

## **APT Global Forum on OPCAT**

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### **Panel 5: Getting Recommendations Implemented – CPT’s View**

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#### **I- Introduction**

CPT is a unique and dynamic monitoring body with constantly evolving standards derived from country visits. CPT’s activities are limited to places of detention where people are deprived of their liberty; as such its target population is particularly at risk of ill treatment. While this presents certain particularities for the work of CPT, the Committee confronts similar challenges and concerns with other human rights mechanisms. In this sense, human rights protection whether in the context of torture prevention, elimination of violence against women, fight against racism etc. must be perceived as a holistic endeavour. We cannot expect improvements in places of detention in an environment where human rights has not emerged as a fundamental value and guiding principle. Therefore, CPT represents a far broader venture than its mission statement may imply.

#### **II- Challenges to Implementation of Recommendations**

CPT’s over 20 years of experience clearly demonstrates that implementation of recommendations concerning prevention of torture and ill-treatment cannot be taken for granted despite ratification of treaties, legislative reforms, creation of new institutions and the like. At the outset, it is a fact that torture prevention, requires investment in material conditions and human resources. It is for this reason that states often cite limitation of resources as their bottleneck in observing CPT recommendations. However, it must be acknowledged that resource requirements are perhaps the more manageable aspect of the problem of torture prevention. Some improvements can be achieved with very little or no additional resources and others can be managed within the existing budget line with strategic budgeting whereby human rights goals are prioritized. Needless to say, there will be interventions that will require extra resources which can be a burden on the economy particularly for low income countries or economies in transition. Towards this end, the Special Fund foreseen in the OPCAT is an invaluable initiative. CPT for long has promoted the idea of external resources being made available for the implementation of its recommendations. In this respect, CPT explores with the COE Development Bank the possibility of channeling funds to assist countries in their effort to realize CPT standards.

A more challenging issue in torture prevention, however, is changing mind sets. Changing the mentality and hence the behaviour of police, prison guards and others who have direct contact with detainees is of particular importance for implementation of recommendations. Equally important is the attitude of the general populous. If there is a negative public opinion regarding rights of crime suspects and prison population it will be difficult for governments to justify transferring resources to prison reform. Political commitment and will on the part of leaders is a crucial element in overcoming some of these obstacles. As they say, “where there

is a will there is a way”. The often self-assumed right by the lower echelons of the hierarchy to use excessive force against people deprived of their liberty can only be diffused and eventually eliminated by a strong message of zero tolerance from the very top of the leadership and uncompromised measures to end impunity.

Under the best of intentions things can still go wrong. As central as Article 3 of the ECHR is for the work of CPT, Article 8 on respect for dignity for the human person is vital, as this is precisely where intentionally or unintentionally ill-treatment may manifest and sustain itself. In one of my CPT missions a detainee said, “They don’t torture you here, they destroy your psyche and self-esteem by way of discrete acts that do not constitute an act of wrong doing, so you can’t even complain about it”. When I hear such testimonies I recall Martin Luther King Jr. who once said, ‘legislation can restrain the heartless but what about the hearts?’ This is the ultimate challenge in preventing torture and ill-treatment.

Ironically, in the post-cold war era as there is an increasing convergence around international human rights values competing paradigms are undermining those very values. The global political environment following 9/11 has placed the security discourse as a priority on the agenda of all states. National security and public safety concerns in the context of migratory flows or terrorism tend to act as strong justification for instituting measures that contradict the essence of human rights protection. CPT is increasingly having to address problems with respect to the treatment of foreigners detained under the aliens act in countries which otherwise have achieved impressive outcomes in implementing CPT standards. Similarly, the fight against terrorism acts as a major constrain in the states’ willingness to cooperate with the CPT.

Not long ago the incidents at Abu Gharaib shocked the whole world, not because of the scenes of ill and inhumane treatment of prisoners – these were familiar scenes for many of us – but rather the shock was caused by the perpetrators who were from a developed, democratic country. According to Jean-Pierre Restellini (CPT member in respect of Switzerland) the Abu Gharaib incident brought us to our senses and made us realize that torture is not the sole preserve of repressive regimes.

#### I- CPT : A Success Story

These are real challenges and their existence is a testimony to the importance of international monitoring bodies and their recommendations. While being mindful of the persisting challenges we must also acknowledge the fact that CPT has made positive contributions in preventing torture in the European region. States parties to the ECPT have now been visited once if not more by the CPT. Although there is a wide gap in the implementations of CPT recommendations in the countries concerned they have all undergone noticeable change in their dealings with places of detention and treatment of detainees. A director of a prison in one of my visits remarked that they are trying to shift from a system of control to one of dialogue with the prisoners. I think this is a commendable preoccupation. Perhaps a good example of what CPT can accomplish is my own country - Turkey. Just 10 years ago Turkey was known for the systematic torture in its police stations and prisons and its cooperation

with CPT was one of reluctance. Today, although prison conditions are far from ideal and incidents of ill-treatment have not been eradicated the picture has significantly changed in Turkey, there is a well demonstrated commitment and will on the part of the authorities to work in compliance with the CPT to implement recommendations. Turkey has also ratified the OPCAT recently, which will strengthen its efforts to eradicate torture and ill-treatment.

What accounts for CPT's success? I would like to touch upon two factors I feel would shed light on our discussion at this panel:

- (i) CPT's performance in monitoring and developing standards in light of reality on the ground. It has done this with diligence, observance of the rule of confidentiality, consistency in its recommendations to governments and contextualizing its standards while being mindful not to normalize the existing situation in a given country.
- (ii) Mutual reinforcement of different bodies in the European region. Reports of CPT, recommendations of entities of the COE, jurisprudence of ECtHR, and the support for prison reform in the EU, among others, have all reinforced one another and contributed to the development of 2006 EPR. CPT's relationship with the ECtHR is of particular importance. From the beginning of 2006 to the end of 2007 the court referred to CPT reports in 88 of the cases it acted on. Likewise, CPT uses the decisions of the Court in its reports and dialogue with states.

## II- New Partners: APT and NPMs

With the OPCAT we have entered a new phase in torture prevention. There are now new actors mandated with the same goal. From CPT's perspective this is an opportunity to strengthen the torture prevention efforts in the COE countries that have ratified both ECPT and OPCAT. CPT can offer its accumulated experience to its new partners but it also stands to benefit from this partnership. Working closely with SPT will enable its standards to be tested globally and NPMs will provide a natural follow up function at the national level. A constructive partnership will require new and innovative working methods; a particular area of concern is how to share confidential information. States also need to be involved in responding to some of these new challenges. For example, they may choose to make unpublished CPT reports available to the NPMs or invite them to the final talks following a CPT visit. Making the new partnership effective in torture prevention will depend on the degree to which these entities collaborate toward complementing and supporting one another's work. The mutual reinforcement of European entities referred to earlier provides a good practice to build on.

Thank you!