Moritz BIRK / Walter SUNTINGER

A systemic approach to human rights practice

Table of Contents

"There is nothing more practical than a good theory"
(Kurt Lewin)

I. Introduction

It is useful to regard human rights and human rights practice essentially as an "unfinished enterprise",[1] a process in which the different actors involved try to strengthen the practical relevance and effectiveness of human rights and in which different approaches – mindsets, cultural settings, academic and professional perspectives – come together and learn from each other, always with a view to having maximum impact.

Our personal story of working for the realisation of human rights has been strongly shaped by our experience at the Ludwig Boltzmann Institute of Human Rights and thus also by Manfred Nowak and Hannes Tretter. They are both exemplary representatives of the tireless efforts of the academic and research community to identify the challenges and promising practices worldwide for implementing human rights. They have moved between research and practice in a constant effort to close the implementation gap between the ambitious normative human rights framework and the reality on the ground. We regard the following considerations as a modest contribution to this joint endeavour: to better understand the conditions of and to apply adequate tools for effecting human rights change.

The starting point is, however, the recognition of the limitations of effectiveness and efficiency of human rights work. If one looks at the current state of affairs in the world, these limitations are plain. The present crisis that human rights are facing worldwide and definitely in Europe must prompt us to ask questions of "what really works" more thoroughly and these questions must reach far beyond the legal field.

Some of those questions are: Why do we fail when we fail? What can we learn from actors in other fields with a view to increasing our effectiveness? How can we overcome some of the limitations linked to rigid theoretical approaches, including legalistic ones? Which entry points and levers could human rights practitioners use to enhance impact? How can we create a learning environment which helps us to progress in a constructive and self-reflective way? These are obviously big questions and we do not pretend to have answers to all of them.

What we can say, however, is how we personally have struggled with these questions and contribute our thoughts on a conceptual framework for finding answers. We have both gone, autodidactically as well as through advanced professional education, through a process of trying to understand what other disciplines can effectively contribute to human rights practice. This was prompted by the sheer need to perform well in practice. In a training room, for example, a lot more happens than discussions about issues related to human rights. How do groups behave, how do adults learn, what produces and sustains a certain occupational culture present in the room? Thus, we tried to expand our

---

1   Gready, Paul/Philipps, Brian, An unfinished enterprise: visions, reflections and an invitation, in: Journal of Human Rights Practice Vol.1, No.1 (2009), 1.

knowledge to other disciplines, in particular, adult learning, organisational science, psychology, sociology and systems thinking.[2] The latter seems particularly useful, for several reasons, not the least because we find very successful practices of application of the basic tenets of systems thinking, mainly in the business world.

The aim of this contribution is to explore new and innovative ways of thinking about and working in human rights practice, in particular, the possible added value of systems thinking. We will first briefly describe the context of human rights practice, will then introduce basic concepts of systems thinking and illustrate how those concepts influence our perspective and attitudes as well as some useful practical tools for effecting lasting change which have been developed on this basis. Finally, we attempt to show the added value that systems thinking can have, applying it to preventive monitoring of places of deprivation of liberty.

Two points seem pertinent to mention as they characterise our personal perspective while they are, at the same time, features of systems thinking. Firstly, we are aware that we are only offering *our* point of view. We are describing human rights practice on the basis of our experience. This concerns in particular our work for the prevention of torture and other forms of ill-treatment and how monitoring of places of detention can contribute to their effective eradication.[3] Moreover, it is based on professional training in institutions of systemic change management and organisational consulting in the German-speaking world. In short, our experience shapes our perspectives. This is the central premise of a constructivist approach and is characteristic for systemic thinking. Pierre Bourdieu has put it beautifully: *"Every point of view [is] a view taken from a particular point in social space".[4]* Secondly, we write this with "a beginner's mind", that is, a clear awareness of our own (cognitive) limitations and a real curiosity, which is more often found with beginners, in its most apparent form with children. "A beginner's mind" is a traditional Buddhist term for referring positively to the state of curious non-knowledge. Also and helpfully, systemic consulting practice is adamant in pointing to not-knowing as an important resource. It opens your view, invites other perspectives in and helps one come to grips with one's own biases: "In the beginner's mind there are many possibilities, but in the expert's there are few".[5]

---

2   We use the terms "systemic" and "systems" thinking interchangeably. For more on this see chapter III.

3   Birk, Moritz/Long, Deborah/Murray, Rachel/Suntinger, Walter/Zach, Gerrit, Enhancing impact of National Preventive Mechanisms – Strengthening the follow-up on NPM recommendations in the EU: strategic development, current practices and the way forward, Ludwig Boltzmann Institute of Human Rights, Vienna 2015, https://www.univie.ac.at/bimtor/dateien/NPM_Study_final.pdf (accessed 15 October 2018).

4   Bourdieu, Pierre, Social space and symbolic power, in: Sociological Theory Vol. 7, no. 1 (1988), 122.

5   Shunryu Suzuki, Zen Mind, Beginner's Mind: Informal Talks on Zen Meditation and Practice, Boston: Shambala, 2006.

II. The context: human rights practice

The reflections of this contribution are squarely placed within the broad context of human rights practice, understood as *"approaches being undertaken by those actively applying the framework of international human rights standards to the contexts in which they are working. The key term here is actively applying. […] [H]uman rights practice implies an extension beyond the analysis of texts and purely philosophical debates to a focus on implementation – or, in other words, human rights in the 'real world'".*[6]

More specifically, human rights practice can be seen as essentially consisting of three structural elements: 1. The *normative perspective*: it is based on a dense web of international human rights norms and standards. These norms and standards portray a vision of a world based on equal human dignity and provide for rules of behaviour for states, but ultimately for everyone. 2. The *analytical perspective*: Human rights practice is about analysing reality. The reality of human rights performance, usually human rights violations and (systemic) causes underlying them. This reality is then analysed/evaluated in the light of applicable human rights standards. 3. The *change perspective*: Based on this analysis, human rights practitioners seek to develop and apply strategies and tools in order to bring reality in line with the vision outlined by human rights.

A good starting point for reflecting on human rights practice is the enormous gap between norms and reality. In 1992, the first UN Special Rapporteur on Torture stated: "*The world can no longer avoid the conclusion that while successes have been registered at the international level, only failures can be recorded at the national level. The most vital question before us, therefore, is: how do we bridge this seemingly unbridgeable gap between international success and national failures.*"[7] These words still describe too well the situation in 2018. There is simply a very clear implementation failure: a real and tangible gulf between norms and reality, in all too many places. This is sufficiently shown by the Annual Reports of international NGOs such as Amnesty International and Human Rights Watch.

This implementation gap must trigger our creative minds to come up with possible reasons for this state of affairs. When doing so, the critical look should not stop at pointing only at external causes, albeit a very important part of the explanation are unequal power relations, racism, colonialism, gender discrimination, etc. While these are, obviously, very relevant points, we should also approach this gap from the other side, starting with ourselves in a self-reflective way: "*The question is whether human rights advocacy is ultimately predicated on, at best, an insufficiently nuanced – and, at worst, a completely outmoded – conception of the human actor, means of communication, and group dynamics.*"[8] With this question in mind Goodwin, Jinks and Woods asked experts from different disciplines to share their academic insights with regard to what is needed in order to understand human rights related problems better as well as to achieve more sustainable change. Very helpfully, they also point to the structural difficulties which an interdisciplinary approach faces: cognitive overload, lack of

---

6   Gready/Phillips, (FN.1), p. 4.
7   UN Special Rapporteur on Torture, UN Doc. E/CN.4/1992/17, para. 288.
8   Goodman, Ryan/Jinks, Derek/Woods, Andrew Understanding social action, promoting human rights, Oxford: Oxford University Press, 2012 p.6.

recognition in the respective academic institutions, lack of bridges between theory and practice, etc. These problems are in line with the clear message in Freeman's introduction to human rights:[9] interdisciplinarity in human rights is much talked about, but seldomly really practiced.

In our more practical setting, the lack of a broad inter-/transdisciplinary vision translates into e.g. the following challenges of human rights practice:

- The focus of human rights practice is still mostly on naming and shaming rather than on identifying systemic weaknesses. This approach is generally regarded as quite successful[10], but has its clear limitations as recent research shows.[11] Problems are often more complex than what naming and shaming techniques can address.
- Strengths, potentials and resources found within systems (e.g. criminal justice) are seldom focused explicitly on the promotion of human rights. This is a lost opportunity and can severely limit the impact of human rights work.
- Interventions to solve problems are often insufficiently strategic (lacking clear definition of goals, process planning, evaluation and learning), and modes of implementing human rights capacity development are not state-of-the-art.

We do not have the place here to analyse the many challenges of human rights practice. Nor is it possible to give an overview of the many different approaches and strategies which have been tested to overcome these challenges. But it is important to us to emphasise that there are many areas where examples of an improved integration of different types of knowledge and experience can be found: The following examples are chosen selectively, as they stood out most clearly as relevant to our own experience and/or from a systemic perspective.

- The Human Rights Based Approach (HRBA) has been developed as a conceptual framework for operationalising human rights in the context of development cooperation.[12] Its operational focus on some important cross-cutting principles has proven highly useful. Furthermore, most of the principles of a HRBA – participation, accountability, non-discrimination, empowerment, link to human rights – already form part of the professional discourse in the development context, grounded in economic and social sciences.
- A further area of interesting developments concerns the rapid expansion of what is commonly called "Theory of Change" (ToC) approaches. Starting from evaluation science and practice in the area of community support in the USA in the 1990ies, ToC has gained enormous attention as a result of donor pressure as well as by organisations seeking to enhance impact.

---

9   Freeman, Michael, Human Rights, 3rd edition, Cambridge: Polity Press, 2017.
10   For a classic defence of this approach, see Roth, Kenneth, Defending Economic, Social and Cultural rights: Practical issues faced by an International Human Rights Organizations, Human Rights Quarterly, Vol. 26, no.1, 63-73.
11   Lahti, Sara E., The limits of shock and shame: an ethnographic case analysis of the naming and shaming technique to promoting human rights for the Taalibe Qu'uranic School Students in Senegal, Human Rights Quarterly, Vol.40, no.3, 2018, pp. 605-640.
12   See e.g. Broberg, Martin/Sano, Hans-Otto, Strengths and weaknesses in a human rights-based approach to international development – an analysis of a rights based approaches to development assistance based on practical experiences, International Journal of Human Rights, Vol. 22, no.5, 2018, 664-680.

"Proving and improving impact",[13] the title of the ToC tools of Amnesty International, expresses the basic idea clearly. We have used such a ToC approach for proposing measures to strengthen follow-up to recommendations of National Preventive Mechanisms (NPMs).[14] It is fundamental to define clear goals and clarify the assumptions when acting – this includes looking at different academic disciplines to understand how change can be achieved.[15] While ToC approaches are not necessarily explicitly systemic, their basic ingredients overlap with some of the features of a systemic approach.

- Furthermore, systemic approaches have been tested in some selected areas of human rights practice. An example is work done in the children's rights movement, where numerous publications have dealt with systems approaches to child protection.[16]
- Lastly, the idea of a systemic, holistic analysis commonly appears in preventive monitoring practice, in particular on the basis of the Optional Protocol to the Convention against Torture (OPCAT). In chapter three, we will take this practice as an example to show what more rigorous systems thinking can add to existing approaches of how to change reality in closed institutions.

III. Systemic thinking – perspectives and tools for enriching human rights practice

According to *David Peter Stroh*, an experienced systemic practitioner, the promise of applying systems thinking is clear: it enables practitioners to "achieve better results with fewer resources in more lasting ways."[17] It does so by

- reflecting on one's own assumptions, intentions and action, including one's own contribution to possible problems and negative consequences of well-intentioned solutions
- helping to look for areas of greatest impact and for high-leverage interventions
- identifying and mobilising diverse stakeholders to get change going
- motivating and supporting continuous learning

In the light of the above discussion of the limits of current human rights practice, systems thinking has two specific added values:

First, the academic knowledge underlying systems thinking constitutes a solid scientific basis to construct a plausible theory of the social world. Systems theory has always been inherently trans- and interdisciplinary, involving experts/

---

13   Amnesty International, Amnesty International, Proving and Improving our Impact: An Impact Assessment Toolkit, ACT 10/020/2011.

14   Birk/Long/Murray/Suntinger/Zach (FN. 3).

15   For a useful short introduction to ToC thinking see Stachowiak, Sarah, Pathways of change: 10 Theories to Inform Advocacy and Policy Change Efforts, New York, 2013, http://www.pointk.org/resources/files/Pathways_for_Change.pdf (accessed 4 September 2018).

16   See for example UNICEF/UNHCR/Chaplin Hall/Save the Children, Adapting a Systems Approach to Child Protection: Key Concepts and Considerations, New York 2010; World Vision, A Systems Approach to child protection, A World Vision Discussion Paper, 2011, https://www.wvi.org/sites/default/files/Systems_Approach_to_Child_Protection.pdf (accessed 14 October 2018).

17   Stroh, David Peter, Systems Thinking for Social change, Vermont: Chelsea Green Publishing, 2004, 1.

7

fields from natural sciences, social sciences, psychology, philosophy, etc.[18] This makes it useful for the inherently transdisciplinary field of human rights practice. In other words, it complements the normative basis with a sound social science foundation.

Second, there is a long-standing practice of translating this academic knowledge into a set of helpful basic principles as well as practical tools. Mostly applied in the private business sector and organisational development,[19] systemic thinking has also been translated into guiding principles and tools for achieving social change.[20] We thus believe that systemic thinking has the potential to significantly enrich human rights practice and to increase the impact of our work.

The following chapter shall provide the reader with an understanding of the **theoretical basis** of systemic thinking and how it can influence our practice on three different levels:

- By broadening our **perspective** to understand problems and solutions differently, applying a "systemic lens"
- By thereby influencing our basic **attitudes** so as to behave differently in our working relations and beyond
- By applying innovative **tools**, i.e. design and implementation tools, self-reflection tools, to concrete settings of human rights practice. This implies conducting our work differently and achieving better results/more impact as human rights practitioner.

A. The cornerstones of systemic thinking

In today's world complexity and uncertainty are the norm, the context we live in. Globalisation, the interdependence of political, economic and ecological systems, the role of technology and many other factors are making developments in the world more and more unpredictable. The defence and intelligence community refer to this phenomenon as the "VUCA" (Volatile, Uncertain, Complex and Ambiguous) world – meanwhile also commonly used in consulting contexts – that followed the end of the Cold War 'order'.[21] This makes good theories necessary in order to see contexts differently, providing new perspectives on the practice with new, potentially more adequate and effective options to act.[22] From the perspective of human rights practice what counts is to have more impact with our work.

---

18 For an overview see Figure 3, Königswieser, Roswita/ Hillebrand, Martin, Systemic Consultancy in Organisations, Heidelberg: Carl-Auer Verlag, 2016, p. 26.

19 The other disciplines are Personal Mastery, Mental Models, Building Shared Vision, Team Learning. See Senge, Peter, The fifth discipline: The art and practice of the learning organization, Revised Edition, New York: Currency Doubleday, 2006, pp. 73.

20 Stroh (FN. 17).

21 OECD, Working with Change Systems approaches to public sector challenges, GOV/PGC(2017)2, Draft, p. 10., https://www.oecd.org/media/oecdorg/satellitesites/opsi/contents/files/SystemsApproachesDraft.pdf (accessed 14 October 2018).

22 See Groth, Torsten, 66 Gebote systemischen Denkens und Handelns in Management und Beratung, Heidelberg: Carl-Auer Verlag, 2017, p. 16; Seliger, Ruth, The Jungle Book of Leadership: A Navigation System for Leaders, Heidelberg: Carl-Auer Verlag, 2014.

1.   Historical roots

The theoretical foundation of systemic thinking developed in different disciplines and areas of science is a result of the limitations of conventional linear thinking. Interestingly, it was, among others, in Vienna as early as around 1900 when scientists and scholars attempted to explain the emergence of order and disorder in systems, building inter alia on the work of Ludwig Boltzmann in the field of physics and thermodynamics.[23] The "birth" of modern systemic thinking is often considered to be at the so-called Macy's conferences in the 1940s/50s when scientists from different disciplines came together to discuss the topic of cybernetics (see below), self-regulation, reciprocity, feedback loops and how they can impact their fields of work.[24] From there systemic thinking has developed in different areas, such as mathematics, social sciences, psychology[25], and finds its application in different practical fields, ranging from consulting and organisational development to coaching and psychotherapy.

Due to its development in different disciplines and schools of thought, it is very difficult to define systems thinking and it is beyond this publication to illustrate its development and diverse interpretations. Instead, our attempt is to outline what we view as the cornerstones of systems thinking as relevant to our perspectives, attitudes and actions as human rights practitioners.

2.   Systems thinking – a paradigm shift

"Conventional thinking is not suited to address the complex, chronic social and environmental problems you want to solve."[26]

The cornerstones of systemic thinking provide for a shift of paradigm, away from conventional thinking. The division into three cornerstones[27] is for instructional purposes only. They cannot be clearly delimited but overlap and should be seen as part of a whole.

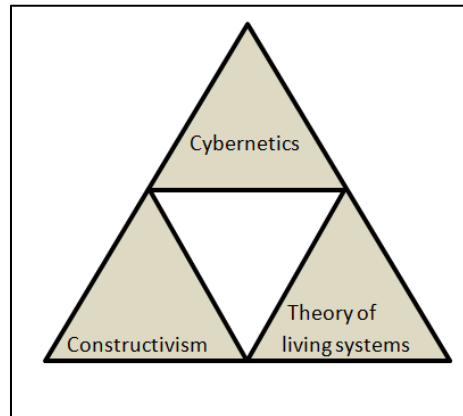23   Königswieser/Hillebrand(FN.18), p. 24.
24   Seliger (FN. 22), p. 52.
25   For an overview of the historical roots see pp. 51 et seq. in Hester, Patrick T./ Adams, Kevin, Systemic Thinking – Fundamentals for Understanding Problems and Messes, Springer, 2014.
26   Stroh (FN. 17), p. 15.
27   Based on Seliger (FN. 22) p. 54 et. seq.
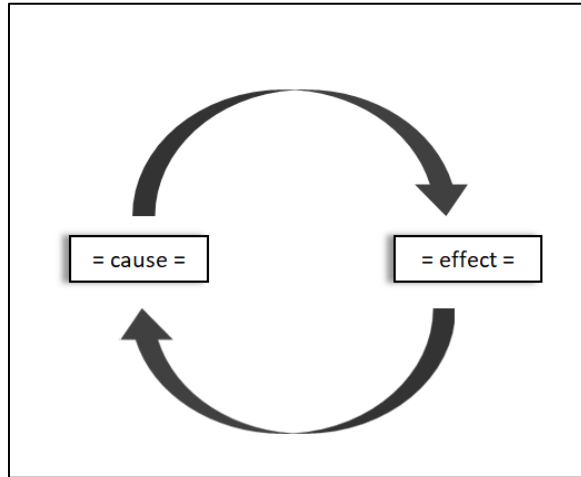
[Fig. Cornerstones of systems thinking]

3. Cybernetics

The first cornerstone of systemic thinking is cybernetics – the study of control and communication. The idea of cybernetic control rejects linear causality and the scientific and technical understanding of the world that presupposes controllability and predictability. We commonly think: "If I do A – B happens."[28] Instead, cybernetics assumes that things always occur in a '*reciprocal feedback loop*' where cause and effect become indistinguishable: cause is always effect and effect is always cause. *Watzlawick* famously described this with the example of a relationship between a man a women where he says "I withdraw because you nag" and she "I nag because you withdraw", their behaviour becoming both the trigger and feedback within the communication.[29] This is even more applicable to societal processes that are inherently complex and do not function according to the simple pattern of input and output: climate, communication, politics, learning, economics and the situation of human rights in the world.

---

28   Seliger (FN. 22), pp. 50-53.
29   Watzlawick, Paul/Beavin Bavelas, Janet/Jackson, Don D., Pragmatics of human communication: A study of interactional patterns, pathologies and paradoxes, New York: W.W. Norton & company, 1967.

[Fig. Cybernetic Control Loop]

4. Constructivism

"Everything said is said by someone"[30]

The other core cornerstone of systems thinking is constructivism which states that the knowledge of the world is nothing but our own construction. It thereby rejects the commonly held idea of the ability of objective observation and thereby separating things neatly into true or false. Everything we observe is our viewpoint including of course what we see as the system: as observers we combine the elements, defining their belonging and relationships to make sense of them.[31] A constructivist view thus breaks with the familiar view that cognition is the representation of the world "out there". Rather it is the on-going construction of reality. And, importantly, a constructivist view is "an invitation to refrain from the habit of falling into the temptation of certainty".[32]

5. Theory of living systems

According to a systemic view, the world is made up of systems that can be defined as a combination of elements and their correlation.[33] It focuses on living social systems that are maintained through communication as their basic unit. Social systems can be teams, organisations, institutions or society. *Luhmann* has developed a compelling and powerful theory explaining the functioning of

---

30 Maturana, Humberto R./Varela, Francisco J., The Tree of Knowledge, Boston: Shambhala, 1992, p. 27.
31 Seliger (FN. 22), p. 58.
32 See Maturana/Varela (FN. 30), p. 18.
33 See Seliger (FN. 22), p. 57; Simon, Einführung in Systemtheorie und Konstruktivismus, Carl-Auer Verlag, 2015, p.87.

11

social systems[34] that cannot be adequately dealt with in this publication. Instead, we will focus on some main elements useful for the practitioners.

It is of major practical relevance that systems thinking rejects mechanistic views that expect living systems to function like machines. Heinz von Foerster described this by differentiating between trivial machines and non-trivial machines (living systems). Unlike trivial machines which respond to input with the same reactions (e.g. a power button on television), living systems always respond differently to the same input making it impossible to anticipate what they will do next. The usual mode of operation (f) is modified by a 'booster' (z) inside the living system that always re-evaluates how the outer impulses should be assessed. This "booster" can be an experience, interest, mood, feeling, world views, etc.[35]
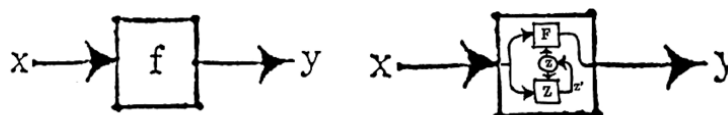
[Fig. Foerster – trivial vs. non- trivial machine]

This fact makes living systems unpredictable and uncontrollable. Thus, systems thinking draws a clear and fundamental conclusion: systems cannot be controlled and not be changed directly from the outside. On the other hand, in order to ensure a necessary degree of stability and efficiency, individuals learn to trivialise themselves to some degree in a system to become more predictable, by adhering to certain established rules, codes and agreements. Thus, systems develop patterns of communication to maintain stability and reduce complexity.[36] It is these patterns that systems thinking tries to understand, or as *Senge* put it: *"System thinking is a conceptual framework, a body of knowledge and tools that has been developed over the past fifty years, to make the full patterns clearer, and to help us see how to change them effectively."*[37] In order to do that – dealing with complex living systems – the integration of the knowledge of psychology, sociology and communication sciences is required.

B. Characteristics of a systemic perspective – as applied to human rights practice

People who learn about human rights often describe seeing the world differently afterwards, e.g. by identifying issues of discrimination, vulnerability and violations of human dignity. In a similar way, systemic thinking provides us with another lens for observing the world, "the systemic lens". In the following, we explain the characteristics of the systemic lens with regard to human rights practice and thus intend to contribute to developing what could be called the "systemic human rights lens".

---

34   Luhmann, Niklas, Introduction to Systems Theory, Cambridge: Polity Press, 2013.
35   See Seliger (FN. 22), p. 59.
36   Ibid. pp. 59-61.
37   Senge (FN.19), p. 6.

1. Looking at the big picture

"A group of blind men decided to inspect a strange animal – an elephant – coming to town. The first person's hand landed on the trunk and said: 'It is like a thick snake'. The second person's hand was upon its leg and he said: 'It is a pillar like a tree-trunk.' The third placed his hand upon its side and said, 'An elephant is a wall'. Another who felt its tail, described it as a rope. The last felt its tusk, stating the elephant is that which is hard, smooth and like a spear."[38]

This story is commonly used to illustrate the systemic perspective. Instead of looking at the "entire elephant" we look at phenomena from one specific angle and then deduce answers and solutions.[39] *Senge* describes this as the "compartmentalisation of knowledge".[40] It seems to give us confidence to neatly sub-divide the world's problems and solutions: a social problem, legal problem, economic problem, etc. But "life comes to us as a whole" and if we forget this whole we easily succumb to the illusion of solving problems by isolating and treating them separately and lose the spirit of openness.[41] This is also true for human rights practice where holistic approaches are still rare. As mentioned above: although the necessity of an interdisciplinary approach in human rights practice is commonly recognised, it is seldomly practiced. We too often tend to perceive problems and the possible solutions from a one-dimensional perspective.

Systems thinking is thus always an attempt to see the big picture or "entire elephant". For example, contemporary thinking about human rights education and training stresses that educational activities should not take place in isola-tion, but that the organisational environment and other possible measures and interventions to address existing human rights problems need to be taken into account.[42] Still, stand-alone activities of training still seem to be widespread. We have seen this in an EU Twinning project in Turkey where comprehensive police training activities could not be integrated into broader police reforms and thus did not manage to effectively prevent excessive use of police force – pain-fully witnessed by the shocking incidents around the Gezi protests.

2. Integrating multiple perspectives

In line with the constructivist perspective, systems thinking acknowledges that how we view an issue depends on our own angle and construction. This means that we acknowledge that there is not one correct way to see an issue. Instead, the existence of different perspectives needs to be recognised and welcomed as they help in the attempt to get a more accurate picture of the whole. Particularly in the context of human rights consulting, this allows for a better understanding

---

38   See Popple, Ariella, Individual differences in perception, in: Goldstein, E.Bruce, Encyclopedia of perception, Thousand Oaks/London: Sage, 2010, p. 492.

39   Seliger (FN. 22), p. 27.

40   Senge, Peter, The fifth discipline: The art and practice of the learning organization, First Edition, New York: Currency Doubleday, 1990, p. 258.

41   Ibid.

42   Celermayer, Danielle, The ritualization of human rights education and training: The fallacy of the potency of knowing, Journal of Human Rights, Vol.16, No.2, 2016.

of complex problems and finding solutions which produce sustainable results.

Allowing the subjective realities to be acknowledged also leads to a more non-judgmental way of communication. This is of enormous help in an area so heavily morally loaded as human rights are, e.g. in training settings with a challenging target audience like the police: It makes participants feel heard and taken seriously. It brings participants' experience into the training, thus making the training relevant and directly applicable to their practice. Further, it helps creating a positive environment of communication.

3. Seeing connections not events, circles not straight lines

There is a general cognitive tendency to focus on single events, parts and persons when analysing problems and possible solutions. Instead, a systemic perspective sees processes in which events, facts, etc. are tied together in a recursive form, influencing each other dynamically, as in the above-mentioned example of the "nagging" woman and "withdrawing" man. Instead of linear cause-effect chains and snapshots, systems thinking sees (inter)relationships and processes of constant change. *Senge* speaks of "seeing circles of causality" that can be "reinforcing" or "balancing".[43] He uses the example of the "war on terrorism"[44] to illustrate this point. While the US expanded its military responses in response to the perceived terrorist threat, the terrorist networks expanded their terrorist activities as a response to the perceived military aggressiveness of the US. The interaction of the different linear viewpoints of the situation form a system with variables that influence each other: The response to the perceived threats by each side escalates the threat ending up in a perpetual cycle of aggression with the result of heightened insecurity for everyone.[45] A systemic perspective attempts to understand problems by understanding the circles of causality.

Such a view tends to be in conflict with a legal perspective which is characterised by linear thinking and which still strongly dominates the human rights field.[46] Linear thinking is a fundamental step in any legal analysis in order to establish direct causality between different acts and consequences, and thus imputability. However, such thinking severely limits the understanding of complex situations in which many different factors mutually influence each other. This is certainly true for total institutions, such as prisons, where the rigidity of rules, based on a mechanistic understanding, produce a variety of coping strategies of inmates leading to strong subcultures.[47]

4. Looking at the bottom of the iceberg

A systemic perspective pays particular attention to what "cannot be seen". This is commonly illustrated with the iceberg metaphor: while we focus on the ten

---

43 Senge (FN. 19), pp. 73.
44 Op. cit. p. 70.
45 Ibid.
46 We certainly agree with Michael Freeman on this point, see Freeman (FN.9), p. 13.
47 Rubin, Julius, Total institutions in: Ritzer, George, Encyclopedia of Social Theory, London: Sage Publications, 2007, pp. 844-846.

percent above the water it is important to look at the 90 percent below, the bottom of the iceberg, the "systems structure": the pressures, power dynamics, perceptions and (hidden) purposes underlying the problem.[48] This can be illustrated with the example of *Stroh's* practice consulting criminal justice reform processes to tackle mass incarceration: e.g. it appeared that political decisions of "law and order" are much more influenced by the population's rising fear of crime than the crime rate which was actually declining. It is thus crucial to deflect the focus from individual incidents, news reports or statistics to consider such underlying causes when trying to achieve change.[49] In the case of organisational consulting, we need to understand the different levels of organisational culture by not only focusing on the visible structures, processes and the observed behaviours but by understanding the goals, ideologies and rationalisations as well as the basic underlying assumptions of why we do, see, think and feel the way we do.[50] In our work, we have thus emphasised the importance for organisations to clarify their assumptions on how change happens as a key step to strengthening their impact.[51]

Another relevant example concerns police reform where any initiative needs to take into account characteristics of police culture, including an exaggerated sense of mission towards their role, masculinity, a willingness to use force and engage in informal working practices, a defensive solidarity with colleagues, conservative views of politics and morality, as well as cynicism and pessimism.[52] A failure to take this cultural factors into account limits the results of reforms, including trainings.[53]

5. Looking at patterns

Living systems form patterns of action, behaviour and thinking to reduce complexity to a manageable level and make events somewhat predictable. These show in habits, rituals, stereotypical behaviour, world views and cultural characteristics.[54] For example, in every team there is a pattern of how conflicts are handled or what can be addressed and what cannot. Unlike an organisational structure these patterns are not visible but part of the "bottom of the iceberg". At the same time, they are of vital importance for a system, keeping it stable, deciding who is part of it and who is not. It is important to understand those patterns and structures to achieve change because "structures of which we are unaware hold us prisoner".[55] A systems perspective thus always seeks to identify patterns lying behind events and details in order to understand complex problems and seek sustainable change. Certain patterns of structure recur again and again

---

48 Stroh (FN. 17), pp. 36 et seq.
49 Stroh (FN. 17), pp. 35 et seq.
50 See the model of the "three levels of culture" by Edgar Schein, Organisation culture and Leadership, 5th edition, Hoboken: Wiley, 2017, p.24.
51 See Birk/Long/Murray/Suntinger/Zach (FN. 3), pp. 95 et seq.
52 Loftus, Bethan, Police occupational culture: classic themes, altered times. Policing and Society, in: Policing and Society, 2010, Vol. 20/1: pp. 1-20.
53 Suntinger, Walter, Police Training and International Human Rights Standards, in: Alleweldt Ralf/Fickenscher Guido (eds.), The Police and International Human Rights law, Leiden/Boston: Springer 2018, p. 292.
54 See Königswieser/Hillebrand (FN. 18), pp. 32 et seq.
55 Senge (FN. 19)

and have been identified as "system archetypes" which are easily understood; they are transferable across different system structures and serve to identify complex dynamics.[56] Knowledge of some basic archetypes can help us identify patterns faster and develop solutions more effectively.

6.   Looking at systemic failures not at persons

A system always "works" to achieve something and this makes it stable, i.e. through the patterns and structures it has established. In a system, individuals only take on a role that is negotiated within and assigned by the system and serves to maintain it.[57] This is why exchanging a person within an organisation does not necessarily solve the problem but rather a new person will likely fall into the same position as her/his predecessor. Therefore, a systemic perspective looks squarely at possible systemic failures but not at persons.

It is common in human rights practice to focus on individual (criminal) responsibility of perpetrators. While there is no doubt that this is an important element of responding to human rights violations, a systemic view suggests that reactions to human rights violations must not stop there. It rather needs to look beyond, that is, at the systemic factors, including organisational and cultural issues in order to identify the conditions which enable such violations.[58] The case of Bakaray Jassey, a victim of torture in Austria, illustrates the difficulties that such an approach faces.[59] A proposal from within the Austrian Human Rights Advisory Board to look at the systemic causes/dimensions of this case – leadership responsibility, cultural characteristics – was not taken up by the police.[60] This was unsurprising: police organisations, in case of misconduct, tend to blame individuals but are regularly strongly reluctant to acknowledge organisational responsibility, including the existence of systemic causes.

7.   Looking at resources not only deficits

A systemic perspective tries to identify the strengths and resources existing within a system. This is a crucial move away from the common deficit-oriented view. Such perspective allows to appreciate the existing state of affairs, to see things that have not been seen before and to best use the existing resources in order to achieve the desired goal. This also changes the attitude towards challenges: rather than simply constituting a problem they already contain the seeds of the solution. Moreover, a focus on resources has an energising effect. Such a view – based on positive psychology – is already strongly established in business consulting. In the human rights field it is increasingly recognised that "naming

---

56   See Senge (FN. 19) pp. 92 et seq; Stroh (FN. 18), pp. 52 et seq.

57   According to Luhmann, individuals are not part of the system, but rather a relevant environment, see Seliger (FN. 24), 130 et seq.

58   See Zimbardo, Philipp, The Lucifer Effect, Understanding How Good People Turn Evil, New York: Random House, 2007.

59   For a description of the case see Nowak, Manfred, Torture. An expert's confrontation with an everyday evil. 2018. Philadelphia: Pennsylvania Press, pp. 92 et seq.

60   Zauner, Alfred, Überlegungen zur Entwicklung eines Modells der Qualitätssiche-rung und des Fehlermanagements in der ASE-WEGA in Verfolgung einer Initiative des Menschenrechtsbeirats, 2008 (unpublished, copy with the authors).

and shaming" is not sufficient for sustainable change but that it is necessary to identify and multiply "good practice" examples.

8. Recognising the limits of interventions and looking for entry points

Systems thinking recognises that living systems have operational boundaries, are self-regulating and ultimately uncontrollable. This brings a realistic understanding of what action/intervention can actually achieve. This does not mean that we cannot induce any change from the outside but rather that change interventions must be very carefully conceived. One of Senge's laws of systems thinking is: *"The harder you push the harder the system pushes back".*[61] Making more efforts to improve matters often just results in more resistance.[62] Thus, a careful look at the different forms of interventions in the light of the complex nature of problems becomes crucial. Human rights practitioners are often far too little aware of this need. A systemic perspective can "offer" different ways of observing a problem and thinking about solutions. It tries to "identify high-leverage interventions that focus limited resources for maximum, lasting, system wide improvement".[63] A systemic perspective is weary of quick fixes or attempts to solve problems by increasing pressure. In addition to enhancing effectiveness, this entails an immense relief as it takes away the burden of having to achieve immediate change, all too understandable in the light of situations of suffering which human rights practitioners confront.

9. Looking at oneself

While a systemic perspective focuses on systemic failures rather than persons this does not relieve us from the responsibility of looking at our own involvement in shaping reality. Interestingly, we are often quick to acknowledge that "the others are the problem", while finding it more difficult to acknowledge our own contribution to it.[64] In other words, a systemic perspective attempts to see the whole, recognising interrelations and interdependencies with others while acknowledging our own part.[65] This requires us to look inwards and become aware of our own assumptions, biases and limitations. In our work – e.g. in training or consulting projects – a perspective of reflective openness has proven to be extremely powerful. Why do we work like this? Why do we think that the way chosen best achieves the desired results? In our research[66], representatives of an international human rights organisation described the part of clarifying assumptions as one of the most difficult parts of their Theory of Change process. Not surprisingly, as it forces to put into question what has always been accepted as a given and have been done in the past, being self-critical and shaking up entire belief system – this may be painful and makes people vulnerable and exposed.[67] However, it is through permanent self-reflection, testing our views

---

61   Senge (FN. 19), p. 58.
62   Ibid., pp. 59 et seq.
63   Stroh (FN. 17), p. 2.
64   Ibid., p. 31.
65   Ibid., p. 15.
66   Birk/Long/Murray/Suntinger/Zach (FN. 3).
67   See Senge (FN. 19), p. 262.

and accepting them as a view constructed by us, that we enable growth and improvement towards achieving maximum impact. In our experience, the most successful trainings and workshops were those where we explicitly dedicated time to clarifying our assumptions and hypothesis.

C. Use of systemic tools for intervention

On the basis of these concepts, perspectives and underlying attitudes, systemic practitioners have developed a set of practical tools of change management. Furthermore, existing tools for effecting change are applied "with systems thinking inside". The change tools described below serve different purposes: analysing a situation/problem, designing change processes, conceiving effective action/intervention, and reflection. It goes without saying that it is beyond this contribution to present the variety of existing tools in any satisfactory way. Instead, we will describe some of the tools that we have used in our practice or we think have a great potential for enriching human rights practice.

Two general points should be taken into account when thinking about tools. First, tools cannot be neatly divided into categories but overlap considerably. E.g. in line with the constructivist perspective described, it is commonly understood that any analysis or inquiry will constitute an intervention into the system.[68] Second, tools should not be applied rigidly, but in a flexible, light and wise way. In particular, one should not fall into the trap of sticking only to the tools which "have always worked" or one is comfortable with. "Drop your tools or you will die"[69] is the succinct formulation of this idea by a systemic consultant and trainer.

1. The systemic loop: a basic model for interventions

A basic model for developing change-related activities, widespread in the German speaking systemic consulting practice, is "the systemic loop".[70] It is „a simple and effective thought and process model that clearly illustrates the systemic attitude: 'I want to understand what is going on. We have to begin by collecting information, building hypotheses and reflecting, not by taking immediate action.'"[71] This is done in a circular movement of thinking, acting and reflecting.

---
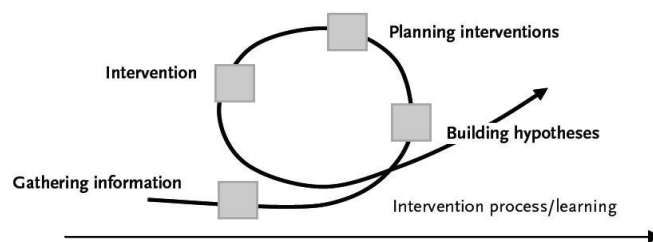
68   E.g. Bushe, Gervase, Appreciative inquiry, in: Boye, D./Burnes B./Hassard, J. (eds.), The Routledge Companion to Organizational Change, Oxford: Routledge, 2011, p. 90.
69   Weick, Karl, Drop your tools: On reconfiguring management education, in: Journal of Management Education, Vol. 31/1, 2007, pp. 5-16.
70   Königswieser/Hillebrand (FN. 18), p. 45.
71   Ibid.

[Fig. „Systemic Loop" process model by Königswieser]

The systemic loop can enrich the following elements of human rights practice as outlined above: understanding the situation at hand, in particular analysing causes, and conceiving and developing effective interventions. It does so by applying systemic principles, in particular holistic and circular thinking, as well as constant reflection and self-reflection. Systemic consulting practice has developed a wide range of instruments for gathering information and intervening into systems with a view to achieving the desired change. In the following, we briefly mention some selected approaches on the basis of our experience.

2. Gathering information

Effecting change requires an adequately broad understanding of systems/ organisations one works with or works on. The elaboration of a systemically based organisational analysis pays particular attention to achieving a balanced view of the systems/institutions analysed, thus embodying systemic princi- ples:[72]

- While it identifies problems and malfunctioning, it also seeks to uncover the potentials, strengths and resources that exist within the organisation.
- While it aims at creating something new, it places specific value on preserving what already works – thoroughly aware of the principle that fast change often backfires.
- While it seeks to "irritate" the system, it seeks not to lose connection with it – through a "connective" attitude and careful choice of wording.
- While it adds new perspectives and thus increases complexity, it seeks to reduce complexity, i.e. by identifying priority areas to focus on.
- While it seeks to understand the details (using e.g. social scientific research methods), it tries not to lose sight of the overall picture.

These considerations are clearly relevant to human rights practice, where the focus on naming and shaming tends to exclude a search for what already works and often fails to identify the elements of a larger picture. E.g. sustainable police reform will be much more successful if existing strengths and resources are identified to work with. Equally, these principles could be well used by human rights organisations to undertake a process of self-analysis with a view to mobilising their strengths and energy. Linked to these general characteristics of a broader systemic analysis are a set of tools of inquiry which have proven useful for a better situation analysis. We briefly mention two of them which we have found particularly useful: systemic questions and appreciative inquiry.

First, so-called "systemic questioning"[73] constitutes a core tool of systemic practice. It is a very specific way of asking questions which helps to unearth hidden knowledge, underlying perceptions, meaningful differentiations, etc. Originating in systemic family psychotherapy[74] (where it is the equivalent to dream analysis in psychoanalysis.), its use has spread into consulting practice.

---

[72]   Developed by Schrader, Oliver, Training Materials „Organisationsanalyse", 2016 (unpublished, copy with the authors)
[73]   Schlippe, Arist von/Schweitzer, Jochen, Systemic Interventions, Göttingen/Bristol: Vandenhoeck&Ruprecht, 2015, pp. 47 et seq.
[74]   Ibid. p. 51.

A series of often surprising questions help people 1. to take the positions of others, 2. to see things in a new light, 3. clarify their assumptions and 4. to identify relevant differentiations to work with. Systemic questions thus push the boundaries of thinking, both in terms of expanding vision as well as seeing one's own contribution to situations. Using systemic questions regularly results in generating new information but also constitutes an intervention into the thinking/ belief of the interlocutors. Systemic questioning could be used well in human rights practice, e.g. in police training or in monitoring and the self-analysis of human rights organisations. Examples of systemic questions are:

- Circular questions – to generate new perspectives: "How would your wife feel about your police intervention in settings of domestic violence?"
- "Miracle" question – to open up imagination to possible changes: "If your problem would magically disappear, how would your situation look like then and how would you notice the change?"
- Differentiating questions – to reveal relevant differences: "To what extent is your position a risk and to what degree an opportunity? Give percentages"; "How are police interventions with children different from that of social workers?"[75]

The second tool is known as "Appreciative Inquiry" (AI):[76] It is one of the most popular approaches for effecting change through a systematic focus on existing strengths instead of a deficit-oriented view. Appreciative inquiry can constitute a framework for a broader change process[77] as well as a very specific form of interviewing, the methodological heart of this approach. As suggested by its name, AI interviews ask questions which unearth available strengths, resources and potentials. The beginning of an AI interview could be: "What were situations when you really felt that you were doing a good job?" Or: "What was the high point of your involvement in organisation x?". It thus looks at what works and where one's own strengths, talents, high energy situations are. The effects of this technique are at least two-fold: first, it sheds light on aspects of reality which are normally not seen in a deficit-oriented culture; second, it helps raising motivation and enhancing energy. As mentioned above, prison research, pioneered by Alison Liebling and others, has used the method of appreciative inquiry in order to understand the quality of life in prisons, with highly interesting results directly relevant to human rights.[78] In a workshop we facilitated at the international conference on "Fair treatment of persons in police custody" in Berlin in October 2018, we presented and tried out the AI interviews as a way to mobilise potentials and strengths within police organisations to realise human

---

75 For further examples, see, ETH Zürich, Systemic questions to guide learning pro-cesses of students, May 2017, https://www.ethz.ch/content/dam/ethz/main/eth-zurich/education/lehrentwicklung/files_EN/Liste_SystemischeFragenCoachingLETen.pdf (accessed 14 October 2018); see also Schlippe, von/Schweitzer (FN. 86), pp. 59-61.

76 Cooperrider, David L./Whitney, Diana, Appreciative Inquiry, San Francisco: Berret-Koehler Publishers, 2005. Bushe (FN. 68).

77 The appreciativ inquiry 4-D cycle (discover – dream – design – destiny), see Cooperrider/Whitney (FN.76), pp. 15 et seq.

78 Liebling, Alison/Price, David/Elliott, Charles, Appreciative Inquiry and relationships in prison, in: Punishment and Society, Vol.1/1, 1999, pp. 71-98.

rights.[79] It goes without saying that we consider this also to be a very helpful tool for self-analysis of human rights organisations.

---

79   The contributions and result of this conference will be published in 2019.

3. Building hypotheses

Building of hypotheses is a central method of systemic practice. Hypotheses are assumptions about connections and relational patterns that need to be tested. *"Systemic hypotheses describe relationships, interaction, reciprocal effects and processes, they refer to different contexts, focus on resources and solutions and often seem unconventional. They try to uncover the hidden meaning behind problems. They have explanatory power."*[80]

Hypothesis-building is a creative process which allows new perspectives and options of action to come into light and which requires flexibility and openness of mind. The functions of hypotheses are two-fold: First, they help systematise/ prioritise information, second, they stimulate thinking about options for intervention.

In human rights work, a systematic practice of hypothesis-building would allow for a much better understanding of possible causes of human rights problems as well as of the conditions for effective intervention, areas where current human rights practice seems clearly deficient. Rarely have we experienced a thorough process of dealing with these issues (see below regarding preventive monitoring)[81]. A classical example concerns the regularly advanced argument of lack of resources for undertaking the necessary measures to fulfil human rights in prisons, e.g. regarding a deficient regime of activities for inmates. While lack of resources might indeed constitute a main issue, a range of other possible explanations, e.g. staff management, powerful interests of staff, might be relevant as well. A thorough process of hypothesis-building could discover not yet thought about explanations as well as leverage for change. It would thus enrich human rights practice and effectiveness enormously.

4. Planning interventions – begin with the end in mind

The third element of the systemic loop concerns interventions, which should be based on an adequate process of information-gathering and hypothesising. At the same time interventions produce new information and lead to new hypotheses, a circular movement well depicted in the image of the loop.

Before presenting some concrete forms of intervention, a basic principle which we regard as especially important in the light of our working experience shall be mentioned: "*Begin with the end in mind*".[82] This refers to the highly important work of developing a concrete vision of what one wants to achieve with an intervention, whatever its nature. It is one of the more frustrating aspects of our experience in particular with trainings and conferences in the human rights field that the methods and tools chosen are often not based on a process identifying concrete and realistic learning objectives. This leads to an unclear picture of the desired outcome and hampers the process of identifying the right measures, steps, exercises, etc. to achieve results. Metaphorically speaking, if you do not know where you want to go, it is difficult to choose the adequate means for getting there.

---

80   Königswieser/Hillebrand (FN. 18), p. 48.
81   See e.g. the findings of our study of the work of National Preventive Mechanisms, Birk/Long/Murray/Suntinger/Zach (FN. 3), p.1.
82   Coined by Covey, Stephen, 7 habits of highly effective people, 2nd ed., New York, Simon&Schuster, 2004, p. 103.

This basic orientation and other principles underlying a systemic approach have been translated into a variety of well-tested models of steering change processes. One of these models for developing change processes that we have found particularly useful is called the change formula "D x V x R x F".[83]

- Driver: What is the incentive for change? Is there a "sense of urgency",[84] a pressing problem to solve, an opportunity to seize?
- Vision: Where do we see ourselves in the future?
- Resources: What are the available resources, strengths, etc. that can be used?
- First Steps: What are good first steps to take in order to create a sense of "feasibility"?

This model is as powerful for providing orientation and mobilising energy as these questions are simple.

5.   Levels and dimensions of intervention

Systemically based models of change process such as the Change formula can be applied in the appropriate form to a variety of change processes and tools. Systemic consulting practice we are familiar with helpfully distinguishes between three different levels of intervention in order to effect change – which build on each other:

- Level 1: the elaboration of a broader framework for a change process (often called a change architecture or a roadmap)
- Level 2: the development of change designs for specific steps within an overall framework (e.g. workshops on vision development or power analysis)
- Level 3: the use of concrete tools of intervention which can be integrated within a specific design.[85]

We have experienced the usefulness of a systemic approach in particular with regard to the levels 2 and 3. However, as described above broader frameworks for human rights based change – meaning theories on how change is to occur ("Theories of Change") – are still very rare.[86]

With regard to level 3, it is pertinent to mention that a wide variety of concrete tools exist. Those tools are either used with "systems thinking inside" or explicitly embody a systemic view. Two examples should serve to illustrate the point:

- The fishbowl discussion:[87] is a workshop method that is widely used in different variations. One group of people (the fish) sits in a circle to discuss a series of directional questions while they are surrounded by a larger group of observers in an outer circle (the bowl). After an initial observation of the communication, roles may be switched or observers may be given the

---

83   Schrader, Oliver/Wenzl, Lothar, Die Spielregeln der Führung, Stuttgart: Schäffer-Poeschl Verlag, pp. 153 et seq.
84   Kotter, John P., Accelerate. Boston: Harvard Business Review Press, 2014, p. 27.
85   See Königswieser/Hillebrand (FN. 18), pp. 54 et seq.
86   But see Zauner, Alfred (in this publication) on the police reform project in Austria ("Polizei.Macht.Menschen.Rechte"), where a systemically based change processes was initiated.
87   For a description see http://slitoolkit.ohchr.org/data/downloads/fishbowl.pdf (accessed 14 October 2018).

opportunity to move into the inner circle to participate in or give feedback on the communication. Its systemic worth lies in the fact that it creates an environment for active listening to other perspectives.

▪ World Café:[88] The basic set-up of a World-Café is as follows: A small group of people are seated at Café-style tables or in conversation clusters to discuss a predefined topic of relevance; while a host stays at the table the other participants move on to the next one after a certain amount of time. The host welcomes the newcomers and briefly shares the main ideas, themes and questions discussed so far. After some rounds, ideally, after each group has "visited" each café once the main results are shared in a plenary conversation. This method is powerful in creating an environment for listening, exploring relevant issues, connecting diverse people, getting multiple per-spectives on a specific issue and making collective knowledge visible; all essentially systemic in nature.

At all levels of interventions described, five different dimensions need to be carefully looked at.[89] These dimensions are:

▪ the content/factual dimension: the objectives of a workshop, the goal of an intervention, the topics dealt with
▪ social dimension: the participants of a workshop or a conference
▪ time dimension: the duration of an event
▪ spatial dimension: the rooms/seating arrangements
▪ symbolic dimension: decisions regarding the other dimensions also send symbolic signals; e.g. using chairs in circles without tables instead of a more formal seating.

While these dimensions will have to be considered in any choice of events, format or tools, it is the special care and time that a systemic approach employs in considering these dimensions, in particular the symbolic dimension. Practically, this translates into adequate time and resources dedicated to the preparation of events such as workshops. In our experience, the challenge caused by a lack of vision development in human rights practice is compounded by the lack of attention and resources dedicated to exploring these dimensions properly.

6.   Integrated reflection

A final element in the application of systemic tools of intervention implicit in the systemic loop concerns reflection in a broad sense. This comprises structured rethinking of one's own approaches, thoughts, actions at the individual level as well as a specifically dedicated feedback processes between people and within teams. A specific systemic tool for group reflection which is at the same time an intervention tool is called: "reflecting team"[90]. The facilitators of a change process talk among themselves in front of the group of participants and thus let the group watch them while they carry out a process of reflection. This is a bit

---

88   See Brown, Juanita/Isaac, David, The World Café: Living knowledge through conversa-tions that matter, in: the Systems Thinker, Vol 12/5, 2001. http://www.theworldcafe.com/wp-content/uploads/2015/07/STCoverStory.pdf (accessed 14 October 2018).
89   Königswieser/Hillebrand (FN. 18), p. 59.
90   Königswieser/Hillebrand (FN. 18), p. 84.

like letting people take a peek through the proverbial keyhole. This method prompts reflection through its surprise effects and awakens curiosity.

IV. The added value of systems thinking for preventive monitoring bodies[91]

Our research (predominantly in the EU) and experiences working with NPMs has shown that the focus of NPMs is on conducting ambitious visiting programmes and drafting reports.[92] However, an explicit reflection about the NPM's own role or a clarification of assumptions on how torture and ill-treatment can most effectively be prevented are still rare. This can probably be explained by a lack of resources in view of the very challenging task but also by the particular mindsets – often bureaucratic – in which monitoring approaches have been developed over the years; in particular in cases where existing National Human Rights Institutions (NHRIs)/Ombudsinstitutions were designated as NPMs.

A systems approach would firstly mean taking a step back from the daily work of visiting and reporting to look at the overall goal – preventing torture and ill-treatment and improving the treatment/situation of persons deprived of their liberty – and clarify the assumptions how this is best achieved. As a key manual for the implementation of OPCAT states, visits "only constitute the first step of a holistic preventive strategy."[93] It highlights that preventive monitoring should be based on a broad and collaborative approach through a constructive dialogue with authorities and other actors, encompass a system-wide analysis and be holistic as to include risk factors that lie outside the place of detention, such as the legal framework, institutional arrangements, and public policies. Finally, it should be forward-looking and apply a long-term perspective.[94]

A. Gathering information through a systemic situation analysis

In line with this, the work of an NPM should be based on a systemic analysis of the problem of torture and ill-treatment and how it can be prevented. At first, this requires an explicit clarification of the dimensions in which change needs to occur: from law, functioning management, institutional arrangements, public awareness and policies as well as the different levels on which the capacities of actors could need improvement.[95]

To obtain a whole picture it is useful to map the system(s) relevant for the change to be achieved. Stakeholder mappings[96] are commonly used in strategy development to visualise the role of actors who can contribute to a desired change, usually by showing their interest and power. Such mapping must include all actors and elements relevant to the prevention of torture and ill-treatment,

---

91   See also the contributions of Berger/Paar and Zauner in this volume.
92   Birk/Long/Murray/Suntinger/Zach (FN. 3), p.10
93   Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IIHR), *Optional Protocol to the Convention against Torture: Implementation Manual*, Association for the Prevention of Torture (revised edition, 2010), Geneva/San José, 2010, p. 236.
94   Op. cit., pp. 234-238.
95   Op. cit., p. 235; Birk/Long/Murray/Suntinger/Zach (FN. 3), pp. 91 et seq.
96   Birk/Long/Murray/Suntinger/Zach (FN. 3), pp. 99 et seq.

e.g. also the media, political parties, professional associations, etc.

We were surprised to see that some NPMs are reluctant to look at certain important elements in the system of prevention of torture and ill-treatment. In a project focussing on the cooperation between judges and NPMs many have stated that analysing the work of the judiciary would be beyond their mandate.[97] In another research project, some have stated the same with regard to procedural safeguards after police arrest. Excluding such important factors or actors from the monitoring task makes little sense if the NPM's aim is to identify the systemic factors and find solutions to the overall problem of torture and ill-treatment.

Furthermore, it seems that most monitoring bodies pay little attention to the situation of the staff of places of detention during their visits. Taking seriously the insight that lasting change cannot be done without or against the staff – as relevant and powerful actor – a systemically based monitoring visit would pay much more attention to understanding the perspectives, conditions and needs of staff. The pioneering work done by the Alison Liebling[98] and others[99] in prison research on the moral performance of prisons appears to us particularly relevant.

An effective situation analysis must see the problem of torture and ill-treatment as a whole. Instead of compartmentalising problems, identifying the faults of different actors – the problems in the police, prosecution, judiciary, an NPM should pay particular regard to the connections and relationships between these and try to identify systemic patterns that contribute to the problem. The focus must always be on systemic failures rather than blaming individual stakeholders or even persons. Moreover, a holistic, systemic analysis must also take into account a reflection on the NPM's own role and position in the system and the effects of its presence/interventions, including its potential negative effect. For example: Is there a risk that a NPM mandate replaces the right of NGOs to visit places of detention? Is the preventive focus of NPMs misused by the authorities to shift the focus away from fighting against impunity? Such concerns must be seriously addressed by an NPM.

The 'bottom of the iceberg', such as attitudes, views, needs, objectives, etc., is always to be included in the analysis of the overall situation as well as of individual organisations and institutions. It is for example paramount to pay close attention to the institutional culture – i.e. the atmosphere amongst persons deprived of their liberty, the attitude of staff towards the detainees, and the relationship amongst employees. This has been recognised by academic research[100] and found its way into guidance documents for monitors.[101] It is also

---

97   Tomkin, Jean/Zach, Gerrit/Birk, Moritz/Crittin, Tiphanie, The Future of Mutual Trust and the Prevention of Ill-treatment, Judicial Cooperation and the Engagement of National Preventive Mechanisms, Ludwig Boltzmann Institute of Human Rights: Vienna, 2017, https://bim.lbg.ac.at/sites/files/bim/anhang/publikationen/final_version_ the_future_of_mutual_trust_and_the_prevention_of_ill-treatment_1.pdf (accessed 14 October 2018).

98   Liebling, Alison (assisted by Arnold, H.), Prisons and their moral performance, New York: Clarendon Studies in Criminology, 2004.

99   Jefferson, Andrew M./Gaborit, Liv S., Human rights in prisons. Comparing Institutional Encounters in Kosovo, Sierra Leone, and the Philippines, London: Palgrave Macmillan, 2015

100   Stevens, Jem, Changing Cultures in Closed Environments: What Works, Law in Context, Vol. 31, 2014 , pp. 228-260

worth emphasising the value of the systemic focus on resources and potentials which exist within places of deprivation of liberty – good practices, innovative solutions to problems, etc. – that allows to balance the identification of deficits with positive aspects and thus helps strengthen the constructive dialogue and increase impact. The method of appreciative inquiry (see above) could be an effective tool for this purpose. An important method in the prison research pioneered by Liebling, it has surfaced a number of issues which are key to understanding the systemic functioning in places of detention.

A systemic analysis of the problem of torture and ill-treatment naturally needs to be a collaborative one, integrating multiple perspectives, with a view to obtaining a holistic view of the problem and possible solutions. This is acknowledged in the OPCAT requiring a multidisciplinary composition of monitoring teams.[102] Therefore it is important that states/NPMs take this criterion seriously to render preventive monitoring effective. This includes making the most of the different professional backgrounds and experiences present in the NPM, not only during monitoring visits and the analysis of the situation but also in the drafting of recommendations and their follow up. However, also beyond the internal cooperation an NPM needs to exchange and collaborate broadly with other actors to analyse the problem and find sustainable solutions.

B. Clarifying and checking assumptions through hypothesis building

Clarification of underlying assumptions about how change can be achieved is a very important task in order to enhance the impact of the work of NPMs.[103] Just like all other persons, NPM members approach their monitoring work with a set of beliefs and assumptions on how change will occur. From a systemic perspective it is important to acknowledge that the analysis conducted is always the analysis from a "constructed" viewpoint. Therefore, we believe that it is crucial to make assumptions explicit and put them to critical reflection.

For this purpose, the tool of hypothesising can be extremely helpful, both for the purpose of describing a problem ("The reason for the negative attitude of staff towards detainees could be their poor working conditions …") as well for identifying possible solutions ("The attitude towards the detainees could change if the staff had shorter working hours, longer recovery breaks and received adequate payment, felt more appreciated for the challenging work"). Hypothesising helps deepen the analytical depth, systematize information, stimulates creative thinking and helps question viewpoints one is familiar with.[104] Recognising that observations are just hypotheses also promotes the

---

101 Association for the Prevention of Torture/Penal Reform International, Institutional Culture in detention: a framework for preventive monitoring, London/Geneva 2013, https://www.penalreform.org/wp-content/uploads/2016/01/culture-in-detention-2nd-ed-v6.pdf (accessed 14 October 2018).

102 See Art. 18, para. 2: *"The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country."*

103 Birk/Long/Murray/Suntinger/Zach (FN. 3), p. 96.

104 Ibid., pp. 99 et seq.

sense of collaboration within and outside the NPM to test, adapt and improve them in order to get a whole picture of the problem and possible solutions.

C.   Strategic planning of interventions

Our EU-wide research has also revealed that NPMs do not have a comprehensive strategy on following up and ensuring the implementation of their recommendations.[105] Therefore we have proposed elements of a "systematic change perspective" for the establishment of an effective NPM follow-up strategy that was largely welcomed by NPMs. On that basis and its follow-up during conferences and trainings we have seen that NPMs worldwide are becoming increasingly strategic and look more thoroughly for ways to enhance the effectiveness of their work beyond the usual approaches. We have particularly emphasised the importance of developing a pathway or a theory of change. In light of the principle of "Beginning with the end in mind", it is not sufficient to establish visiting plans but NPMs should continuously develop strategies on how to effectively prevent torture and ill-treatment, based on a rigorous systemic analysis and through broad cooperation and exchange with other actors.

Moreover, it is specifically relevant for the strategy of NPMs – with such complex mandates – to consider leverage/entry points to achieve change. In our study – in reference to political science research – we have called this "detecting and using opportunities for change".[106] Additionally, we have emphasised the importance of communication – messaging and framing – to achieve change.

D.   Effective interventions through cooperation and reflection of tools

As already mentioned above broad cooperation of the NPM in order to get a whole picture of the problem and possible solutions is crucial. The Sub-Committee for the Prevention of Torture (SPT) recommends NPMs to *"establish a strategy for cooperation with other national and international actors […] on the prevention of torture and on the follow-up of cases of suspected or documented torture or ill-treatment and of possible reprisals. A wide range of national actors, such as representatives of nongovernmental organizations, trade unions, concerned social and professional organizations, trends in philosophical or religious thought, universities and qualified experts, Parliament and government departments, could be included."*[107]

It is of utmost importance that NPMs cooperate broadly and not only with state authorities or institutions which they are monitoring. Particularly the cooperation with civil society is often weak, although in many countries NGOs have a long-standing expertise in monitoring. We have emphasised the importance of strategic networking with a broad range of relevant actors, particularly from civil society, including a division of labour, exchanging information, seeking support and building sustainable partnerships.

An opportunity in that regard are the working groups NPMs have established

---

105   Op. cit., p.10.
106   Op. cit., p. 97.
107   SPT, Analytical assessment tool for national preventive mechanisms, 25 January 2016, CAT/OP/1/Rev.1, para. 43.

to discuss specific issues or even Advisory Boards or Consultative Councils that support NPMs. Such multi-stakeholder, inter-agency bodies have great potential in systemically analysing problems and developing solutions. However, our experience is that the potential of these bodies is not fully exploited and they are rarely used to systematically strengthen the NPMs' work.

There are other interesting tools for follow-up and enhancing the impact of their recommendations that some NPMs are already using. However, it can be generally said that NPMs should consider extending their tools moving beyond the commonly used working methods. However, in a systemic constructivist spirit this should not be done without reflecting on their availability and suitability clarifying the assumptions on why and how to use which tool for which purpose. From our point of view, it would be most useful for NPMs to specifically consider applying systemic tools or a reflection on how to integrate systems thinking into the tools already in place.

Finally, the strategy and working methods of an NPM require continuous reflection, evaluation, adaptation and improvement. An NPM has the difficult task to be effective in constantly changing complex circumstances. This can only be done by maintaining an open mindset of continuous learning.

As a final point it is important to repeat that monitoring bodies when considering how to create change in society should also pay regard to how they could improve their own organisation and working methods. In its "Analytical assessment tool of national preventive mechanisms"[108] the SPT asks NPMs to "carry out self-evaluations systematically and periodically".[109] This includes strategies to maximise impact of its activities as well as areas of organisational nature, such as structures of NPMs, recruitment, capacity-building of members, resources budgeted and spent, internal organisation with regard to systematisation of observations, recommendations issued and the responses given.[110] Some NPMs have undergone such a process[111]; unfortunately it is beyond this contribution to evaluate existing experiences. What we can say is that the practice of self-assessment is not yet widespread and that we are convinced that systems thinking would enrich such assessment enormously. The perspectives and tools mentioned above can be well used. As an example, it is easy to imagine how an assessment process could employ "Appreciate Inquiry" in order to surface the strengths and the potentials of the NPM and, thereby, mobilise energy to make its work more effective.

V. Conclusions

This article is an attempt to show the added valued of a systemic view for human rights practice. While it is obviously limited in scope and depth, we hope we could show that it is worthwhile to explore this approach further.

---

108   SPT, Analytical Assessment Tool of National Preventive Mechanisms, UN Doc.CAT/OP/1/Rev.1, 25 January 2016.
109   Op. cit., para.6
110   Op. cit., para. 18
111   e.g. the National Preventive Mechanism of the United Kingdom, see https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/08/UK-NPM-self-assessment-write-up.pdf (accessed 18 October 2018)

We think that the added value of systems thinking for human rights practice is two-fold: First, systems thinking equips human rights practice with a plausible theory of the social world. Second, systems thinking enriches the human rights tool-box with well thought-through and well proven instruments and tools for effecting change. One of the most influential systems thinkers, Heinz von Foerster, has proposed the following ethical imperative of systems thinking: *"Act always so as to increase the number of choices."*[112] Human rights practitioners should take this imperative seriously. Our concrete personal vision for the next years is to develop the basic approach and principles illustrated in this article into a systemic tool-box for human rights practitioners.

---

112 Förster, Heinz von/Pörksen, Bernhard, Understanding Systems, New York et al: Kluwer Academic Publications, p.32.