



## Briefing N°4

### Mitigating the risks of Sanctions related to Detention Monitoring

Since its founding in 1977, the Association for the Prevention of Torture (APT) has promoted the regular and independent monitoring of places of detention as an effective means for preventing torture and other forms of ill treatment in detention. The *Detention Monitoring Briefing Series* makes APT's pioneering research-analysis and our counterparts' best practices available to practitioners at national and international levels around the world. It aims to complement and provide more detailed consideration of aspects introduced in the APT publication, *Monitoring Places of Detention: A Practical Guide*.

Feedback, comments or suggestions on the content of the series are welcome and should be sent to [apt@apt.ch](mailto:apt@apt.ch).

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## Introduction

The risk of torture and other ill-treatment is inherent to places of deprivation of liberty, where detainees are in a state of powerlessness in relation to the detaining authorities. The role of independent monitoring bodies is therefore crucial to ensure that persons deprived of their liberty are not subjected to torture and other ill-treatment. Nevertheless, monitoring activities can be two-sided, as detained individuals are sometimes punished by sanctions or reprisals for their mere contact with an independent monitor. This is the reason why the Optional Protocol to the UN Convention against Torture (OPCAT), which establishes both an international Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment and punishment (SPT) and National Preventive Mechanisms (NPMs) provides clear safeguards as regard sanctions taken against individuals who have communicated with the SPT or the NPMs:

*“No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.”<sup>1</sup>*

Additionally, on 21 December 2010 the international community forcefully confirmed its clear opposition to any forms of sanctions against persons in contact with monitoring bodies, through a General Assembly resolution adopted by consensus.<sup>2</sup>

This paper aims therefore at describing and analysing sanctions applied to individuals detained under the authority of custody forces and their consequences on their daily life. Even though sanctions are most often inflicted against people deprived of their liberty, they may also be applied to other categories of persons, such as family members, employees of the place of detention, and monitors: these situations will also be addressed in the present document.

This paper also seeks to offer some advice on how to avoid, or at least mitigate, the impact of these sanctions on the individuals they are applied to. It is intended to be used by all mechanisms who undertake preventive visits to places of detention, and especially to NPMs, established under the OPCAT.<sup>3</sup>

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<sup>1</sup> OPCAT, Art. 15. Exactly the same wording is used regarding the NPMs in Article 21.

<sup>2</sup> “The General Assembly [...] urges States, as an important element in preventing and combating torture and other cruel, inhuman or degrading treatment or punishment, to ensure that no authority or official orders, applies, permits or tolerates any sanction or other prejudice against any person or organisation for having been in contact with any national or international monitoring or preventive body active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment.” A/RES/65/205, §9

<sup>3</sup> The concern about sanctions or reprisals is shared by many UN representatives and mechanisms active in the field of human rights, in particular the Special Rapporteur on Torture and other ill-treatment. The terms of reference for fact-finding visits carried out by UN Special Procedures clearly states that no individual should suffer threats or sanctions for having been in contact with the special Rapporteur (see UN Doc. E/CN.4/1998/45, 20 November 1997, Appendix V(c)).

## What is understood by “sanctions”?

The term of “**reprisals**” is frequently used to describe punishment practices inflicted by guards or detaining authorities against detainees who have reported to independent monitors. However, “reprisal” being defined as an act of revenge or retaliation, is neither exact nor precise, since the effects suffered by individuals subjected to torture and other ill-treatment do not result from committing an “offence” supposedly justifying a revenge or a punishment. Therefore, the APT prefers to use a more generic but also more adequate term, “**sanction**”, which is also the wording used in articles 15 and 21 of the OPCAT (see above), describing any punishment resulting from mere contact with an independent monitor.

In a broad outline, sanctions can be applied to four categories of individuals, the first of them clearly being the most at risk and in the most urgent need of special protection:

1. Persons deprived of their liberty
2. Relatives of individuals deprived of their liberty
3. Employees of the places of detention/other public offices’ employees
4. Members of monitoring teams

In any case, all monitoring mechanisms undertaking visits to places of detention and holding interviews in private with inmates shall be aware at all times that the individuals agreeing to talk to them are potentially exposed to sanctions for the sole fact of speaking in private with someone from the outside.

## Who are the potential victims and what are the sanctions applied?

### 1. Persons deprived of their liberty

Persons in custody are the most vulnerable to sanctions and therefore require the greatest protection. Since monitors have to be in close contact with them in order to properly conduct preventive visits, they have the responsibility to be well aware of possible sanctions and to spare no effort in preventing them from being inflicted.

#### A) *Types of sanctions applied*<sup>4</sup>

- **Death**: occasionally, the punishment is so brutal and sustained that it may provoke the victim’s death, whether resulting from the staff’s direct violence or being self-inflicted in order to put an end to the punishment.
- **Physical punishments** are the most direct and easily observable sanctions. Beatings, slaps, kicks, electroshocks, physical and chemical restraints, etc., are some of the various ways in which physical force is applied on a person who is obviously unable to respond or defend himself or herself.
- **Inter-prisoners’ violence** can be generated by the authorities or the staff and operates as a powerful sanction. In countries where a strong hierarchy exists amongst detainees, the authorities can make use of those unequal relations to sanction targeted individuals. In some contexts where members of different organized crime groups have to be detained in separated areas or blocks in

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<sup>4</sup> The items presented below do not form an exhaustive list. The same applies to all listings in this paper.

order to avoid violence or even killings, a common sanction can be to transfer (or to threaten with transferring) an inmate from a specific gang to another area controlled by a different gang, which will generate fights and can even sometimes lead to executions. The transfer to another area of the place of detention (or the mere threat of it) can also concern former police officers, rapists, child molesters, etc.

- **Verbal and psychological threats:** Intimidation is also a very common sanction that can have a damaging effect on the detainees' psychological state.
- **Isolation:** accused of committing offences or with the supposed aim of protecting their physical integrity, the detained individuals can be moved away from their companions and subjected to solitary confinement.
- **Restriction of detainees' rights:** common sanctions can be to limit (or threaten to limit) detainees basic rights, such as provision of food (reducing its amount or frequency), access to activities (education, work, sport), access to medical care, access to the courtyard, access to the food or other articles brought by the detainee's family, etc.
- **Prohibition of visits and communication with the outside world:** in addition to isolation, detainees can be sanctioned through the prohibition to receive visitors or the reduction of the visits' frequency. Isolation following reports of violations can also be complemented by inspecting prisoners' mail and destroying legal notes or submissions, like habeas corpus.
- **Transfers:** a way of sanctioning detainees who report ill-treatment or torture is to transfer them to another place of detention, usually with a stricter regime and further away from their family, friends and lawyer. Transfers are a common sanction and a threat for detainees, especially in large countries. For mothers deprived of their liberty, the fear of being transferred is a very powerful sanction, especially when their children do not live with them in the place of detention.
- **Humiliation:** this is one of the most common ways of sanctioning detainees and can range from daily petty acts of humiliation to actions affecting the detainees' dignity and amounting to ill-treatment.

## **B) Consequences**

⇒ **Fear:** when the visiting team leaves the place of detention, the individuals deprived of their liberty remain alone with those who potentially inflicted torture or other ill-treatments. Fear operates in this situation as the most effective mechanism to silence denunciations and prevent the elucidation of abuses and human rights violations behind the walls of detention places.

⇒ **Distrust:** distrust comes along with fear. If a detainee speaks with monitors who claim to protect his or her rights and is then punished or transferred to another place of detention, why will he or she trust the monitors? While the detainee might feel betrayed, the visiting team will be hampered in its future monitoring tasks.

⇒ **Silence:** the outcome of fear and distrust is silence. And clearly, silence facilitates the continuity of practices that violate the human rights of people deprived of their liberty.

## 2. Relatives of individuals deprived of their liberty

One of the most harmful effects of confinement is the destruction or weakening of affective ties, as frequent contact with relatives and close friends is essential for individuals deprived of their liberty.

### A) Types of sanctions applied

- **Prohibition of visits:** relatives can be sanctioned by being accused of infringing the facility's safety rules and regulations. Relatives who protest against the long wait to enter a place of detention or report the conditions in which their relatives are held in, know that the person they visit can be sanctioned as a result. Apart from this threat, which often ends up by silencing relatives, it is also possible that they will suffer the consequences themselves, by being prevented from visiting under false excuses. These prohibitions are usually applied as a sanction against family members and can be extended to long periods or even be indefinite.
- **Transfers of their relative:** the order of transfer as a sanction also entails severe problems for the relatives; particularly for women who, in most countries, take upon themselves the physical, economic and affective burden of supporting individuals deprived of their liberty. Besides the pain inflicted by the separation, the transfer of their close relatives involves considerable economic expenses, particularly in big countries, as well as a weakening of the relatives' physical and emotional health. In addition, as a visit might take several days, considering the distance to the new location and the visit itself, those who have professional obligations and cannot afford a leave are to lose direct contact with their detained relative.
- **Humiliation:** Family members of persons deprived of their liberty can also be sanctioned by queuing for hours with no reason, by being subjected to humiliating searches or any other petty actions that would eventually discourage them from questioning the way their relatives are detained.

### B) Consequences

⇒ **Uncertainty and despair:** family members do not know what to do to protect their relatives in detention. If they report what has happened to them, they fear losing their right to visit or, even worse, a forced transfer of their relative. In large countries, a transfer may result in ending up in a prison hundreds or thousands kilometres away from the relatives' place of residence. And, more than anything, family members fear that their detained relatives may suffer new ill-treatment. This uncertainty generates anguish, resentment, and finally damages the ties between people deprived of their liberty and their relatives.

## 3. The institution's employees/other public offices' employees

In detention facilities as well as public offices, for the executive, legislative and judicial branches of government, employees who condemn practices violating the rights of individuals deprived of their liberty and who actively report such cases may be at risk of suffering sanctions from their hierarchy and work colleagues. In fact, authorities who execute, tolerate, silence or omit to investigate cases of torture and ill-treatment, tend to punish subordinates who denounce them, accusing them of a lack of *esprit de corps*.

### A) Types of sanctions applied

- **Threats to their physical integrity:** particularly in the case of security forces - police, prison staff - and in countries lacking democratic guarantees, employees risk psychological threats and even attempts against their physical integrity.
- **Redundancy:** the mere threat of being dismissed often operates as an effective and unofficial disciplinary measure for the staff.
- **Defamation:** the public officers or their actions can be denounced under a false reason in order to remove them from their position or discredit their deeds.
- **Harassment:** without reaching the point of physical sanctions, redundancy or defamation, there are actions that look for the mental exhaustion of the public officer having reported torture or other ill-treatments. The informality of such sanctions makes it more difficult for victims to protect themselves. Those sanctions can include: changes of office; withdrawal of working material and tools; reduction of responsibilities and tasks; compulsive transfers; hindrance for speaking with a superior; detaching him or her from the decision making; assignment of inadequate, unnecessary or unimportant tasks; lack of respect, mockery and humiliation. Additionally, in contexts where employees are granted specific privileges as compensation for relatively low salaries, a typical sanction can be for them to be deprived of those privileges.

### B) Consequences

- ⇒ **Complicity:** individuals working in detention places, even if well-intentioned, end up being accomplices of practices violating human rights, as they face the threat of losing their position, being transferred against their will, or suffering one of the harassment practices described above. In institutions with a strong *esprit de corps* and loyalties based on silence, isolation operates as a powerful deterrent.
- ⇒ **Weakening of the institutions:** As for other public officials not working directly in places deprivation of liberty, the sanctions they suffer can lead to **discouragement** and giving up their task, and therefore to a weakening of the government's capability to protect human rights.

## 4. Members of monitoring teams

Monitoring bodies established under the OPCAT are granted the following powers that should normally prevent possible sanctions against them: access to all information referring to the treatment of detainees, access to all places of detention, opportunity to have private interviews with the persons deprived of their liberty, liberty to choose the places they want to visit and the persons they want to interview<sup>5</sup>. Nevertheless, binding conventions are sometimes overlooked and sanctions can be applied in spite of international safeguards. Besides, other bodies are not granted the same legal powers and are therefore more vulnerable to sanctions (for instance, NGOs might be forced to negotiate the access time and again as a sanction inflicted by the detaining authorities).

### A) Types of sanctions applied

- **Entry ban:** the monitors may be banned from visiting places of deprivation of liberty, either for a false reason (security issues, lack of staff, unease among

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<sup>5</sup> See OPCAT Art. 20.

detainees, etc.) or even without formal grounds. Similarly, restrictive conditions can be imposed: limited access to the facility, escort by custody staff, no possibility of holding interviews in private with detainees, etc.

- **Lack of cooperation from the staff:** in retaliation for having reported human rights violations against detainees, monitors can be severely hampered in doing their work by the facility's employees. While the visiting conditions remain officially granted, monitors may face many obstacles of all kinds aimed at making their work more complicated, if not impossible.
- **Attribution of responsibility for newly inflicted ill-treatment:** making monitors responsible for recently inflicted ill-treatment on detainees after reported abuses is a pernicious sanction. Evidently, this not only engenders fear but also distrust, thus undermining the efforts of monitoring teams to gain the trust of detainees.

Besides these kinds of sanctions, monitoring teams can be subjected to threats, false denunciations and harassment, similar to the cases of detention facilities' and public offices' employees mentioned above.

### B) Consequences

⇒ **Difficulties in accomplishing their task:** the purpose of monitoring visits is to bring transparency to places of deprivation of liberty and to prevent torture and other ill-treatment. If, instead of achieving these objectives, the consequences of visits are new ill-treatments or a worsening of the living conditions, the fundamental task of monitoring teams is undermined, becomes more difficult and, under certain circumstances, ceases altogether.

#### Sanctions: general consequences

- **Preventive monitoring hampered:** If detainees are afraid to be in contact with monitors because they know that they will be sanctioned afterwards, or if the monitoring bodies encounter difficulties in accessing the facilities, or if any other sanction is applied, the whole preventive work is in jeopardy.
- **Increase of torture and other ill-treatment:** less visits and less dialogue with presumed victims leads to an increased opacity within places of deprivation of liberty, opening the way to abuses and violations of the detainees' rights.
- **Impunity:** the recurrence of human rights violations, the infliction of torture and ill-treatment based on the silencing of its victims and the inaction of those who should prevent and investigate such practices generate a vicious circle of repetition and impunity.

### How to prevent sanctions?

In the following paragraphs some measures aimed at preventing, or at least mitigating, the risks of sanctions will be briefly analysed. The guiding principle during a visit should be at all time the **do no harm principle**, which can be described as follows: "Detainees are particularly vulnerable and their safety should always be kept in mind by visitors, who should not take action or measure which could endanger an individual or groups. In particular, in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity should be kept in mind. Poorly planned or prepared visits, or visits

not conducted in respect of the methodology or of the following basic principles, can actually do more harm than good”.<sup>6</sup> While primarily focusing on preventive measures relevant to monitors, some actions to be taken out of the scope of the visits themselves are also addressed in the following paragraphs.

## 1. Actions to protect individuals deprived of their liberty<sup>7</sup>

### ➤ **BEFORE THE VISIT**

- **Develop an internal strategy** for the prevention of sanctions.
- Establish clear **guidelines for reporting individual cases** of deliberate ill-treatment, requesting inquiries and guaranteeing the confidentiality against sanctions.
- **Establish a specific policy** setting out the types of information that can be collected during group interviews and the types of information that should be collected only during interviews in private.
- **Collect relevant information from other actors**, including NGOs working directly or indirectly with inmates.

### ➤ **DURING THE VISIT**

- **Chose randomly a large group of people to interview**, or mix the individuals chosen for the interview in a random way, in order to prevent custody staff from identifying the interviewed detainees.
- Carry out the interviews in **absolute privacy**: *out of hearing and, to the extent possible, out of sight (of both staff members and detainees)*.
- Omit formulating recommendations, suggestions or petitions to custody staff **immediately after the interviews**, except in cases of extreme urgency or when the detainee’s demand is unquestionable; in these cases, such information must be recorded in writing.
- When visiting the place of deprivation of liberty, **avoid collective demands** raised openly by detainees as they may expose them. Be clear and concise when stating that whatever they need to say will be heard in private, and honour this commitment as soon as possible.
- Be aware of the **possible presence of informants** among detainees. A group interviews with an informant among the interviewees may have disastrous consequences for those communicating violations of their rights to the monitors. In any case, it is important to always opt for individual interviews, especially when dealing with possible cases of torture or other ill-treatment.
- Disclose the personal details of individuals deprived of their liberty – or those allowing identifying them - only with their **express and informed consent**.
- People deprived of their liberty, particularly those who are more vulnerable, such as children or adolescents, women, foreigners or mentally disabled, are frequently ignorant of their **rights**. Granting them with adequate and qualified advice is an effective way of protection.

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<sup>6</sup> APT “*Monitoring places of detention: A practical guide*” p.27.

<sup>7</sup> This section has been partially inspired by the following document: “Analytical self-assessment tool for National Preventive Mechanisms (NPM). A preliminary guide by the SPT regarding the functioning of an NPM”, CAT/OP/12/8, 18 October 2011

➤ **AFTER THE VISIT**

- **Carry out follow-up visits:** the best protection that can be offered to persons deprived of their liberty by monitors is to repeat the visits as frequently as possible/necessary and to undertake follow-up visits to directly ensure that no sanctions are being taken against those who have communicated with them. Cases of particular concern should be monitored including after the transfer to other institutions. Monitoring bodies operating at national level, such as the NPMs, should also follow-up on visits carried out by international bodies or rapporteurs, with the same objective of preventing sanctions.
- **Guarantee the presence of multiple monitoring bodies:** one of the most important tools to protect the physical integrity of individuals deprived of their liberty consists in regular visits by different organisations, entities and people (NPMs, international bodies, judges and prosecutors, NGOs, etc.). This continuity and persistence provides not only effective protection, but also strengthens the detainees' confidence and stability.
- **Benefit from international support and leverage,** whenever there is a permanent international presence in the country, such as the UN country teams. Numerous UN Human rights mechanisms with no permanent presence in the field, such as the UN Special Rapporteur on Torture, can also serve as valuable support in addressing potential or actual sanctions.
- **Avoid public exposure,** unless the person wishes the transmitted information to be publicly known. It is highly sensitive and strongly not recommended to make public or identifiable the testimonies of those who had been in contact with the monitors. In public reports or statements, the information should always be general enough in order to avoid any additional risk of sanctions.
- **Facilitate communication with the outside world:** telephones, mail and contact with the media are additional means to protect individuals deprived of their liberty.
- **Submit for judicial approval any sanctions** concerning individuals deprived of their liberty that are taken at the administrative level. The judicial control must include the right to defence and appeal, and the measure in question must be suspended until this process is complete.

**2. Actions to protect the relatives of individuals deprived of their liberty**

- **Offer appropriate advice** concerning their rights as relatives. When formally or informally sanctioned, relatives sometimes do not know how, or do not dare to invoke their rights to defend themselves, mainly because they fear the consequences for their relatives. Family members also have rights and should be made aware of them.
- **Provide support to relatives** in administrative submissions and in the defence of their rights. Their state of defencelessness might require that they receive not only advice but also support to enable them to claim their rights through administrative submissions.
- **Give relevance to the role of relatives** in both the judicial and the administrative fields, by developing comprehensive care programmes to address their needs. The detention of a family member often generates a great number of problems, especially when the family has no sufficient income and the detainee

was the breadwinner prior to his detention. A transfer to a faraway prison as a result of a sanction will automatically increase the travel expenses, the travelling time, and will generate difficulties both at work and at home. Designing public programmes and policies which perceive relatives as a collective with specific rights and needs contributes to their protection as well as that of their detained family member.

### 3. Actions to protect the staff of institutions and public offices

- **Create specific mechanisms within government structures** that focus on the specific issues faced by people deprived of their liberty. Wherever such areas already exist, increase their relevance, since problems of individuals deprived of their liberty tend to be a rather low priority, addressed with a limited budget and staff, and low attention from higher rank public officers. This might lead to the persecution of public officers committed to defending the rights of individuals deprived of their liberty.
- **Create external oversight mechanisms** within detention institutions, depending on other government areas, and with the mandate of receiving public or anonymous complaints from the institution's staff, and guarantee the stability of their position and, whenever necessary, their personal protection.

### 4. Actions to protect the members of monitoring teams

- **Explicitly state the faculties and powers** of the members of monitoring teams through national legislation. Since one of the most serious sanctions applicable to them is the entry ban, it is essential that the legal norm stipulating monitoring teams' functions explicitly prohibits this sanction.
- **Raise awareness of public opinion on the rights of persons deprived of their liberty:** The problems faced by people deprived of their liberty are unknown to most of the population, which only has an occasional access to minor - or sometimes sensational - aspects of what happens behind the walls of detention centres. The rights of people deprived of their liberty ultimately coincides with the rights of the rest of society. In some countries, forms of ill-treatment sometimes appear to be justified, as if it were an inevitable consequence of having committed a crime, suffered from a mental illness or being a rebellious adolescent. Providing a better understanding of the basic rights of persons deprived of their liberty and actively advocating for a better compliance with international human rights standards in places of detention should be part of a monitoring body's activities.
- **Raise awareness of the mandate of the monitoring body:** Most visiting mechanisms operate behind the scenes, which is also part (at least in NPMs' case) of the constructive dialogue they have with the authorities. Nevertheless a cooperative approach does not prevent raising awareness of the monitoring body's activities and the specificities of its mandate.
- **Train monitoring bodies' staff:** Carrying out preventive visits to places of deprivation of liberty is a complex and highly demanding task. Monitors have important responsibilities and are to be appropriately trained, notably on the basic principles and methodology which ultimately aim at mitigating the risks of sanctions.

## Conclusion

Defending human rights and fighting torture and other ill-treatment is directly linked to the respect for human dignity. It is unacceptable and prohibited under international law to inflict sanctions on those in contact with independent monitors.

Ensuring that no authority tolerates any sanction against any person for having been in contact with a monitoring body is a key element in combating and preventing torture. While persons deprived of their liberty are more vulnerable to sanctions inflicted by detaining authorities, it should not be forgotten that their relatives, the places of detention's employees and even members of monitoring bodies can also be subjected to such punishment measures.

Sanctions therefore affect the society as a whole and governments should ensure that they are not tolerated in any place of deprivation of liberty within their jurisdiction. The primary responsibility for preventing such actions falls within the governments and the detaining authorities, but those carrying out visits to place of detention should be aware that the mere fact of visiting implies important responsibilities.

Monitors should always be guided by the “do no harm principle” and undertake all the possible actions to mitigate the risk of sanctions inflicted on those who agreed to cooperate with them during their visits.

