

THE IMPACT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE (CPT): LESSONS FROM SOUTHERN EUROPE

MALCOM D EVANS

The purpose of this article is to set out the conclusions which were drawn from the presentations made at the Oñati Seminar by Country Rapporteurs from Greece, Italy, Portugal, Spain and Turkey on the work of the CPT and the response of those States to its recommendations.¹ These presentations provided the background information necessary to move towards the analysis of the record of the implementation of CPT recommendations by the States of Southern Europe. Such an analysis is of interest in its own right but, more importantly, it provides – or, rather, it was hoped that it would provide – a starting point for a more general consideration of the impact of the CPT upon these states. This in turn was to shed light upon the manner in which this influence was exercised and channelled in order to see whether there were any general lessons which could further our understanding of how the CPT and its partners could improve the quality of their relationship and encourage the fullest compliance with CPT recommendations.

As was to be expected, the presentations did not adopt a common format, nor did they focus upon similar issues. This was inevitable – indeed, desirable – since it reflects the differing issues raised by the CPT reports themselves and the varied nature of the governmental response. Not unnaturally, they were also influenced by their author's own exposure to, and understanding of, the

¹ The Country Rapporteurs were: Greece, Effi Lambropoulou; Italy, Mauro Palma and Patrizio Gonnella; Portugal, Eva Falcao and Francisco Teixeira da Mota; Spain, Rafael Sainz de Rozas Bedialauneta; Turkey, Mehmet Semih Gemalmaz. The author of this article wishes to thank the Rapporteurs for placing their Reports at his disposal and to apologize for any inadvertent inaccuracies or misrepresentations of their views, for which he is, of course, responsible.

particular concerns raised. It is, therefore, virtually impossible to analyze them by reference to a common template. Perhaps it is unfortunate that due to constraints of space they cannot be reproduced in full², since this would allow the reader to draw his or her own conclusions. However, this itself would not be a fully satisfactory approach since it would exclude the discussions to which these presentations gave rise and which played a crucial role in drawing out the essence of the Reports relative to the purposes of the seminar.

Rather, the following sections will highlight the key points found in the Reports and raised in the discussions, arranged under a number of headings. The choice of headings may seem idiosyncratic but it reflects those themes which were common to the Country Reports and the more generalized conclusions that were ultimately drawn from them in the discussions to which they gave rise. This means that not all of the points raised in the Country Reports as presented at the Seminar will be given here and this section should not be read as a 'summary' of the views presented. Rather, it represents this author's understanding of the position relative to implementation of the CPT's Recommendations in the light of the written materials and oral discussions.

1. The Factual Background

It is important to bear in mind that not all 'Southern European' States are embraced by this study. Although Malta was represented at the discussions, there was no Country Report. Cyprus and San Marino were unrepresented. France, though a 'Mediterranean' State was not included as a 'Southern European State' for the purposes of this seminar, nor, indeed, were the Balkan states party to the ECPT (including Albania, Croatia, Slovenia and "TFYRO" Macedonia). Since any categorization is likely to be anomalous in some respects, the following paragraphs will limit themselves to setting out the facts of the CPT's involvement with those States for which Country Reports were presented.

² Revised versions of the Country Reports will appear in the version of the Seminar Proceedings, shortly to be published by the Association for the Prevention of Torture.

1.1. Greece

The CPT paid its first visit to Greece from 14-26 March 1993. This was a periodic visit and its Report was transmitted to the Greek Government some 9 months later on 20 December 1993. The Report³ was not made public until 29 November 1994 and was published alongside the Interim Response.⁴ The Greek Government's Follow-up Report was published on 21 February 1996⁵ but it is clear from its contents that it was finalized in February 1995, although the date of its transmission to the CPT is unclear. A second visit took place from 4-6 November 1996. This was a follow-up visit to the Attica State Mental Hospital for Children.⁶ As yet, no material arising out of this visit has been published. A further periodic visit is scheduled to take place in the course of 1997.

1.2. Italy

Italy has now been visited by the CPT on three occasions. The first two were periodic visits and took place between 15-23 March 1992 and 22 October-6 November 1995. The third was a follow-up visit to the San Vittore remand prison in Milan between 25-28 November 1996. So far, the only information in the public domain relates to the first periodic visit. The CPT transmitted its Report⁷ on 25 January 1993 but it was not made public until two years later, on 31 January 1995, and at the same time as the Interim Response was published.⁸

1.3. Portugal

Like Italy, Portugal also received 2 periodic visits, from 19-27 January 1992 and 14-16 May 1995 and subsequently received a follow-up visit, from 21-24 October 1996, which was focused on Oporto Prison. Portugal has published the Report and interim responses to both periodic visits. The first Report was transmitted to Portugal on 27 October 1992 and the Interim Response submitted

³ CPT/Inf (94) 20.

⁴ CPT/Inf (94) 21.

⁵ CPT/Inf (96) 8.

⁶ Council of Europe Press Release 628 (96).

⁷ CPT/Inf (95) 1.

⁸ CPT/Inf (95) 2.

a year later on 12 October 1993. Both the Report and Response were published together on 22 July 1994.⁹ The Final Response to the first periodic visit was only made available (in Portuguese) during the course of the 2nd periodic visit.¹⁰ The Report¹¹ on the 2nd visit was itself transmitted to Portugal on 20 December 1995 and its publication authorized, along with the Interim Response¹² to that visit, on 21 November 1996.

1.4. Spain

The CPT has now carried out four visits to Spain, two periodic visits, followed by two *ad hoc* visits. The periodic visits took place between 1-12 April 1991 and 10-22 April 1994, the *ad hoc* visits between 10-14 June 1994 and 17-18 January 1997. The first *ad hoc* visit was to Madrid I Prison, and the purpose was to interview persons held there who had been arrested in the Basque Country by the Civil Guard and had allegedly been severely ill-treated.¹³ The purpose of the second was to visit the General Directorate of the Civil Guard and to Madrid V (Soto del Real) Prison, where it interviewed a person recently detained at the General Directorate.¹⁴ The Reports arising out of the periodic and first *ad hoc* visits were transmitted to Spain on 21 October 1991, 15 December 1994 and 21 September 1994 respectively. The publication of all three Reports, along with the Spanish responses, took place on 5 March 1996.¹⁵

1.5. Turkey

Turkey has been visited by the CPT more frequently than any other country. *Ad hoc* visits took place from 9-21 September 1990 and 29 September – 7 October 1991 and a periodic visit was conducted from 22 November – 3 December 1992. A third *ad hoc* visit took

⁹ CPT/Inf (94) 9.

¹⁰ See CPT/Inf (96) 31, para. 7.

¹¹ CPT/Inf (96) 31.

¹² CPT/Inf (96) 32.

¹³ CPT/Inf (96) 9, p.195.

¹⁴ Council of Europe Press Release Ref 34 (97).

¹⁵ The Reports were published in CPT/Inf (96) 9 and the Responses to the 2nd Periodic and 1st *ad hoc* visits published in CPT/Inf (96) 10. The Response to the First Report was submitted in Spanish and remains untranslated. It is available on request in Spanish from the CPT (as are the other published Responses).

place from 16-10 October 1994. The CPT returned to Turkey at the invitation of the Turkish Government from 19-23 August 1996 and then conducted a fourth *ad hoc* visit from 18-20 September 1996. A further periodic visit is planned for 1997. Members have also returned to Turkey for discussions outside the framework of visits. None of the documentation arising out of the visits has been published but two Public Statements have been issued, on 15 December 1992¹⁶ and 6 December 1996¹⁷ which draw attention to the continued failure of the Turkish authorities to improve the situation in the light of its recommendations.

2. Cooperation between the State and the CPT

2.1. In the Preparation of Visits

Responsibility for the preparation of a visit lies with the CPT. However, the State is obliged to provide the Committee with information regarding places where persons are deprived of their liberty¹⁸ but it is apparent this has not always been done promptly and comprehensively. For example, in Italy the CPT only received a full list of Police and Carabinieri stations after the visit had begun. Given that the Follow-up Report to the first Portuguese Visit was only submitted during the course of the second, this must have had some ramifications for the preparations. All of the Country Rapporteurs thought that the Committee was well prepared for its visit and had chosen appropriate places to visit, although the Spanish Rapporteur thought that prison facilities could have featured more prominently.

2.2. In the course of visits

Drawing on both the CPT Reports and their wider investigations, the Country Rapporteurs commented upon the levels of cooperation between the States and the CPT. In the case of Turkey it is evident from the Public Statements that the CPT itself is not satisfied with the levels of cooperation encountered. Most published CPT visit

¹⁶ See 3rd General Report, CPT/Inf (93) 12, Appendix 4.

¹⁷ CPT/Inf (96) 34.

¹⁸ See ECPT, Articles 8(2)(b) and (d).

Reports indicate some problems of access to certain institutions or sources of information but, on the whole, levels of cooperation are generally good. The Italian Country Report, however, concluded that cooperation was generally poor during the visit in 1992, the principal problems stemmed from a lack of knowledge of the CPT, its mandate and working methods by the Police and Carabinieri. This is typically at the root of such difficulties in most states, rather than a wilful refusal to cooperate (perhaps with the exception of Turkey) and the intervention of the Liaison Officer is usually sufficient to deal swiftly with the situation. There do not seem to be instances of principled opposition to the CPT having access to certain places of detention or forms of information (such as medical records) which have been subsequently supported by the State authorities.

2.3. After a Visit

Following a visit, there is inevitably a delay whilst the CPT Report is prepared. This has been in excess of 10 months in some cases and this must reduce the impact that the visit has upon the state. The effectiveness of the dialogue will also be adversely affected by delay in the transmission of the States' Responses. The CPT requests that Interim Responses are submitted within 6 months, and Follow-up reports within 12 months, of the State receiving its Report on the visit. It is clear from the factual material summarized in the previous section that this is an aspiration that is rarely achieved. However, there is evidence that the situation is improving and responses to the more recent Reports seem to have been produced and transmitted more speedily.

3. Publication of Reports and Responses

No State is obliged to give its consent to the publication of CPT material and the failure to do so cannot be taken as evidence of a lack of cooperation. However, there is now a clear expectation that publication will occur and delay in doing so inevitably raises question marks over the nature of the relationship between the CPT and the State. It is in the nature of things that delay encourages a suspicion that a Report is highly critical or a response either non-existent or transparently inadequate. The general observations of the Country Rapporteurs from Italy and Spain, and to a lesser extent, Portugal, seem to bear this out.

Certainly, the publication record of Italy and Spain has been poor,

with the CPT Reports on the first periodic visits to Portugal and Italy appearing some two years after receipt and, in the case of Spain, three years later. Greece published the Report on its first periodic visit alongside its interim response nearly one year after receipt. This is closer to the general practice of States within the CPT system. Spain and Portugal have already improved on their previous record in the case of subsequent Reports and it is to be hoped that Italy will do likewise. Although it is too soon to be sure, it does appear that once a State has accepted the principle of publication (and all the States under consideration have done so with the exception of Turkey), its practice in this regard becomes settled and relatively non-contentious.

4. The Adequacy of State Responses

The extent to which the response of the State to the work of the CPT can be considered 'adequate' can be addressed in a number of ways. This section will consider briefly the contents of the written responses submitted as an element of the dialogue between the Committee and the State. The following section will begin to address the broader question of the extent to which the CPT's recommendations seem to be having an impact on the practice of custody and custodial regimes within the States concerned.

Most of the Country Rapporteurs considered the published responses to be defective in some fashion. In the case of Spain the accuracy of the published Responses on a wide range of matters was called into question. The Portuguese Report joined the Spanish in emphasising the gap between what was said in the Responses and what actually happened in practice, although the extent to which this was believed to result from an intent to mislead differed. The Portuguese Rapporteur also believed that the Responses tended to be 'formalistic', and betrayed a lack of real understanding of the situation in a number of instances. The Italian Rapporteurs considered elements of the Italian response to be 'excessively bureaucratic', and betrayed a greater interest in justifying the Italian legislative and administrative position than to 'take a stand' vis-à-vis the CPT's recommendation. The Greek Rapporteur also noted a degree of vagueness, but thought the responses generally accurate, if not comprehensive: some gaps again emerged between the picture in the responses and the underlying situation, with the Ministry of Justice 'avoiding' expressing their position on some recommendations, the Ministry of Public Order, appearing 'neutral' and the Ministry

of Health not answering at all. Although it is clearly helpful for Responses to give direct answers to the specific recommendations, comments and requests for information made in the Reports, there is a danger that this can become overly technical and, as such, lose sight of the general issue underlying the particular point at issue.

One further point should be noted. Almost all the Rapporteurs agreed that officials were more receptive to the points raised by the CPT Reports and its recommendations than was reflected in the official documentation. This should caution us against drawing conclusions too readily from the content and general tenor of the responses: other factors need taking into account when assessing the nature of the State's response to the work of the Committee.

5. Impressions of the Impact of the CPT

All of the Country Rapporteurs accepted that it was very difficult to assess the impact of the Committee. Some of the reasons for this, and the conclusions which might be drawn from this, are considered in the following sections of this article. To the extent that it is possible to gauge the potential impact, however, the following views were expressed, either in the written reports or discussions to which they gave rise.

5.1. Greece

The CPT's recommendations had exerted a degree of pressure on the Greek authorities, which had prompted them to attempt improvements which would not have otherwise been undertaken, and to hasten the implementation of others. The pattern of action, however, is inconsistent and does not suggest a concerted attempt to implement the recommendations on a systematic basis. Problems of overcrowding are less severe than hitherto and more work places are available and there has been an increase in the number of occupational training schemes and the levels of medical provision within the prison system has increased. As regards policing, improvements in conditions for detainees at Athens Police Headquarters and the Pireaus Transfer Centre are also noted. On the other hand, it is apparent that neither the CPT Report nor the Government responses seem to address what many consider to be the most pressing problems in Greek prisons, drugs and drugs trafficking. Nor is the response to the suggestions of ill treatment in police custody particularly apparent.

5.2. *Italy*

The Country Rapporteurs noted that following the CPT's visit, new rules concerning the transfer of prisoners have been introduced, limiting the use of handcuffs, as have new rules limiting the occasions on which it is permissible to listen to, or record, prisoner's phone calls (although it is unclear whether the authorities subsequently check out the numbers which are called). The maximum period for which a suspect can be held without being permitted to contact a defence lawyer has also been reduced from seven to five days. In all these instances, however, the Rapporteurs are not able to say whether the real pressure for change was from the CPT or from intense media and public pressure. Moreover, they conclude that the Italian Government has not demonstrated a willingness to comply with CPT recommendations regarding overcrowding, lack of regime activities in prisons, the run-down nature of many facilities and the training of personnel.

5.3. *Portugal*

The situation in Portugal is, perhaps, somewhat different. There appears to have been a change of emphasis with a change of Government in 1995 and, although many points remain outstanding, there are encouraging signs [such as the establishment of the *Inspecção-General da Administração Interna (IGAI)*] and programmes of refurbishment and new construction have been drawn up and are under way. There is still much to do regarding the recommendations concerning health care in prisons. A sufficiently firm denunciation of police brutality is still required, and changes to the legal structure are still resisted, particularly as regards access to doctors and lawyers for those in police custody.

5.4. *Spain*

The Spanish Rapporteur stressed the mismatch between the picture painted in the Government's Responses to the CPT Reports and his understanding of the real position. This undermined any real prospect of moving towards a meaningful assessment of the impact of the CPT's recommendations since, it was argued, there were, in effect, two dialogues occurring in parallel but at the same time really impacting upon each other: these being between the CPT and the Spanish authorities on the one hand and that between the Spanish authorities and the NGO community in Spain on the other.

By way of illustrating the problems of assessing compliance and impact with reference to the published reports, it was pointed out that in those comparatively rare cases in which sentences handed down against police officers in connection with ill-treatment of detainees, the sentences were rarely served, and pardons had been granted. This fostered a view that the police were 'immune' from prosecution. Such beliefs were hardly compatible with the spirit underlying the work of the CPT.

5.5. *Turkey*

It is evident from the Public Statements issued by the CPT that Turkey has made no real progress towards implementing the recommendations of the CPT. Indeed, the Country Rapporteur concluded that almost nothing had been achieved as regards prevention of torture and ill-treatment by the police forces in both Ankara and Diyarbakir or the strengthening of the legal safeguards against torture and ill-treatment. Political commitments had not been translated into practical action. Following the issuing of the first Public Statement in December 1992, further visits by the CPT took place, with the aim of reestablishing a degree of mutual confidence but there is no evidence that this has had any tangible results. On the contrary, evidence arising from press coverage surrounding the most recent visits of the CPT suggest that officials were alerted to the possibility of the CPT visiting in order to allow them time to make arrangements that might mislead the Committee. There was also evidence that the Committee's activities were closely monitored by the authorities, in order to exert some pressure upon those with whom it came into contact. It was the opinion of the Rapporteur that the Public Statements were not considered to be particularly significant by the Turkish authorities. Indeed, the issuing of the 2nd Public Statement in December 1996 served only to underline the ineffectual nature of the sanction.

It is clear from these summaries that the predominant view was that the CPT's recommendations had not been enthusiastically embraced by any of the States in question. Although there certainly was evidence of States responding positively to a wide range of suggestions, this was matched, or exceeded, by instances in which the recommendations had been either sidetracked or ignored. There was also a tendency towards paying lip service to the Reports but not, in the eyes of some Rapporteurs and observers, of translating this apparent concern into practical action.

6. Determining Compliance

It is against this background that the remainder of this article will turn to the broader issues concerning the ways in which the implementation of CPT recommendations might be encouraged.¹⁹ Before doing so, however, it is necessary to consider in greater detail what is actually meant by 'compliance' with CPT recommendations.

6.1. *Assessing 'Implementation'*

Implementation is a difficult area for those not intimately involved in the process to assess. Outsiders may have sight of Recommendations presented in the Reports and they might observe that what has been recommended has come to pass but this does not mean that the Recommendation has been 'implemented'. For example, the change in question might have been planned before the Recommendation was made. On the other hand, even if it was not previously planned, the CPT Recommendation might not have been a factor in the decision, which could come about because of pressure from other sources and have been entirely uninfluenced by the fact that the CPT was also pressing in a similar direction. Of course, it is likely that many CPT Recommendations will raise issues which are already well known within the State concerned and so will feed into an ongoing debate and contribute to the outcome. In such a situation it becomes very difficult to assess the degree to which it was the voice of the CPT which brought about a given result. It is better perhaps to think in terms of whether the results sought by the CPT have come to be realised in the State concerned, rather than focus on whether the CPT Recommendations have been implemented. This has the advantage of recognizing the potential impact of the contributions made by other actors. It also places the focus upon the heart of the matter – the improvement in the treatment of detainees – than upon what might become a narrow, technical issue of whether this has come about because of the CPT, a question which it may often be impossible to answer with certainty.

¹⁹ The remainder of this article represents the conclusions drawn by the author as one of the Rapporteurs of the Oñati Seminar and will also appear, in a modified form, in the volume of Proceedings to be published by the Association for the Prevention of Torture.

6.2. *The identification of factors relevant to 'implementation'*

If the above viewpoint is accepted and understood, the discussions take on a new and more meaningful direction. At first sight, the particular points and suggestions which will be considered below seem to go over old ground and to be chiefly preoccupied with information and communication, rather than with enhancing effective implementation. However, it became clear that the reason for this was twofold. First, there remains a very real need for further development in order to facilitate the practical functioning of the CPT visit mechanism. Secondly, continuous communication and flows of information are crucial to maintaining the momentum created by a visit, thereby sustaining the pressure upon the State to accede to the Recommendations made by the CPT. In the final analysis, it may not matter whether the desired result comes about because of pressure from the CPT or from elsewhere, but if the CPT wish it to be understood that theirs is a significant voice in the process of change then it is important that dialogue be maintained and enhanced with all those engaged in the process.

6.3. *Models of compliance with recommendations*

It has already been pointed out that 'compliance' with recommendations can take a number of forms, including obtaining a result which would not otherwise have been possible, or the acceleration of a programme already planned. Both of these results might appear 'positive', but it should also be remembered that they might produce a negative consequence in that something which was planned to have happened may now not happen, or not happen so speedily. In short, compliance with a CPT recommendation may have negative as well as positive effects and it might be necessary to consider these in relation to each other when assessing the overall impact of the CPT's work in a State.

Another way of putting this is to ask whether the CPT's priorities are appropriately ordered for the State in question and is it necessarily the case that the State should adopt them if, in good faith, its assessment of priorities *within the relevant field* is different?

The CPT, for example, may visit a particular institution and be generally complementary about the physical conditions of detention whilst noting poor levels of regime activity and call for improvements in this regard. Is a State justified in concluding that it should devote resources to bringing conditions of detention in other institutions up to what it now recognizes as the CPT's standards as a matter of

greater priority, albeit at the expense of not fully addressing the issue of regime activities in the institution first visited? Should a State be deemed to have 'failed' to implement CPT recommendations if it applies the lessons the CPT has given it to facilities more in need of improvement than those in the context of which the lesson was drawn? Conversely, to what extent should one say that a Recommendation has been 'implemented' if a particular facility is improved in response to a visit but others which are known to the State to be as bad are abandoned, or made worse in consequence (e.g. increasing overcrowding elsewhere). Of course, the ideal is for the State to do both, but at the very least, these questions suggest that a mechanical 'check list' approach to assessing the implementation record of States may not be appropriate. This may be too crude a measure.

7. Assisting Compliance

The principal conclusion was that further flows of information were needed in order to both assess and assist the process of compliance. To this end, a number of routes were considered.

7.1. Further probing by the CPT

Knowledge of compliance is inevitably restricted by the confidential nature of the dialogue between the State and CPT and the publication of Reports and Responses does not fully address this problem. We cannot tell how much the CPT knows about the real impact which its visits have within member states, but there is evidence that the published responses of States are not always as full, candid or honest as they might be. Ideally, the Secretariat should be engaged in detailed follow up and developing ongoing dialogue in order to test the degree to which its Recommendations have been taken up at an administrative and operational level.

This could be done by conducting further visits but this is unlikely to be practical, or even well suited to the aim. Other possibilities would include establishing more regular contact with the Liaison Officers and with inspectoral mechanisms already existing within the state concerned and, where they are lacking, giving greater weight to recommendations that they be established. In short, thought could be given to constructing a supporting dialogue with the 'formal partners' which would be inspired by the Visit Reports but would not be directly focused upon them. However, it is suspected that the

resources needed to pursue this path might not be available, or could only become available if there was a fairly fundamental re-appraisal of the CPT's priorities and working methods, the consideration of which is beyond the scope of the present discussion.²⁰

7.2. *Probing by others*

7.2a. Parliamentary Scrutiny

The CPT stands in a privileged position when seeking to engage in dialogue with States. As several of the Country Reports delivered at this Conference indicate, it can be difficult, if not impossible, for others to gain access to relevant, reliable information. Parliamentarians, however, themselves stand in a privileged position. When a government is slow to authorize publication they can be a potent source of pressure. Equally, when publication has taken place efforts should be made to make CPT Reports and Recommendations known to them and they should be encouraged to use their position to discover what has been the response. To date, this has happened sporadically but to some effect. More attention should be given to fostering their interest.

7.2b. The Legal Community

The Legal Community in member states ought to have a very real interest in the work of the CPT. They provide detailed and reliable information which can be of use when preparing cases, particularly those which involve the jurisprudence under Article 3 of the ECHR.

7.2c. National Inspectoral Agencies

Those bodies which exercise inspectoral functions and/or judicial oversight of the penal system should be made aware of the general standards advocated by the CPT, as well as the contents of Reports relevant to their own national jurisdictions and domestic spheres of competence. This information could be offered outside the CPT-State

²⁰ The need for an increase in the human and budgetary resources of the CPT is highlighted in the recent Report by the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly, 26 March 1997, Doc.7784, 'Report on the Strengthening of the Machinery of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Rapporteur Mr Jerzy Jaskiernia), para.50-55.

dialogue arising from a particular visit, in order to emphasise its general relevance to their functions in a non-specific (and therefore potentially less contentious) context.

7.2d. The Academic Community

The work of the CPT should be made better known to the academic community. This would have a number of benefits. It would ensure an ever wider dissemination of knowledge about the Committee and would foster the study of its work. It would also bring a greater degree of critical scrutiny to the working methods and standards of the CPT, placing them within a broader framework and bringing new influences to bear upon them.

7.2e. The Media, Journalists, etc.

More could and should be done to ensure publicity for the work of the Committee. It is recognized that this is not the responsibility of the CPT, and there are dangers of misportrayal and misrepresentation. Yet these are no different from the risks habitually run by other bodies whose work is not fully understood and should not be used as a reason to marginalize their potential to contribute towards the effective implementation of the Committee's Recommendations. It should be remembered that NGOs have relatively little influence in some States and the media, particularly the press, has a greater influence on public opinion and government policy.

7.2f. The NGO Community

Perhaps inevitably, the principal focus of discussion concerned the extent to which the NGO community could and should be involved in the follow-up of CPT Recommendations, both in the sense of monitoring compliance and working in order to achieve it. There was a widespread feeling that some of the smaller national NGOs did not fully understand the manner in which the CPT feels constrained by the principle of confidentiality. It was also felt that the CPT need not adopt quite so restrictive an interpretation. The lack of warmth in the acknowledgement of information submitted – and the failure to provide any meaningful indications of its usefulness to the Committee – could be interpreted (albeit incorrectly) as indifference and this did little to encourage small and often struggling NGOs to embrace the CPT and its work with any real enthusiasm. More could be done to make NGOs feel part of the wider circle of the preventive mechanism.

For example, NGOs who had supplied information to the CPT could be automatically provided with a copy of the relevant Report if and when it was made public – why should they have to request it? There could be increased dialogue with NGOs on the nature of information which the CPT would find valuable and the manner in which it could be most usefully presented. This could include specific details relating to areas on which the CPT had expressed concern in a State.

Suggestions were also made that the CPT could develop a list of ‘accredited’ NGOs. Whilst this might raise complex issues, it works well in other fora, resulting in better channels of access and a fuller understanding of the procedures involved. This leads to a more productive relationship for all concerned.

8. Availability of Information

All of the points made above are linked by a common theme: the need to make the work of the CPT more readily accessible and widely known. Without accessibility and knowledge there is little prospect that the Committee’s Recommendations will be embraced by civil society. Central to this is the need to make the Reports available in the language of the country concerned.

8.1. Availability

It is not enough that Reports are available on request in printed form. Requests can take weeks, even months, to be fulfilled, by which time interest may have lapsed. Even if the distribution system could be improved, Reports should now be made available in electronic form, and capable of being down loaded from the Internet. Other areas of the Council of Europe are adopting this practice and it is to be hoped that this is under consideration within the CPT. Alternatively, NGOs, such as the APT, could develop a website with the co-operation of the Committee. This would be a major step forward.

Additionally, the Ministries of Foreign Affairs of many member states now have their own websites. Could they not be encouraged to make Reports available themselves through these channels?

8.2. Language

Above all else, the need to make Reports available in the language of the State concerned should receive further thought. The position

at the moment appears random. It is accepted that there are very real barriers to be overcome, particularly those of cost and delay. A further problem concerns the range of languages: in a number of states there might be a need to produce versions in a variety of languages, including minority languages, the use (or lack of use) of which might be contentious. Accuracy is, of course, a paramount consideration, particularly given the careful nuances of language within the Reports.

On the other hand, translations of Reports and Responses exist for internal use in many States. In the spirit of cooperation these might form the basis of an approved translation, thus eliminating the need to 'start from scratch'. It is also apparent that the use of standard terminology in key statements of standards and recommendations should facilitate translation.

Would it not be possible to produce the summaries of recommendations, or a summary of the Report, it being clear that this was without prejudice to the authority of the Report as a whole?

Finally, would it not be possible to produce the General Reports in a wider variety of languages, particularly the sections of those Reports (such as the second, third and, we understand, the seventh) which set out the CPT's approach to key areas of its mandate?

9. General Conclusion

At first sight, it may appear that the points raised in the previous sections do no more than revisit issues raised in the past. It is true that issues of publicity, information and co-operation have long been debated. That they are still considered pertinent suggests that further improvements are needed. On a broader level, it is important to note that the very fact that the discussions kept turning to these questions when attempting to focus on issues of enhancing compliance with CPT Recommendations, suggests that the basic impulse of the NGO community and the guiding spirit of international human rights protection under international law – that the sanction which a State fears most is publicity – is soundly based. This raises important questions for the operation of a mechanism which sees confidentiality as the central pillar of its working relationship with States.

It may be that the CPT is approaching a crossroads. It was – and is – an exciting and innovative mechanism that has great potential. There is, however, a danger that the operation of the mechanism no longer produces the same degree of concern in certain States: having

seen (or thinking that they have seen) what the CPT might mean for them it is possible that some States might come to believe that they have the measure of it. Certainly, once a Public Statement has been issued there is the problem that the CPT has no further forms of pressure remaining at its direct disposal. It is incumbent on all those dedicated to the struggle against torture and inhuman or degrading treatment or punishment to ensure that States do not feel 'comfortable' about their position vis-à-vis the Committee and that they feel the need to embrace the opportunities that a constructive dialogue built around the implementation of CPT Recommendations presents.

Malcolm D Evans is senior lecturer in Law at the University of Bristol, specialising in International Law and Human Rights. His most recent publication is *Religious Liberty and International Law in Europe* (1997, CUP).