

# OPCAT WORLD FORUM

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- × GETTING RECOMMENDATIONS IMPLEMENTED

- × Torture as a *crime of opportunity*

- × &

- × Recommendations as

- × **guidelines** to *torture prevention policies*

- × **Luciano Mariz Maia**

# THE MANDATE OF THE SPT

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- × The SPT
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- × Receives information by States and other sources;
- × Gathers/produces information in its fact-finding/visiting activity;
- × Assesses the needs to strengthen the protection of persons deprived of their liberty;
- × **Issues recommendations**
- × Which
- × Have to be examined by States;
- × In order to implement changes required to prevent torture
  - + **Added value: analysis of risk factors**

# 1. THE ROLE OF RECOMMENDATIONS AND ITS IMPLEMENTATION IN TORTURE PREVENTION

- ✘ **Recommendations are useful for Governments, leading to the adoption and amendment of legislation; lend credibility to statements made by national-level actors when challenging policies; provide a framework for human rights activities; raise the visibility of human rights issues; have been used to develop human rights action plans; serves as the basis for requests for technical assistance.**
- ✘ REPORT OF THE SEMINAR ON RECOMMENDATIONS OF UNITED NATIONS EXPERT BODIES Geneva, 9 to 10 November 2006
- ✘ They serve as guidelines to torture prevention policies.

## 2. WHAT FACTORS MAKE A RECOMMENDATION MORE LIKELY TO BE IMPLEMENTED

- ✘ Zdenek HAJEK: [...] the necessary precondition for a good, timely and efficient implementation of the recommendations was their quality. [...] treaty bodies should strive to prepare recommendations that are **short, concrete and realistically implementable**, and that take into account the specificity of the countries concerned. [...] it was useful not only to talk about what should be done, but also to offer suggestions to the States on how practically to achieve the realization of the recommendations, in order to help the State party concerned to set up priorities and timetables for implementation.
- ✘
- ✘ Recommendations should be specific and concrete, so as to facilitate their follow-up; be set in order of priority. Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee : . 18/10/2002. HRI/TB/FU/1.
- ✘ Should be forward-looking, targeted, concrete, timely, time-bound, focused and operational; concise, but not prescriptive elaborated. REPORT OF THE SEMINAR ON RECOMMENDATIONS OF UNITED NATIONS EXPERT BODIES Geneva, 9 to 10 November 2006

## 2. WHAT FACTORS MAKE A RECOMMENDATION MORE LIKELY TO BE IMPLEMENTED

- ✘ Should be targeted, focused and treaty based. MARRAKECH Statement
- ✘
- ✘ Treaty Bodies [should] critically review the substance and form of concluding observations for the purpose of improving them and thus, enhancing their impact. POZNAN STATEMENT
- ✘
- ✘ Should be specific and concrete to be more easily translated into a comprehensive plan of action and thus ensure their effective and full implementation. Seoul Statement on Strengthening the UN Human Rights Treaty Body System
- ✘ Reports and recommendations will be most effective if they are based on rigorous analysis and are factually well grounded. SPT

## 2. COMPARING TARGETED AND CONCRETE WITH UNTARGETED AND ABSTRACT

### × CAT TO BRAZIL 2001

- + (d) Urgent measures should be taken to improve conditions of detention in police stations and prisons, and the State party should, moreover, redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned;

### × SPT TO MEXICO

- × 302. The Subcommittee recommends that the following actions should be taken to improve physical conditions at police and municipal detention facilities:
  - × • All cells in police stations should be clean and of a reasonable size for the number of people detained there
  - × • Light and ventilation should be adequate
  - × • Detainees should be provided with mattresses and blankets or covers when they are required to spend the night in a detention facility
  - × • Detainees should be provided with basic necessary personal hygiene products
  - × • Detainees should have access to drinking water and should be given sufficient food of adequate quality
  - × • Detainees incarcerated for more than 24 hours should be given the opportunity to engage in physical exercise for one hour each day
  - × • The personnel responsible for guarding detainees should include both men and women and only female guards should be assigned to areas where women are incarcerated

### 3. WHAT ARE THE MAIN OBSTACLES IN ACHIEVING IMPLEMENTATION OF RECOMMENDATIONS

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#### ✘ Main obstacles

- ✘ Absence of full agreement at the policy level; a need to introduce and enforce new legislation; a lack of familiarity with specific follow-up arising from international human rights obligations; the difficult economic situation, when it comes to implementing recommendations with important financial implications.
- ✘ CPT (2002) 61 IMPLEMENTATION OF THE CPT'S RECOMMENDATIONS CPT

### 3. WHAT ARE THE MAIN OBSTACLES IN ACHIEVING IMPLEMENTATION OF RECOMMENDATIONS

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#### ✘ Main obstacles

- ✘ The perceived inadequacies of concluding observations, due to their abstract nature. REPORT OF THE SEMINAR ON RECOMMENDATIONS OF UNITED NATIONS EXPERT BODIES Geneva, 9 to 10 November 2006
- ✘
- ✘ Lack of relevant information, resulting in inadequate evaluation of needs and means necessary to strengthen protection.
- ✘
- ✘ Lack of dialogue with State actors and stakeholders.

# 3. CONCRETE STEPS TO OVERCOME

- ✘ Identifying means of providing assistance to State Parties which require financial assistance.
- ✘ - An assessment of the needs of each target country for assistance towards the implementation of the CPT's recommendations;
- ✘ - Translation of these needs into concrete project ideas/draft project proposals;
- ✘ - Identification of key stakeholders;
- ✘ - Preparedness of key stakeholders, in particular the main target groups, to participate in projects;
- ✘ - Assessment of the possibilities of external financial assistance to such projects.
- ✘ CPT (2006) 16 PILOT PROJECT ON THE IMPLEMENTATION OF THE CPT'S RECOMMENDATIONS: CALL FOR TENDERS

# 3. CONCRETE STEPS TO OVERCOME

- × **Implementation is the process of carrying out and accomplishing a policy.**
- × **Seven Dimensions of Policy Implementation**
- ×
- × **The Policy, Its Formulation, and Dissemination**
- × **Refers to the policy content, the nature of the formulation process, and the degree of dissemination. Are the policy's goals, objectives, and strategies clear and appropriate given the issues to be addressed by the policy? Do key stakeholders agree on the goals and strategies? Has the policy been disseminated to and understood by those responsible for implementation?**
- ×
- × **Social, Political, and Economic Context**
- × **Refers to the various social, political, and economic factors outside of the policy process that can either enhance or hinder effective implementation. Depending on the nature and scope of the policy, social norms such as gender inequality and governing processes such as decentralization and other factors can affect policy implementation. What are the effects and consequences of these factors?**
- ×
- × **Leadership for Policy Implementation**
- × **Recognizes that strong leadership and commitment are essential to ensure the follow through, resources, and accountability needed for putting policies into practice — however, the leaders responsible for policy formulation might find their attention diverted elsewhere once the policy is adopted or the responsibility for leading implementation might shift to new individuals and groups. How effective is the leadership for implementation?**
- × **Pressman, J.L., and A. Wildavsky. 1973. Implementation. Berkeley, CA: University of California Press.**
- × **Implementation is the process of carrying out and accomplishing a policy.**

# 3. CONCRETE STEPS TO OVERCOME

- × **Stakeholder Involvement in Policy Implementation**
- × **Recognizes that policy formulation is increasingly a multisectoral endeavor, yet this engagement might not continue during the policy implementation stage—thus, it is crucial to consider the extent of stakeholder involvement in policy implementation and the nature of the relationships and collaboration among different stakeholders.**
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- × **Planning for Implementation and Resource Mobilization**
- × **Considers the planning, resources, and capacity needed to facilitate policy implementation. Does an implementation plan exist? Do organizations need new skills and training in order to implement the new policy? How will funding for new initiatives be ensured? How reliable is the resource flow?**
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- × **Operations and Services**
- × **Refers to the coordination mechanisms, operational systems, and capacity of individuals and organizations charged with delivering services outlined in the policy. What are the positive changes as a result of putting the policy into practice on the ground? What are the challenges?**
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- × **Feedback on Progress and Results**
- × **Recognizes the importance of regularly gathering, disseminating, and using feedback to assess progress toward achieving results. Who is and is not receiving information about implementation? How is the information used? Are the perspectives of beneficiaries or clients considered?**
- × **Pressman, J.L., and A. Wildavsky. 1973. Implementation. Berkeley, CA: University of California Press.**

# 4. WHICH ACTORS SHOULD BE INVOLVED

- ✘ The various branches of government, the national human rights instruments and civil society; Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee : . 18/10/2002. HRI/TB/FU/1.
- ✘ Parliaments, national human rights institutions. The Dublin Statement
- ✘ UPR . POZNAN STATEMENT
- ✘ All actors at the national level, including the government, parliamentary and judicial authorities, the NHRIs, the UN country offices, and, where they exist, the field offices of the OHCHR, as well as the media and NGOs from all sectors of society. Seoul Statement

# 5. OPCAT BODIES, CONSTRUCTIVE DIALOGUE, TOOLS AND INDICATORS OF IMPLEMENTATION

- × Perfect Implementation (10 preconditions...)
- × 1. External circumstances do not pose any significant constraint to the implementing agency
- × 2. Adequate time and sufficient resources are available for the programme
- × 3. Combination of resources is actually available
- × 4. The actual policy is based upon a valid theory of cause and effect and isn't irrational
- × 5. Relationship between cause and effect is direct with few/no intervening links
- × 6. Dependency on other agencies/organisations is minimal
- × 7. Understanding and agreement re: objectives
- × 8. Tasks are fully specified in the correct sequence
- × 9. Perfect communication and co-ordination
- × 10. Perfect obedience – those in authority can demand and obtain perfect compliance
- × (Adapted from Hogwood & Gunn, 1984)

## 5. OPCAT BODIES, CONSTRUCTIVE DIALOGUE, TOOLS AND INDICATORS OF IMPLEMENTATION

- ✘ Drafting more focused and operational recommendations in clear, practical language to facilitate national level implementation.
- ✘ Establishing tools such as recommendation-based indicators to evaluate the effectiveness of existing programmes.
- ✘ REPORT OF THE SEMINAR ON RECOMMENDATIONS OF UNITED NATIONS EXPERT BODIES Geneva, 9 to 10 November 2006

## 5. OPCAT BODIES, CONSTRUCTIVE DIALOGUE, TOOLS AND INDICATORS OF IMPLEMENTATION

- ✘ Recommendations are guidelines to crime/torture prevention policies;
- ✘ Recommendations must be tailored made, that is to say targeted, objective, and concrete.
- ✘ They are more likely to be implemented when they are seen as feasible, and properly addressing the risk factors actually identified in a concrete context
- ✘ To respond properly, they require that the visiting organization show expert knowledge not only in torture occurrence in general, but in torture occurrence in the particular settings they visit.
- ✘ Data available to visiting organization may be provided by public authorities, but also by other stakeholders, like NGO, academics, etc.
- ✘ Dialogue must be both prior to the visit, and after the visit, in order to build follow-up monitoring mechanism.
- ✘ A systemic understanding of all relevant parameters will be effective.

# 5. OPCAT BODIES, CONSTRUCTIVE DIALOGUE, TOOLS AND INDICATORS OF IMPLEMENTATION

- ✘ Situational crime prevention, as a criminological theory, may help devise tailored, targeted, objective, and concrete recommendations.
- ✘ Adopting Ronald Clarke's perspectives (2005), recommendations would serve as guidelines to build torture prevention policy aimed at:
  - ✘ • Increasing the effort required to commit a crime by target hardening or by controlling access to targets or the tools required to commit a crime.
  - ✘ • Increasing the risks by increasing levels of formal or informal surveillance or guardianship.
  - ✘ • Reducing the rewards by removing targets or by denying the benefits of crime.
  - ✘ • Reducing provocations or frictions by controlling for peer pressure or by reducing frustration or conflict.
  - ✘ • Removing excuses by setting clear rules and limits.
- ✘ As to the question of *Getting Recommendations Implemented*, I consider relevant to take into account that *recommendations act as guidelines to torture prevention policies*, therefore tools used to assess *policy implementations* may throw light in the discussion.