

Report of First Meeting of the Advisory Group on Implementation of Human Rights Standards

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Background to Advisory Group

Bristol University is host to a four year project on the implementation of human rights standards. The aim of this project is to examine how so called “soft law” is used in practice. In particular, the project will track the use of one document, the Robben Island Guidelines on the prevention of torture (RIG), adopted by the African Commission on Human and Peoples’ Rights, in 2002, from its drafting through to its use by the regional and international systems, as well as national actors.

As part of this project, an Advisory Group on implementation was created to consider a broader perspective on the implementation of human rights standards. The Advisory Group is composed of individuals with a range of expertise and backgrounds from government, academia, national institutions, international organs and civil society. The broad aims of this advisory group are:

- to broaden the project out to look at implementation more generally;
- to brainstorm around the idea of what is required to implement human rights law; and
- to develop practical strategies, for all levels, on how this can be achieved.

Outline of discussions

A short discussion paper was prepared and summarised for the Advisory Group, outlining the main trends in the current discourse on implementation at the international and regional levels. The discussion paper noted that the general trend at the international level was to develop human rights indicators and some questions were posed as to whether or not this was a helpful trend.

1. Defining “implementation”

The main discussions began with the question: ‘what does implementation mean to you?’ In answer to this question, a useful template for considering implementation was proposed, namely:

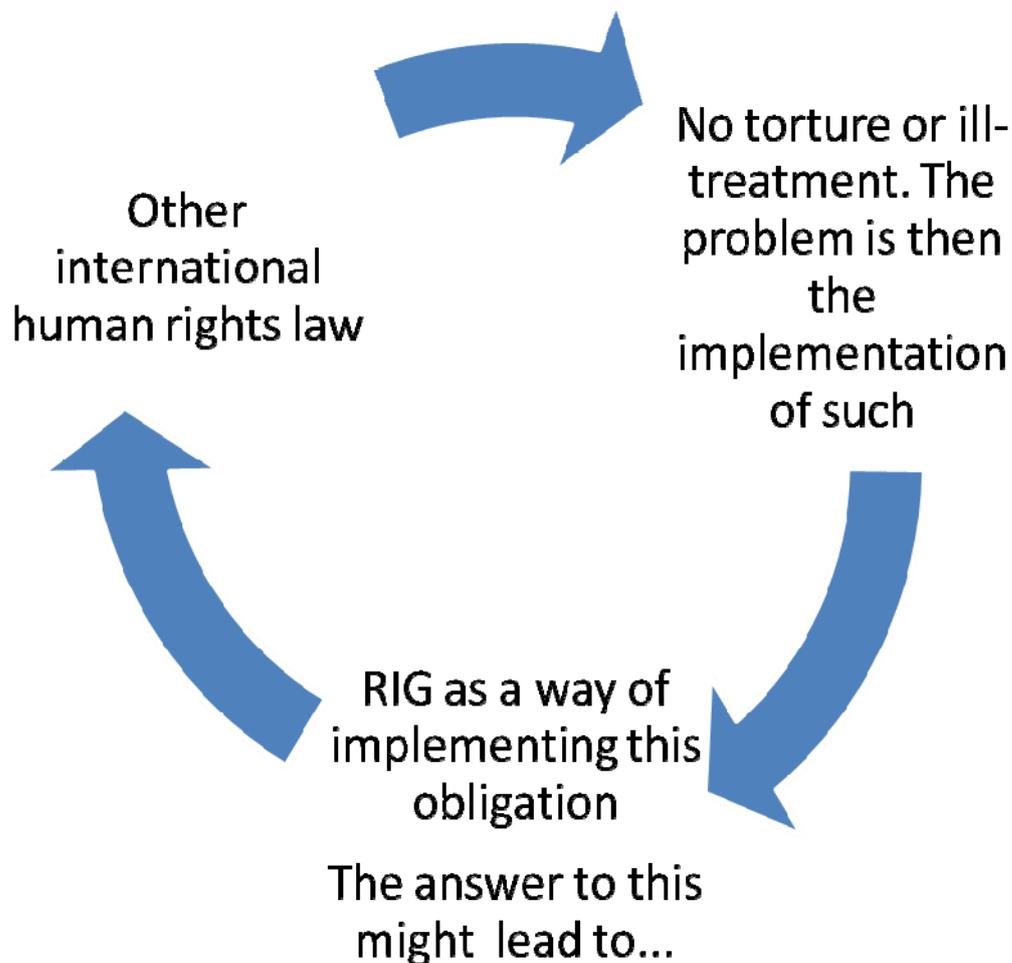
- Does the state know what the standards are?
- Does the state accept those standards?
- Does the state apply those standards?

The last question was elaborated further so that the following questions were also seen to be important:

- Have international standards have been translated into national law?
- How are they respected in practice: are the public aware of their existence?

In addition to these aspects, monitoring, follow-up and political will were also considered to be central to the issue of implementation. In particular, it was noted there was a need to see how the system reacted, how to get the government to agree that it was within its interests to implement, and to consider public condemnation and condemnation in general. Furthermore, it was noted that monitoring implementation had to be sustained and prolonged because standards that are implemented at one point in time may not be at another.

In relation to the prevention and prohibition of torture and other ill-treatment, a useful illustration was presented as an aid to understanding the notion of implementation and how it relates to the project and in turn how this could contribute to a better understanding of implementation of human rights standards generally:



It was noted that the unanswered question is: 'why is torture and ill treatment outlawed yet still persists? How can it be stopped?' It was felt that if this research project can find an answer to this, then it will make a significant contribution to the field.

2. Purpose and nature of the RIG

Discussions then turned to the RIG themselves. It was pointed out that the terms 'principles' and 'standards' can be used in different ways and there is a need to examine what a 'principle' or 'standard' means in a very practical sense.

The practice of the European Committee on Prevention of Torture (CPT) was noted as an example of the different ways in which the terms 'standards' and 'guidelines' can be used. More precisely, the CPT has developed very specific "standards" over the years, which some do not consider to be "soft law".

Looking at the RIG, these include provisions that can be found in various other instruments, including treaties, and therefore the question remains what is the status of the RIG and how are they viewed by various actors who should be implementing them? The research project is going to explore these aspects in further detail.

An additional problem for the implementation of the RIG was identified as being the large range of activities that fell within the definition of 'torture and ill treatment', i.e. torture inflicted by a public official; conditions of detention; judicial corporal punishment; torture committed by armed political groups; and acts that take place in the private sphere. Whilst, the RIG do not cover the latter two groups they are still very broad in scope, therefore there is a practical problem on the ground as to what are the police, and other authorities, supposed to do to implement the RIG?

In order to address the issue of the status of the RIG, i.e. whether they can be considered as a set of standards or recommendations, attention turned to the motivation behind the development of the RIG. It was noted that the idea of developing African specific standards relating to the prevention of torture was seen as part of a global strategy to build support in the region for implementing preventive measures through visits to places of detention and was closely linked to negotiations for the Optional Protocol to the Convention against Torture (OPCAT) taking place within the UN.

The RIG were drafted during an expert meeting, which was co-chaired by the African Commission on Human and Peoples Rights (ACHPR) and the Association for the Prevention of Torture (APT). The expert meeting had been convened in such a way so that the RIG could be taken forward for adoption by the ACHPR if it agreed to do so.

A question was posed as to whether, when drafting instruments such as the RIG, there was a need to consider how they would be monitored? Does this make a difference to whether or not they are implemented? It was further stated that there is a need to see monitoring not just within the context of the instrument itself but also in the context of the organisation within which it operates. All of these issues will be considered by the research project.