



Thematic Session N°5 Getting Recommendations Implemented

Friday 11 November 2011, 9:00-11:30

APT Global Forum on the OPCAT - Preventing Torture, Upholding Dignity: from Pledges to Action

What are the objectives of thematic session N°5?

- To take stock of **progress, challenges** and **gaps** in getting recommendations of OPCAT bodies implemented.
- To find concrete and practical **ways to improve the implementation of recommendations** made by OPCAT bodies.

Why is thematic session N°5 relevant to the OPCAT Global Forum?

Recommendations, and their implementation, are central to the system of prevention of torture and other ill-treatment (hereinafter "torture") established by the OPCAT. At the same time, the OPCAT bodies (SPT and NPMs) are among a number of international, regional and national organisations mandated to make recommendations relating to the prevention of torture¹. So what is the OPCAT's added value? Unlike many other bodies, the SPT and NPMs base their recommendations on a holistic and multidisciplinary analysis of risk factors for torture occurring, and visits to places of detention are central to their analysis. Their recommendations are to be practical and solution-based, and can address any material, structural, legal² or policy issues necessary for strengthening the protection of persons deprived of their liberty. Crucially, state authorities are obliged to consider the OPCAT bodies' recommendations. They thus form the basis for constructive dialogue with the authorities on implementation and the starting point for monitoring and follow-up.

A number of factors may influence the extent to which OPCAT recommendations are implemented, including: the way they are drafted,³ their practicability and timeliness, whether they target the relevant authorities; how they reference standards; the extent of constructive dialogue with authorities; and whether there is proper monitoring and follow-up, as well as political will and resources for implementation. As a domestic body, NPMs have increased potential for tailoring recommendations to the national context and conducting regular and sustained follow-up. The OPCAT also establishes a Special Fund to financially assist states to implement OPCAT recommendations. Nonetheless, five years after the OPCAT's entry into force, getting recommendations implemented is still a major challenge. Finding ways to improve their implementation is thus essential for ensuring that the OPCAT system leads to real, positive change on the ground.

What are the main issues to be discussed?

1. Progress in getting OPCAT recommendations implemented

- Over the last five years, both the **SPT and the NPMs** have gradually improved their reporting, including the way recommendations are articulated and framed.
- NPMs have gained knowledge and experience and have developed **useful working tools**, including for monitoring implementation of their recommendations. Peer-to-peer networks such as the "European NPM Project" have fostered an **exchange of good practices**, including on how to ensure recommendations are implemented.
- Increased **cooperation between the SPT and NPMs** (e.g. through the designation of an SPT focal person for NPMs, opens the door for better coordination on follow-up to each others recommendations).
- Incentives are given to States Parties to publish SPT reports, increasing **opportunities for follow-up by others** (e.g. the SPT has said that the OPCAT Special Fund will assist states to implement recommendations in published SPT reports).

2. Challenges in getting OPCAT recommendations implemented

- The focus of OPCAT bodies has thus far largely been on developing their visiting

and reporting capacities. There is however **room for improvement** in drafting recommendations, building constructive dialogue and monitoring and follow-up.

- Both the SPT and NPMs lack sufficient **resources to carry out follow-up visits** aimed at checking the implementation of their recommendations.
- The provisions of the OPCAT enshrining constructive dialogue are not systematically included in **national NPM legislation**.⁴
- Governments very often invoke a **lack of resources** for implementing the recommendations submitted by monitoring bodies. Governments may also find it challenging to prioritise and implement the **large number of recommendations** received from various UN and other human rights bodies.
- The **OPCAT Special Fund** is not yet operational.
- The international, regional and national monitoring bodies still **lack coordination** regarding their visits (especially follow-up visits) and they could more systematically **follow-up on each other's recommendations**. There is a risk of visiting bodies (i.e. NPMs, the SPT and the CPT) contradicting each other in their recommendations.

3. Ways forward to improve the implementation of OPCAT recommendations

- All **OPCAT bodies** could define clear strategies on seeking implementation of their recommendations. This could include **tools and procedures for monitoring and follow-up**, including through follow-up visits, as well as **indicators and benchmarks** for measuring the effective implementation of their recommendations.
- For this, OPCAT bodies should draw on the wealth of experience of other organisations and experts, as well as each other.
- The dialogue between the SPT and the various NPMs is still to be reinforced. The SPT's **advisory role** should include advice to NPMs on how to monitor and follow-up on the implementation of recommendations.
- NPMs could further refine their **strategies for entering into dialogue** with the authorities on the implementation of recommendations.
- NPMs could include recommendations in annual reports, which should be published and disseminated,⁵ and discussed in parliament (as recommended by the SPT).
- Monitoring bodies could **cross-reference other mechanisms'** recommendations with more consistency and thereby foster synergies. They could also better encourage other actors, including civil society, to follow-up on their recommendations.
- Governments should find ways to implement recommendations within available resources, e.g. by identifying affordable ones, finding creative and cost effective means and generating political will (to provide resources) for implementation.

Five questions for debate

1. What is the **role of recommendations** in torture prevention work? Why is it important to have them implemented?
2. What factors make a recommendation **more likely to be implemented**?
3. What are the **main obstacles** in achieving the implementation of OPCAT recommendations? What **concrete steps** can be taken to **overcome them**?
4. Which **actors** should be involved in efforts to ensure the implementation of OPCAT recommendations and what are their roles?
5. How can OPCAT bodies achieve **constructive dialogue** with the authorities and proper **follow-up and monitoring** of recommendations? What **tools and indicators** are available to measure the implementation of recommendations?

1. Including for example other UN Treaty Bodies such as the CAT; UN Special Procedures including the SRT, ICRC, CPT, CPTA, IACHR, NHRIs and Ombudsmen. NGOs are also active in this field.

2. The OPCAT gives NPMs the specific mandate of commenting on draft legislation (OPCAT Article 19(c)).

3. See APT, Detention Monitoring Briefing N°1: *Making Effective Recommendations* (available at www.apr.ch).

4. For example, the obligation for authorities to examine the recommendations of NPMs (OPCAT Article 22).

5. State Parties have the obligation to publish and disseminate NPM annual reports (OPCAT Article 23).