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention

Claudio Grossman
cgrossman@wcl.american.edu

Mary Werntz

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Grossman, Claudio, and Mary Werntz. "Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention." Human Rights Brief 18, no. 4 (2011): 29-34.

This Conference Proceeding is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

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 ICRC¹, 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,

** 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.*



together with the multiplication of approaches, has positively stimulated the ICRC to develop and refine its approach towards torture prevention.

Rather than reflect upon the evolution of the ICRC's action, which many of you would have followed over the years, I want to focus on the impact of visiting mechanisms in torture prevention. Visiting mechanisms contribute to preventing torture through two distinct but interconnected activities or pillars: 1) the physical presence of visiting teams, and 2) visits as a means to strengthen torture prevention systems — this includes working to change those systems through influencing, monitoring, training, and assistance.

I will now attempt to explore these two pillars. Working simultaneously on these two pillars — that is, through direct visits to detainees and through efforts to change the context in which torture occurs — is an effective means to address the fact that torture is still today widespread.

PROTECTION THROUGH THE PHYSICAL PRESENCE OF VISITING TEAMS

Allow me to speak first about the impact of visiting teams on torture prevention. Before beginning his or her first mission, ICRC delegates receive an intensive training course that entails, among other things, a detention visit role-play. In the course of this role-play, the delegates must locate a hidden detainee, who has been held incommunicado for several weeks and has allegedly been subjected to various forms of ill treatment. Providing our trainees apply properly the theoretical knowledge they have just learned and intervene adequately, the detainee is transferred to a normal cell and the detaining authorities can no longer hide the individual.

This training allows the ICRC to explain to its new delegates the ultimate goal of visiting mechanisms, be it the ICRC or any other mechanism. The ultimate goal for all of us is to protect *all* persons deprived of liberty from *all* forms of abuse. In real situations, the delegates will learn that there is no guarantee of success, that authorities learn quickly and find new ways to hide detainees from visiting teams. They will also learn that, sometimes, protection of the detainees may require temporary postponement of an intervention to the authorities so as to avoid extra-judicial killing or continued ill-treatment. Any visiting team must learn to think on their feet, to adapt and adjust, and to always come back with imaginative ways to limit and to end abuses.

The ICRC considers that visits and visiting mechanisms have a threefold 'protective' effect. First, visits promote transparency. Detainees and authorities do not exist in isolation from one another. The authorities are accountable for what is happening to each person under their control. The mere presence of a visiting mechanism, or indeed any other third party, be it an independent medical doctor, a defense lawyer, or a representative of a functioning judiciary, constitutes a necessary safeguard and a useful reminder to the detaining authority of their obligations and the limitations on their behaviors.

The second protective effect of visiting teams would be that visits emphasize the humanity and dignity of detained persons. Persons deprived of their liberty are inherently vulnerable. Abuse of detainees is fundamentally a denial of the humanity and dignity of the individual. By their presence in a facility, by the time they take to speak privately and with respect to detainees, and by the empathy they present to the detained person, visiting mechanisms contribute to enhancing the dignity and the humanity of the detainees. The simple fact of treating detainees as humans, regardless of the reasons for which they have been accused, helps them to maintain a sense of self and self-respect which is crucial to their mental health and may help them at a later stage to regain a normal life upon release. I personally believe that in humanizing the environment, visiting mechanisms also profoundly impact behaviors of abusive authorities. Generally, the visiting team includes medical personnel whose role it is to understand what has happened to a detainee and to provide him with medical counseling and empathy they can trust and to answer to detainees questions and fears. We hear: "Is it broken? Will I become normal again? Will I be able to have children after what they did to me?"

Third, visits are a framework for the provision of services, which protect and assist the detainee. As per its standard working modalities, the ICRC, when visiting persons deprived of liberty, has the opportunity to register detainees so as to be able to relocate and track detainees individually during its regular and repeated follow-up visits until the detainee is released or transferred to an authority where risk of disappearance and abuse is no longer a concern. It is common knowledge that detainees withheld from monitoring mechanisms or who do not have access to such mechanisms are those most at risk. Furthermore, registration often reassures a detainee that a third party is looking out for him or her.

In addition, the ICRC provides detainees and their families with the opportunity to establish and maintain contact with one another through Red Cross Messages, delivered by the ICRC delegates or through the network of Red Cross and Red Crescent societies. These messages are of utmost importance for detainees' psychological well-being and are often the only means of communicating with the outside world during the initial stages of detention. Re-establishing family contact is an essential tool in preventing abuses: families able to communicate with their detained relatives (through messages or family visits) are often the first control mechanism and contribute enormously to achieving protection of the detained persons. We should never forget the role played by families in protecting detained persons against abuses.

In sum, the ICRC believes these tools — which make up the standard modalities of its visits worldwide — are fundamental elements to the protection of persons deprived of their liberty. Through visits and their physical presence in a place of detention, mechanisms such as the ICRC, intend, as directly and effectively as possible, to achieve the objective of ending abuses.

VISITS AS A MEANS TO STRENGTHEN TORTURE PREVENTION SYSTEMS

Five or ten years ago, it is likely that this speech would have ended here. In the past, the visiting community was convinced that visits by themselves had a deterrent and preventative effect on torture. The debates then were very much focused on how to ensure that visits were as effective as possible, principally, through the careful articulation and adherence to detention-visit modalities.

Influenced by the multiplication of mechanisms and approaches, the contemporary understanding of the role of visiting mechanisms in torture prevention is much broader. I call this “visits as a means to strengthen torture prevention systems.” This includes influencing, monitoring, training, and assistance that can be part of bringing about change in the systems in which torture, ill treatment, and discrimination takes place. I will speak about three elements necessary for contributing to systemic change: 1) understanding the detention system, 2) improving the detention system through assistance and support, and 3) working on the context in which the detention system exists, including legal systems, services, and behaviors.

UNDERSTANDING THE DETENTION SYSTEM

Allow me to speak a moment about the first point, ways of understanding the detention system through visiting mechanisms. In order to engage in a meaningful dialogue with the authorities on detention matters, visiting mechanisms have to develop a deep understanding of the detention system and its links with the broader criminal justice system. To do so, there are many sources of information: reports from other organizations, academic studies, analysis of the legal frameworks, actors from the civil society and local government, and the authorities themselves. I would like to highlight here four separate sources of information: 1) the tour of the premises, 2) dialogue with the authorities, 3) dialogue with detainees, and 4) dialogue or exchange with other visiting mechanisms.

By doing a tour of the premises, the visiting team enhances its capacity to comprehend the facility, in terms of its physical organization and its internal dynamic and atmosphere, as well as issues such as access to services, for example health care. Understanding the internal structures that govern relations between detainees and detainee groups (for example, internal hierarchies and gang interactions) or even a specific situation in a particular quarter or wing of a facility is fundamental to working effectively to bring about systemic change.

Dialogue between visiting mechanisms and the detaining authorities constitutes a second crucial source of information. Generally the authorities understand internal structures between detainees and can be encouraged to better protect the weakest among the detainees from becoming the prey of the strongest. In this regard, we should never forget that it is primarily the role

of the detaining authorities to ensure fairness in the prison and to protect the weakest.

In this respect, I would like to share with you a lesson I learned from a very experienced Prison Governor of an Eastern European country working on prison reform in another country. We were touring a place of detention together at lunchtime. It took him just a few minutes to notice an injustice in the food distribution that allowed the more powerful detainees to decide who got what. The internal system actually ensured that the strongest maintained control of the resources while the weakest amongst them had little access to food. Only by accepting the “protection” of the powerful leaders could a weaker detainee improve his situation. My Council of Europe colleague helped me to see and better understand the dynamics in prison and the role played by detainees themselves in maintaining and ensuring power structures and access to resources. This understanding is fundamental to drafting any relevant recommendations.

Finally, direct access to detainees remains a privileged source of information for understanding the system. Visiting mechanisms can acquire a lot of information beyond the situation of each individual during private interviews with detainees. Issues such as the organization of a place of detention and the way a place functions day by day are well understood by the detainees. Often, it is the detainees themselves who indicate specific parts of a place of detention that need to be visited or signal specific issues which need to be examined more closely.

Furthermore, understanding the details of the detention path, from arrest to release, helps the visiting mechanism to uncover and identify unacknowledged places of detention and to ascertain which authorities have been involved in order to seek access to persons held within them. (In some circumstances, the ICRC also follows detainees after their release through “release checks” carried out with relatives of detained persons or ex-detainees themselves.) Understanding the system is thus the first step to strengthening it.

IMPROVING DETENTION SYSTEMS THROUGH ASSISTANCE AND SUPPORT

The second aspect of strengthening torture prevention is improving the detention systems through provision of assistance and support in order to be effective overtime. Visits should contribute to improving the situation of persons detained and should not be viewed as simply a reporting mechanism.

The ICRC has, for example, moved from a mainly monitoring function on the basis of the Geneva Conventions, to a more humanitarian role in detention, meaning that it is increasingly responding directly to humanitarian needs in places of detention. Today, in almost all of the seventy-plus countries where it operates, the ICRC works together with the authorities to find solutions to address the needs of the detainees and plays an active role in implementing those solutions. This could include for example, training medical staff to set up mechanisms for

reporting abuses, improving water and sanitation systems, ensuring family visits, and enabling provision of food.

Obviously not all of the visiting mechanisms have the mandate and/or the capacity to play a role similar to the one played by the ICRC. All visiting mechanisms should consider, however, going beyond monitoring to take a more active role in answering, directly or indirectly, the needs of persons deprived of their liberty.

WORKING ON THE CONTEXT IN WHICH THE DETENTION SYSTEM EXISTS, INCLUDING LEGAL SYSTEMS, SERVICES AND BEHAVIORS

The third component of strengthening torture prevention is working on the context in which the detention system exists, including legal systems, services and behaviors. Those of you who have been involved in the process of ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT)² at the national level can, no doubt, attest to how this process has led to creating a positive domestic dynamic around torture prevention. Thanks to this process, many stakeholders — ranging from detention authorities to NGOs and from Parliamentarians to representatives of international organizations — have debated issues related to torture prevention. They have contributed, in the best-case scenario, to the establishment of an effective National Preventive Mechanism (NPM)³ and to productive discussions around the legal, institutional or ethical environment related to the prohibition of torture.

Additionally, visiting mechanisms, either on their own, or with the strategic cooperation of other actors or peers have had, especially at the national level, an impact on the legal, institutional, and ethical contexts.

On the legal context, visiting mechanisms, more than anyone else, are in the best position to assess the impact of the legal framework for the protection of persons deprived of their liberty and its gaps. Visits enable them to analyze how the legal prohibition of torture is implemented in places of detention. Furthermore, detention monitoring experts are often consulted by the authorities in a number of legislative processes related to the protection of persons deprived of liberty and prosecution of those responsible for acts of torture.

Visiting mechanisms have also played a crucial role in relation to the institutional context. It is clear that visiting mechanisms are in an ideal position to identify potential institutional gaps. For instance, the ICRC always considers that access to an independent medical doctor is an important means to prevent torture and other forms of ill treatment. Thanks to its visits and to the discussions with the medical doctors working in places of detention, the ICRC is able to assess if detainees have access to a medical examination once they arrive at a new place of detention. More precisely, the ICRC can document how this medical examination is processed, if the medical doctor is independent and well trained, or if he or she is put under pressure by the

authorities. Due to this assessment *in situ*, the ICRC is in a good position to recommend to the authorities that they guarantee the independence of the medical staff, that they be provided with training, and be enabled to work free of pressure.

Recommendations by visiting mechanisms progressively contribute to the reinforcement of the institutional framework and control mechanisms related to the prevention of torture.

Finally, the impact of visiting mechanisms on the ethical context should not be overlooked. The prohibition of torture is above all an ethical issue. Recent history has reminded us that despite a comprehensive legal framework it was still possible to question and challenge the absolute nature of the prohibition of torture and other forms of ill treatment. In this regard, visiting mechanisms have a role to play, as they are the primary witnesses to the impact of torture on the victims and on the society.

As James Ross says in his article, “A History of Torture”:

The human rights treaties can be viewed as the culmination of a historical process recognising the inviolability of the person. Today no justice system formally permits torture and no government openly considers it acceptable. Yet day in and day out, far too many people throughout the world suffer under a torturer’s hands.⁴

As a way to contribute to the reinforcement of the ethical basis of the absolute nature of the prohibition of torture, we, as visiting mechanisms, have to continue to explain to both the authorities and the general public the effects of torture on the victims, their families, their communities, institutions, the authorities and the overall society. The ICRC is very much willing to go in this direction.

CONCLUSION

A few concluding remarks are in order. I have focused on the impact of visiting mechanisms in torture prevention. Visiting mechanisms contribute to preventing torture through two interconnected pillars: physical presence of visiting teams and visits as a means to strengthen torture prevention systems. Both pillars are necessary in order to provide immediate protection to detainees and to change the system to incorporate checks and balances that prevent torture in the future.

As I have noted, the ICRC cannot but welcome the multiplication of visiting mechanisms. This multiplication has led to a reflection and, ultimately, refinement of our approach in terms of torture prevention.

The ICRC modalities are based on prolonged presence and regular and repeated visits. It is this repetition that reminds authorities of their obligation and brings incremental improvement. I am encouraged by the increased interaction between the various international and national visiting mechanisms which

coordinate and sequence follow up and make the whole more effective than the sum of its parts.

The multiplication of actors and approaches has been positive and has led to a broader understanding of 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.

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 WERTZ: 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 complementarity. 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

regularly? Has that started to happen, or is that something that you ask other people to get involved with.

MARY WERTTZ: I think we regularly do what you are asking. In regards to the model aspect, if there is a situation where there is ill treatment, we will start with very gentle approaches. We will suggest a health and prison seminar. When you take doctors out of the situation that they are in, and you start talking about the professions, and you start talking about the ethical rules that govern their profession, and then something happens and then you start listening to the difficulties they are facing or what they are finding. That is an approach we've been doing that for twenty years. In terms of police, police abuses, again it depends on the situation on the ground. We would very, very regularly be doing IHL and IHR training. We always prefer it if there are solid human rights actors on the ground to do the human rights training. Very often the human rights actors do the IHL piece of it.

We do trainings of sanitations engineers to help them develop sustainable systems in prisons that will work in the long term, so people don't live in such miserable conditions. Again, if we look at the Tuberculosis programs that we've run in the south caucuses, they have developed into extremely sophisticated systems, complete with whole laboratories. It really empowers the local structures to do it right. And I've been, in many of these cases, in the short term you fail, if you try to do capacity building in three years or five years it doesn't work. If you do capacity building over ten to fifteen years, you can achieve something as long as you understand the system properly and you think about sustainability from the beginning. If you try to put in place a medical system that looks like the one we have over here, it won't be sustainable. As soon as you go it will fall apart. We try to make sure that the systems and prisons are comparable to the systems in the societies in which they live.

MARK THOMSON: Thank you very much. One last question from Alessio.

ALESSIO BRUNI: A short question. I am going back again to the question of confidentiality. Now, you explained why you need confidentiality because you can continue the dialogue with the state concerned. But on the other hand, from the point of view of the state, is requiring confidentiality sort of a presumption, of guilt? Why does the state accept your recommendation provided

it is confidential, why can they not do it in public? That is my question.

MARY WERTTZ: I think we are the ones asking for the confidential dialogue, in the places that we are trying to get in, and not the states. It seems that states also like it and feel comfortable with it. I believe we have a few examples of states that said, "we don't want your confidential dialogue," and permit us to go public. I think in the Northern European context we have a few cases like that, where states have come forward. I expect that it will happen more and more often. But again, the discussion on confidentiality happens when you are going to a new situation where we already have concern. So there is already a reason for why we are trying to get there. And it's not a relationship that is established. It's something new. There is a need for us to get used to each other. A whole lot of this depends on trust. It's about the ICRC being predictable in what we do, and not suddenly doing something different than what we said. So framing it as confidential makes it rather controlled. I think states don't want a whole lot of information out, because they have things they don't want out. We use confidentiality as a way to have access to the piece of the puzzle that needs to be addressed. States want confidentiality because they have something that they don't want to be in the public realm.

MARTIN DE BOER: Can I add?

MARY WERTTZ: Please.

MARTIN DE BOER: Maybe, part of the benefit of confidential dialogue is to keep it out of a political realm. You can have a technical dialogue — and I think for us, for incremental change, that does have an impact. That's step by step. Influence from the political realm outside it, might hamper some of the changes that we would be able to achieve with, let's say, a more pragmatic and confidential dialogue.

MARK THOMSON: Ok, for those of you who haven't met him, that is Martin de Boer, also from ICRC. I would now like to thank Mary for the presentation. Time has run out, so if you have any other questions you are going to have to ask the panelists this afternoon on ICRC related matters. Whether they will be able to give as good of a response as Mary, I doubt it, but we'll give it a try. Thank you very much Mary.

ENDNOTES: Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention

¹ ICRC, Home Page, <http://www.icrc.org/>.

² Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.

³ National Preventative Mechanism, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, CAT/OP/12/5.

⁴ James Ross, "A History of Torture" in Kenneth Roth, Minky Worden, and Amy D. Bernstein, eds., *Torture: Does it Make Us Safer? Is It Ever OK?: A Human Rights Perspective* (New York: Human Rights Watch, 2005).