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ENHANCING IMPACT OF NATIONAL PREVENTIVE MECHANISMS

STRENGTHENING THE FOLLOW-UP ON NPM RECOMMENDATIONS IN THE EU: STRATEGIC DEVELOPMENT, CURRENT PRACTICES AND THE WAY FORWARD

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The **Ludwig Boltzmann Institute of Human Rights** was established in Vienna, Austria, in 1992 as an independent research centre with the aim of contributing to the scientific discourse of human rights at the national, European and global level. The team Human Dignity and Public Security at the BIM is composed of experts on the prohibition and prevention of torture and other forms of ill-treatment and has supported the mandate of the UN Special Rapporteur on Torture, Manfred Nowak, from 2004 to 2010. The team has conducted extensive research on the phenomenon of torture and ill-treatment, inter alia by the publication of a comprehensive commentary on the UN Convention against Torture and implemented numerous projects dealing inter alia with fighting impunity, strengthening of safeguards and the establishment and development of capacities of NPMs in different countries across the globe, e.g. in Azerbaijan, Kyrgyzstan, Paraguay, Romania, Uruguay, Togo, etc. Furthermore, two of the visiting commissions of the Austrian NPM are coordinated at the team.

The **Human Rights Implementation Centre** is based in the University of Bristol Law School in the UK. It was established in June 2009 in order to provide an international focus for developing expertise, advice and scholarship on the role of institutions in the implementation of human rights. The objective of the HRIC is to work with a range of institutions and organisations at the international, regional and national levels to create a better understanding of how the implementation of human rights can be strengthened globally. Among its thematic areas are OPCAT and torture prevention and human rights implementation. Within the context of these themes the HRIC conducts major pieces of research and provides advice to institutions and organisations at all levels aimed at strengthening efforts to improve implementation of human rights around the world. The HRIC has worked closely with the Subcommittee on Prevention of Torture (SPT) since its inception. The current Chair of the SPT, Professor Malcolm Evans, is Deputy Director of the HRIC.

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ABBREVIATIONS

APF	Asia Pacific Forum
APT	Association for the Prevention of Torture
BIM	Ludwig Boltzmann Institute of Human Rights in Vienna
CAT	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CJINI	UK Criminal Justice Inspection Northern Ireland (UK NPM)
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CQC	UK Care Quality Commission (UK NPM)
CSO	Civil Society Organisation
EAW	European Arrest Warrant
EP	European Parliament
EU	European Union
FD	Framework Directive
FRA	EU Agency for Fundamental Rights
HMIP	UK Her Majesty's Inspectorate for Prisons (UK NPM)
HMIPS	UK Her Majesty's Inspectorate of Prisons for Scotland (UK NPM)
HRAC	Austrian Human Rights Advisory Council
HRIC	Human Rights Implementation Centre of the University of Bristol
IACHR	Inter-American Commission on Human Rights
ICHRP	International Council on Human Rights Policy
IIHR	Inter-American Institute for Human Rights
IVENJ	Dutch Inspectorate of Security and Justice (Dutch NPM)
MWCS	UK Mental Welfare Commission for Scotland (UK NPM)
NAO	UK National Audit Office
NAP	National Action Plan
NPM	National Preventive Mechanism
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	UN Office of the High Commissioner for Human Rights
OP	Optional Protocol
RQIA	UK Regulation and Quality Improvement Authority – Northern Ireland (UK NPM)
SPT	UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UK	United Kingdom
UN	United Nations
UNGA	UN General Assembly
UPR	UN Universal Periodic Review

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The basis for effective follow-up

The purpose of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is the prevention of torture, more precisely 'improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment'. In order to effectively prevent torture and other ill-treatment the OPCAT establishes a triangular relationship between the state party, its National Preventive Mechanism (NPM) and the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) through a series of obligations and corresponding duties. The OPCAT envisages a role for NPMs in monitoring, and facilitating implementation and compliance by states parties.

States bear the responsibility for implementing recommendations of NPMs, and other monitoring bodies. However, it is commonly accepted that NPMs have a role, and a responsibility, to follow-up on their recommendations. Follow-up is understood to be the process by which a monitoring body seeks information on measures taken by states, and other stakeholders, in relation to their recommendations and observations, as well as actively encourages and fosters the implementation of its recommendations in a number of different ways.

The mandate of NPMs as set out under the OPCAT is guided by a number of fundamental principles to ensure their effectiveness such as: a preventive approach, independence, transparency, cooperation and constructive dialogue. These principles must guide all aspects of the mandate of NPMs including any follow-up.

Quality reporting and effective recommendations are an essential component of each NPM's monitoring function. Moreover, the way reports and recommendations are written will be instrumental for the success of the follow-up process as they are the basis for constructive dialogue with the relevant authorities. In light of the broad range of places of detention that NPMs are mandated to visit, multidisciplinary input is required in order to develop recommendations that address the specificities of the different types of place of detention and deprivation of liberty. Furthermore, in order to assist follow-up and effectively track progress made to implement recommendations, NPMs should establish effective data management systems.

Tools for an effective follow-up and implementation

A review of the practices of NPMs operating in the European Union (EU) reveals that NPMs use a number of different tools in order to follow-up and promote implementation of their recommendations. However, beyond visits and written dialogue, the dialogue with the competent authorities and other actors is yet rarely institutionalised. Overall NPMs in the EU spend relatively little resources on follow-up and the tools used are not part of a comprehensive follow-up strategy. Nevertheless, from these experiences and approaches a number of good practices can be identified.

Some NPMs use specific follow-up visits — focusing on specific issues and concerns — while others are reflecting on how to better use visits to follow-up recommendations and strengthen the dialogue with the visited institutions in general. Surveys before or following a visit have helped NPMs to assess the scope of a problem and the development of a follow-up plan. By issuing thematic reports, circulars and newsletters some NPMs inform the authorities of specific problems and strengthen transparency and communication. Demanding the authorities to develop action plans has shown to be a particularly useful means to set a clear framework for implementation, and facilitate the monitoring and evaluation.

NPMs ensure the crucial personal and oral exchange with the authorities through meetings, ad hoc or institutionalised. In this regard working groups, either general or with a specific thematic focus, have been very useful to enhance the dialogue and develop steps forward for the implementation of NPM recommendations. These should ideally take place on a regular level while at the same time ensuring effectiveness and impact-orientation. Some NPMs have also made effective use of special or general

NPM working groups that can help to bring different state and/or non-state actors together to find a coordinated approach for implementation.

In the dialogue with the authorities, some NPMs have had positive experiences with providing trainings to enhance the understanding of their work and the willingness to implement their recommendations. Individual complaints have been used by NPMs to identify systemic issues and promote implementation. While it is not the NPMs function to investigate complaints, they should nevertheless establish a clear policy and procedure to deal with them and cooperate with complaints mechanisms to best ensure the protection of victims, respecting their right to privacy.

The mandate to comment on existing and draft legislation, fulfilled by most NPMs, can be very useful in the follow-up process and some NPMs go further by proposing concrete legal and policy changes. While national action plans on human rights and state reporting to international bodies could present useful opportunities for NPMs to promote and monitor the implementation of their recommendations, it appeared from the research that they have so far not been used as such.

Communication and cooperation with other actors

In the cooperation with other torture prevention actors, many NPMs cooperate with the Parliament, often and most successfully through special committees, parliamentary groups and individual parliamentarians. This may require a thorough identification of relevant stakeholders and caution should be exercised about political influences on the NPMs' work. While the importance of the judiciary for the prevention of torture is commonly acknowledged, there is reluctance from both sides to cooperate, with the exception of only a few but noteworthy examples. Civil society is conceded a key role in the prevention of torture. However, a regular and institutionalised cooperation is the exception and rarely goes beyond the exchange of information for the preparation of visits into questions how civil society could strengthen the NPM's follow-up process. Inter-institutional advisory bodies present very interesting examples for a structured exchange between state and civil society actors with the NPM. Regrettably, though, these have so far not been used to discuss the follow-up to recommendations and develop concrete steps for their implementation. International cooperation both with the SPT and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as other NPMs has increased over the last years but its full potential for the NPMs' follow-up remains unexploited. Networks for NPMs created at the regional level have provided a useful platform to exchange information and ideas between NPMs and have the potential to be a useful devise for exchanging information in relation to follow-up strategies and practice.

Publicity

While public relations are seen as a crucial element in their work, the majority of the consulted NPMs do not have a communication plan or media strategy specifically related to their work as NPMs. Most publicity action surrounds the publication of annual and visit reports and the management of responses to media. Few NPMs have published urgent recommendations or press releases or appealed to the public in case of non-implementation of recommendations. Some have carried their reflections on using publicity and the media further but proactive and strategic interactions with the media are exceptions.

Conceptual framework for effective follow-up strategies: 10 building blocks

The ability of NPMs to secure the implementation of their recommendations is key to their success and impact. Ultimately the recommendations are aimed at changing policies, practices and behaviour in order to prevent torture and other ill-treatment. Thus NPMs are agents of change, contributing to improving the treatment of detainees and the conditions of detention. While the Study shows that NPMs increasingly look at strengthening their impact, there is certainly room for improving the quality of strategic approaches of NPMs.

The present Study therefore proposes a conceptual framework for systematically thinking about strategies to enhance the impact and effectiveness of NPMs, by looking at other areas of social practice, in particular the fields of international development and human rights, for understanding how change can be effectively brought about. These insights have been adapted here to the field of preventive human rights monitoring by NPMs in closed institutions.

There are numerous reasons why NPMs might want to adopt a systematic change perspective to their work: It contributes to enhancing accountability, it leads to better performance, it contributes to make their work transparent, and it strengthens strategic, conscientious and thoughtful use of resources. Concretely, ten building blocks are proposed for developing an effective follow-up strategy for NPMs. They are meant to constitute a first orientation for NPMs developing a sound strategy of follow-up. The ten building blocks are:

1. **Situation analysis:** An appropriate understanding of the factual situation in places of detention, its assessment in the light of human rights standards as well as analysis of the root causes constitute preconditions of any effective change strategy.
2. **Visualising desired change:** Concrete changes to be achieved at different levels can be depicted and then systematically used as orientation for the NPM's work.
3. **Clarification of assumptions:** In a process of (self-)reflection, members of NPMs need to make explicit and discuss their assumptions about how change within the OPCAT mandate can actually be effected. Such a reflection process would benefit from inputs from different academic disciplines.
4. **Stakeholder mapping:** An effective strategy needs to be built on a sound understanding of relevant national and international actors as stakeholders, i.e. those who might have a (negative or positive) interest, resources, knowledge and relevant power to influence implementation of recommendations of NPMs.
5. **Reflection on tools for action:** Any strategically oriented approach to follow-up needs to thoroughly address the choice of tools and their suitability for achieving the desired change.
6. **Strategic networking and communication:** Planning of concrete actions to achieve desired change needs to be built on cooperation with other relevant actors who share some core beliefs. A strategic communications plan needs to address media relations.
7. **Developing pathways of change:** A practical change approach benefits from depicting the concrete change process in a visually simple form, e.g. in flowchart. Such a pathway of change can show the links between goals, strategies and concrete action.
8. **Monitoring of implementation:** There is a need for an on-going process of gathering relevant information in order to see whether there is progress towards achieving results and, if not, to adjust the strategy.
9. **Evaluation:** At specific intervals there needs to be a more rigorous and comprehensive approach to understanding the impact of one's work and possible adjustment measures and learnings.
10. **Learning:** Learning is an essential element of any systematic change perspective. It should take place constantly, both at the organisational and the individual level.

INTRODUCTION

> ‘If we do not achieve that our recommendations improve the situation of the persons deprived of their liberty, we fail’.[1]

Background of the Project

Nearly a decade has passed since the entry into force of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which — through its two level system of preventive monitoring of places of detention[2] — provides state parties with systematic observations and recommendations by the international UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and National Preventive Mechanisms (NPMs) on how to improve conditions of detention and the treatment of persons deprived of their liberty. Of all the regions worldwide, Europe has the highest density of state parties that have established NPMs, with 24 NPMs currently designated to carry out preventive visits to places of detention in the European Union (EU). In addition, the SPT visits state parties and provides guidance on the development of NPMs, whilst the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducts visits to detention facilities in Council of Europe (CoE) member states providing detailed reports and recommendations, as well as a comprehensive body of standards on the treatment in detention.

NPMs are given a broad preventive mandate and corresponding powers under the OPCAT.[3] In accordance with the OPCAT, NPMs are to conduct visits to all places of detention;[4] to regularly examine the treatment of persons deprived of their liberty;[5] to make recommendations;[6] and to submit proposals and observations on existing or draft legislation,[7] all with the aim of improving, where necessary, the treatment and conditions of persons deprived of the liberty and strengthening protection against torture and other ill-treatment. Thus the overall purpose of NPMs can be summarised in the following way: NPMs are to identify factors existing within a state that may increase the risk of torture and other ill-treatment and contribute to systemic/structural and sustainable change in societies towards improving the treatment and the conditions of persons deprived of the liberty (detainees)[8] and preventing torture and other ill-treatment.[9]

As more NPMs begin to operate and generate recommendations, their work is coming under greater scrutiny and one of the main challenges faced ‘is ensuring that their recommendations are implemented and lead to real changes in the practice of deprivation of liberty. Impact obviously constitutes the litmus test of the work of monitoring bodies.’[10] If the visits do not lead to change, there is the risk that this will lead to a ‘monitoring fatigue’, both among the institutions visited and the monitoring mechanism itself.

At the domestic level, the OPCAT foresees a systematic and regular dialogue between NPMs and national authorities on the status of implementation of recommendations. The practice of the CPT and SPT also illustrates the importance of structured dialogue and follow-up to country specific recommendations to promote and support their implementation. The question therefore arises how the follow-up procedures

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[1] Alberto Volpi, Argentinian NPM in Association for the Prevention of Torture (APT), *Preventing torture – A shared responsibility, Regional Forum on the OPCAT in Latin America* (2014) 72 [hereinafter: APT, *Regional Forum in Latin America* (2014)].

[2] For the purpose of this Study, ‘places of detention’ are understood as defined by art 4 OPCAT. While there might be particular challenges regarding places of detention run by private entities, the limited scope of this Study prevents elaborating on these special cases and will focus on the follow-up of recommendations to state authorities.

[3] See arts 1, 3, 4, 17-23 OPCAT.

[4] See arts 1, 4 and 20 OPCAT.

[5] Art 19(a) OPCAT.

[6] Art 19(b) OPCAT.

[7] Art 19(c) OPCAT.

[8] For the purposes of this Study, the term ‘detainees’ will be used for ‘persons deprived of their liberty’ as defined by art 4(1) OPCAT.

[9] This is implied by arts 1 and 19 OPCAT.

[10] APT, *Regional Forum in Latin America* (2014) 72.

of different monitoring mechanisms at the national, regional and international levels can be mutually supportive, substantively cross-fertilising and strategically consistent. In addition, EU institutions can potentially play an important role in following-up and integrating these recommendations into EU level policies and decision-making to promote effective implementation of standards to prevent torture and other ill-treatment across the EU.

The Project 'Strengthening the effective implementation and follow-up of torture monitoring bodies in the European Union'

Against this background, the Ludwig Boltzmann Institute of Human Rights in Vienna (BIM) and the Human Rights Implementation Centre of the University of Bristol (HRIC) were awarded funding by the DG Justice of the European Commission and co-funding by the CoE and Ministry of Foreign Affairs of Norway – to address the following questions:

- Which methods, procedures or institutional frameworks for follow-up on the recommendations of NPMs exist in EU member states, as well as in the practice of the CPT and the SPT?
- Which lessons can be drawn from these examples and how can they be translated into good practice models?
- What are the needs of NPMs in order to effectively follow-up their recommendations and systematically integrate recommendations originating from the regional and international levels into their regular work?
- What lessons can the regional and international monitoring bodies learn from the national practices?
- How can EU institutions be more effectively included in follow-up processes and what should be the role of the EU in the harmonisation and policy implementation of recommendations in the field of torture prevention?

By bringing together different actors in the field of torture prevention in two workshops and a conference, the Project aimed to contribute to the overall objective of fostering communication and coordination between EU NPMs, CPT, SPT, states, relevant civil society experts and EU institutions. This was done with a view to developing and strengthening structured and systematic follow-up of recommendations of preventive monitoring bodies and thereby promoting more systematic implementation at the national level. The final output of the Project was to elaborate the present Study collecting and analysing good practices of follow-up and supporting NPMs in the development of their follow-up procedures and strategies.

Methodology

The Project chose a multi-level approach, including the three levels of preventive monitoring mechanisms (international, regional, and national) in all participatory activities. This approach facilitated mutual, meaningful interaction and exchange of practices and lessons learned on effective follow-up methodologies and procedures between EU NPMs, CPT and SPT, while at the same time providing opportunities for strategic cooperation and cross-fertilisation between the different bodies. The research approach was practice-oriented and aimed at producing outputs that were directly relevant to the target group.

We combined desk-based research and analysis with participatory activities, consulting the target groups in writing, over the phone and in joint activities to ensure that the research outputs are of practical relevance. Firstly, comprehensive desk research was carried out on the standards, principles, procedures and mechanisms concerning follow-up to the recommendations of the NPMs and various torture monitoring bodies in the EU. From this initial research a common survey questionnaire was developed and completed in consultation with NPMs to gather fundamental data on the legal framework and practices of all functional NPMs in the EU. On the basis of the desk research, questionnaires and interviews, country chapters on all consulted NPMs were produced in a baseline study and shared with the NPMs, providing background information on the set-up as well as existing follow-up practices for the subsequent discussions. Secondly, two workshops were held in Vienna on 6-7 October 2014 and Bristol on 10-11 November 2014 creating a platform for mutual exchange of experiences and lessons learnt on follow-up of recommendations and joint identification of further needs and gaps in strategic coordination.[11] The workshops, where EU NPMs, CPT, SPT, as well as selected representatives of state authorities and civil society were invited, also served to build a constructive relationship between the NPMs and the other actors and an informal network for the sharing of information. The workshops were followed-up by further research, in particular on how impact and change can be understood (e.g. 'theory of change'- approaches) and in-depth bilateral phone consultations with NPM representatives.[12]

On the basis of the information collected throughout the Project, the present Study was drafted by BIM and HRIC and reviewed by an external review board composed of distinguished experts in the field of torture prevention and the work of monitoring bodies.[13] The revised Study was disseminated and subsequently presented to all NPMs, CPT, SPT, civil society and independent experts involved in the Project on 29 April 2015 at the final Project conference in Vienna. Subsequently, final revisions were made on the basis of the discussions at the conference as well as written inputs received from a number of NPMs.

Purpose of the Study

The present Study focuses specifically on NPMs. It aims at collecting existing practices of follow-up to recommendations and identifying good practices, which might consequently be employed by other NPMs. Although NPMs have a broader preventive mandate, including the power to comment on draft legislation and promote and undertake educational work, this Project focused on the follow-up to their reports and recommendations.

Additionally, the Study proposes a conceptual framework for the development of an effective follow-up strategy with the ultimate aim of enhancing the impact of the work of NPMs. The framework is inspired by the practices in other fields, including other areas of human rights, thereby drawing on lessons learnt by other actors. The authors consider that the inclusion of such a broader perspective could enrich NPM's practice and open up new ways of thinking about follow-up tools.

Structure of the Study

The purpose mentioned above is reflected in the structure of the Study, which is separated into three main parts:

Part I: Basis for an effective follow-up

Part I deals with the basis for an effective follow-up. Chapter 1 provides some background information on the different NPM models in the EU. Chapter 2 discusses the concept of follow-up and considers the respective duties and roles for the range of actors that have the potential to influence follow-up and implementation. It also reflects on how to measure implementation and the difficulties and variables involved. Chapter 3 subsequently analyses principles underpinning follow-up, such as the preventive approach of NPMs, as set out under the OPCAT. It also explores the importance of the principles of independence, transparency, cooperation and dialogue and effectiveness for the follow-up by NPMs. Chapter 4 examines the drafting of quality reports, the formulation of effective recommendations, including the 'double-SMART' criteria

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[11] Representatives from NPMs in the European Union from Austria, Bulgaria, Croatia, Estonia, France, Germany, Lithuania, Malta, the Netherlands, Poland, Portugal Slovenia, the UK, the SPT, the CPT and other relevant stakeholders from the state, civil society and the European Union were present. Representatives from the Czech Republic, Denmark, Luxembourg, Spain and Sweden were invited but unable to attend.

[12] See the Annex for the questions discussed during the consultations.

[13] Consisting of Silvia Casale, former President of the SPT and the CPT, Richard Carver, Senior Lecturer in Human Rights and Governance from Oxford Brookes University and renowned expert on the effectiveness of National Human Rights Institutions and torture prevention measures and Francesca Gordon, staff member of the CPT Secretariat and previously European NPM Project Manager at the CoE and Associate Inspector at Her Majesty's Inspector of Prisons (HMIP/UK NPM), who provided comments in her capacity as peer-reviewer and not on behalf of the CPT.

developed by the APT, and the establishment of databases in order to assist follow-up.

Part II: Tools for an effective follow-up

Part II constitutes the core part of the Study. It explores the range of tools currently applied by NPMs to follow-up on recommendations. Chapter 1 considers different forms of cooperation and dialogue with the authorities directly responsible for the visited institutions written, orally, formal and informal. Chapter 2 explores the range of other possible stakeholders and actors that might play a relevant role in the follow-up process, such as Parliament, civil society, the judiciary, and the media. It also looks at international actors and considers the potential for cooperation with other NPMs, the SPT, the CPT and the EU. Chapter 3 discusses the importance of publicity of the NPM's reports and evaluates what role publicity plays with regard to effective follow-up. Cooperation with the media, including NPMs' practical experience in this regard, is also addressed in this Chapter.

Part III: A systematic change perspective: 10 building blocks of an effective follow-up strategy

The final Part distils central elements of models for strengthening effectiveness and impact in different fields of social practice, in particular international development and human rights. Consequently, this Part attempts to adapt these models to the field of preventive monitoring by NPMs. The approach, developed by Amnesty International in its internal impact assessment toolkit,[14] has been of particular importance in this regard. Part III also contains some practices, which already exist within NPMs, identified in the course of the consultations.

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[14] Amnesty International, *Proving and Improving our Impact: An Impact Assessment Toolkit*, ACT 10/020/2011 [hereinafter: Amnesty International, *Impact Assessment Toolkit* (2011)].

PART I:

BASIS FOR AN EFFECTIVE FOLLOW-UP

1. BACKGROUND: NPM MODELS IN THE EU

The NPMs participating in the present Project represent a diverse group demonstrating the variety of approaches taken by OPCAT state parties to meet their obligation to put in place some form of NPM. Although the majority are bodies that have been carrying out a visiting — and to some extent a preventive role — for a number of years before being designated to take on the NPM mandate,[15] a few are newly established bodies.[16]

In addition, NPMs also have a range of different structures and compositions, some are formed of multiple bodies,[17] and some have in-built co-operation structures with civil society,[18] whereas others are located in the existing Ombuds institutions.[19] The form an NPM takes and the context within which it functions are obvious factors that influence the scope, complexity, and type of follow-up on their recommendations. For example, any strategy, tools and procedure for follow-up that an NPM may require depends in part on whether it is a stand-alone body or one that is part of an organisation, often an Ombudsman, with a broader remit. An NPM operating within a small country with only a handful of places of detention can potentially conduct more frequent follow-up visits to an establishment than an NPM operating in a large country with numerous institutions to monitor. For example, in Malta the Board of Visitors for Detained Persons conducts fortnightly visits to the two detention centres for migrants. Furthermore, the number of relevant stakeholders will be a lot smaller in such countries, leading to a different approach with regard to strategy development. The structure of an NPM and country context will also have an impact on, for example, the number of recommendations being made by particular NPMs and consequently the degree of follow-up required, as well as the manner in which recommendations need to be recorded. For example, a large or multiple body-NPM may need to have a more sophisticated system for the centralisation and dissemination of its recommendations among its staff than a smaller or single-body NPM.

Notwithstanding the diversity among the NPMs in terms of their structure, mandate and organisation, some common approaches and trends with respect to follow-up were observable, most notably that revisiting a place of detention, dialogue with state authorities and places of detention, and engagement with other actors, were the primary means of conducting follow-up on recommendations. These will be examined in more detail in Part II below.

2. PRIMARY CONSIDERATIONS REGARDING FOLLOW-UP AND IMPLEMENTATION

2.1 What do we mean by 'recommendations'?

The range and type of recommendations issued by the various NPMs vary significantly in terms of content and the time frame and resources that may be required to implement them. Some recommendations may address particular issues observed in a specific place of detention, whereas others may relate more to system-wide problems in the national framework to protect people from torture and other ill-treatment. In addition, the 'relevant authority' to whom the recommendations should be addressed will also depend on their content that is to say on whether the decision to implement the change required by the recommendations can be taken at the local or state level. It is acknowledged that there might be particular challenges in following-up and implementing recommendations in respect of places of detention run by private entities, and *de facto* places of deprivation of liberty. However, the scope of the research did not allow to specifically address these challenges.

2.2 What do we mean by follow-up and implementation?

For the purposes of this Project 'follow-up' is understood to be the process by which a monitoring body seeks information on measures taken by states and other stakeholders in relation to their recommendations

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[15] E.g. Estonia, the Netherlands, Portugal and the UK.

[16] E.g. France, Germany, Lithuania.

[17] E.g. the Netherlands, Malta, the UK and Germany.

[18] E.g. Slovenia and Demark.

[19] E.g. Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Lithuania, Poland, Slovenia.

and observations, as well as actively encourages and fosters the implementation of its recommendations in a number of different ways.

The purpose of 'follow-up' is often closely associated with the concepts of 'implementation' and 'compliance', and 'follow-up' is frequently understood to be a means not only to monitor but to secure, or at least, facilitate, 'implementation' and 'compliance'. This raises questions as to what is meant by 'implementation' and 'compliance' and whose responsibility is it to monitor them?

The terms 'implementation' and 'compliance' are often used interchangeably and/or inconsistently by various actors, including torture monitoring bodies. For example, some bodies speak of 'compliance' with their recommendations whereas others may refer to the 'implementation' of their recommendations. Although there is undoubtedly a close nexus between 'implementation' and 'compliance', they are distinct concepts. For the purposes of this research 'implementation' can be understood as the process by which states, their authorities and agencies, take steps to address recommendations of torture monitoring bodies. 'Compliance' on the other hand is arguably a broader concept, and relates to whether state practice in fact matches international norms and standards. Notwithstanding these formal, complex definitions, in practice it is noted that these terms are often used interchangeably, while the objective is commonly understood to be monitoring whether there has been any action taken on a recommendation.

2.3 Who should follow-up recommendations?

States bear the primary responsibility for implementation and compliance with international human rights standards. The OPCAT was developed specifically as a means to assist states parties to the UN Convention against Torture (CAT) to implement their obligation to prevent torture and other ill-treatment,[20] and the requirement for states parties to put in place an independent and functioning NPM is designed to be a practical step towards fulfilling this obligation. In order to effectively prevent torture and other ill-treatment the OPCAT establishes a triangular relationship between the state party, its NPM and the SPT through a series of obligations and corresponding duties.[21] Thus the OPCAT envisages a role for NPMs in monitoring and facilitating implementation and compliance by states parties with their obligation to prevent torture and other ill-treatment.

NPMs, as preventive bodies, have a broad mandate which 'includes influencing, monitoring, training, and assistance that can be part of bringing about change in the systems in which torture, ill treatment, and discrimination takes place.'[22] One can identify at least three elements 'necessary for contributing to systemic change: 1) understanding the detention system, 2) improving the detention system through assistance and support, and 3) working on the context in which the detention system exists, including legal systems, services, and behaviors'.[23]

At the workshops held in the framework of this Project, NPMs generally considered that they have a responsibility to follow-up and monitor the steps taken to implement their recommendations and observations. Indeed, article 22 OPCAT implies that the NPM will have at least some role, by requiring that 'the competent authorities of the state party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures' (emphasis added). However, the consultations held in the framework of this Project found that the exact extent of this role is very much open to debate. Many we spoke to argued that follow-up should not be

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[20] Art 2(1) CAT.

[21] See APT and Inter-American Institute for Human Rights (IIHR), *Optional Protocol to the Convention against Torture: Implementation Manual* (rev edn, APT 2010) 14 [hereinafter: APT and IIHR, *Implementation Manual* (2010)].

[22] M Werntz, 'Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention' (Enhancing Visits to Places of Detention: Promoting Collaboration. Proceedings of a Conference Presented by American University Washington College of Law and the Association for the Prevention of Torture, March 18, 2011) <http://www.apt.ch/content/files_res/vol-18-issue-4-spring-2011-special-edition.pdf>.

[23] Ibid.

the sole responsibility of the NPM, but ideally there should be a 'collaborative follow-up process', whereby the NPM works in cooperation with the state and non-state actors, and there was some consensus on the list of who these actors should be (Parliament, judiciary, civil society, media, etc.). Who should lead on this process of follow-up, however, is subject to some difference of opinion. The majority of NPMs consulted considered this should be the NPM itself, it being the one issuing the recommendations and because it enabled the NPM itself to evaluate the impact of its own work.

Our conclusions would be that an NPM must play a leading role in follow-up, but that it should not be the sole actor involved. Who else should engage with it, and whether the NPM should lead the process, is dependent on the context of the particular state. But having a clear strategy on follow-up which involves a range of actors would be important and this strategy is something that the NPM itself will have to determine in collaboration with others. Furthermore, whatever role the NPM does play in follow-up, it needs to be provided with sufficient financial and human resources to do so.[24]

At the very least the NPM needs to be able to 'enter into a dialogue' with the 'competent authorities' of the state 'on possible implementation measures'.[25] Who are the 'competent authorities' will depend on the nature of the recommendation and who is best placed to address the issue of concern effectively.

What that follow-up role should entail is also debatable. The role of the NPM with regard to follow-up to recommendations in practice goes beyond the visiting of institutions, and encompasses a number of different activities with regard to making sure its recommendations are implemented. How far this advisory or assistance role goes is subject to debate. The extent to which the NPM should provide practical advice to the authorities on how to implement the recommendations is not always clear, and NPMs vary in their approach in this regard, as it will be outlined in more detail in Part I, Chapter 4.2. In addition, several NPMs, for example, have expressed uneasiness when asked whether they do 'advocacy' in order to foster the implementation of their recommendations, probably because 'advocacy' is often rather understood as 'campaigning', something NGOs engage in. Advocacy can however be defined as 'public support for or recommendation of a particular cause or policy'[26] and might be helpful when describing the NPM's role in the follow-up process, as it delineates, albeit broadly, what activities NPMs engage in, e.g. when involving Parliament or the media.

2.4 Whose recommendations?

A further issue that has arisen is the extent to which NPMs should also follow-up on recommendations made by other bodies, such as the SPT and CPT. The SPT 'Guidelines on national preventive mechanisms' (hereinafter: Guidelines) expressly states that NPMs should '[…] actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.'[27] On the one hand, this makes sense: the OPCAT envisages NPMs acting as a bridge between the international and national levels,[28] noting that 'having an effective, fully independent and properly resourced NPM could greatly contribute to efforts' to follow-up.[29] Where the SPT has made an NPM advisory visit, and in the context of its other visits, recommendations will often be directed towards the NPM itself. On the other hand, however, the extent to which NPMs can follow-up on recommendations made by the SPT is constrained by the fact that the state determines whether it will publish the SPT report.[30] For the SPT the opportunities to obtain information against which to check

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[24] See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) 'Analytical self-assessment tool for National Preventive Mechanisms: A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM' (6 February 2012) UN Doc CAT/OP/1, para 2 [hereinafter: SPT, UN Doc CAT/OP/1].

[25] See art 22 OPCAT.

[26] See Oxford Dictionary. Available: <http://www.oxforddictionaries.com/definition/english/advocacy>.

[27] SPT 'Guidelines on national preventive mechanisms' (9 December 2010) UN Doc CAT/OP/12/5, para 38 [hereinafter: SPT, UN Doc CAT/OP/12/5].

[28] See e.g. art 20(f) OPCAT.

[29] SPT 'Replies by Brazil to the first response of the Subcommittee' (31 March 2014) UN Doc CAT/OP/BRA/2/Add.1, para 21.

[30] See art 16 OPCAT.

the responses of the state, if any are in fact received, are limited and the SPT is principally reliant on other actors, including the NPM, to provide it with such evidence. An independent and credible NPM can provide a reliable source of information.[31] Many NPMs also include in their own recommendations reference to international standards and documents as well as to related recommendations from these and other international bodies, such as the CPT.

2.5 How to measure implementation and compliance

In recent years there has been considerable attention paid to how to measure implementation and compliance with human rights norms and standards. Within this there is extensive literature and documents on human rights indicators, which have been used to measure compliance of human rights norms and standards,[32] but it is unfortunate that it is seen as complex and technical.[33] In addition, Richard Carver notes that 'in some instances the indicator does not have the valid, proven relationship with the right ostensibly being measured.'[34] These factors explain in part why potentially useful tools from the human rights indicators field have not generally been translated over into discussions on measuring compliance with recommendations of institutions like NPMs or other bodies.

Various questions are considered by those treaty bodies or other actors who undertake follow-up and measurement of compliance and implementation. These include: what information should be collected to measure compliance and implementation (namely, not only information from the state or the actor expected to comply, but other sources such as Civil Society Organisations (CSOs), National Human Rights Institutions (NHRI), parliamentarians, among others); and what precisely is being measured (particularly when the recommendation made by the relevant body may not itself be sufficiently specific). It requires consideration of a number of variables including: the length of time taken to comply with a recommendation; how many recommendations are made at any one time and whether some need to be prioritised; the complexity of what may be required to comply and implement; and the range of actors that should be involved in doing so.

One interesting attempt by an NPM to measure implementation of recommendations can be found outside of the European context. In the Maldives the NPM has developed a 'Recommendations Monitoring Tool Kit'.[35] This comprises three core elements:

1. A recommendations implementation time-line
2. A recommendations monitoring tool;
3. A '17 Factor Model'.

Within this package of tools the recommendations implementation time-line consists of a list of recommendations in each visit report, which is shared with the relevant authority and forms part of the process of establishing constructive dialogue. The recommendations monitoring tool sets out progress with the implementation of each recommendation based on 'progress monitoring scale'.[36] Lastly, the 17 Factor Model sets out a list of factors identified by the NPM that are applied to each recommendation as an indicator of implementation.[37]

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[31] See Part II, Chapter 2.5 for more information about cooperation with international actors.

[32] See UN Office of the High Commissioner for Human Rights (OHCHR)'s webpage: <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>; and OHCHR, 'Human Rights Indicators: a Guide to Measurement and Implementation' (2012) UN Doc HR/PUB/12/5; see also RL Barsh, 'Measuring Human Rights: Problems of Methodology and Purpose' (1993) 15 (1) Human Rights Quarterly 87; M. Green, 'What we talk about when we talk about indicators: Current approaches to human rights measurement' (2001) 23 Human Rights Quarterly, 1062.

[33] G. de Beco, 'Human Rights indicators: from theoretical debate to practical application' (2013) 6 Journal of Human Rights Practice 159.

[34] Comments provided by Richard Carver during the peer review of this Study.

[35] For more information on this toolkit see J Mahmood, 'Getting Recommendations implemented' in APT Global Forum on the OPCAT February 2012 <http://www.apt.ch/content/files/opcat%20forum/Jeehan_Mahmood_Session5.pdf>.

[36] Ibid.

[37] Ibid.

The extent to which this elaborate package of tools has actually improved implementation of recommendations has not been extensively and comprehensively studied. Yet, although there is no comparable example in the EU, elements of these tools can be found in the practices of some of the NPMs in this region, such as the use of tables and/or scales to illustrate any changes in practice, agreeing or setting timelines for measures to be taken, and systematic data management and the centralisation of information on recommendations. For example, one of the bodies of the UK NPM, Her Majesty's Inspectorate for Prisons for England and Wales (HMIP), carries out inspections on the basis of published criteria known as 'expectations'. Each expectation describes the standards of treatment and conditions an establishment is expected to achieve. These are underpinned by a series of 'indicators' which describe the evidence that will normally indicate to inspectors whether the outcome is likely to have been achieved or not. However, the list of indicators is not exhaustive and does not prevent an establishment demonstrating that the expectation has been met in other ways.[38]

Yet, at the end of the day whether a monitoring body such as an NPM considers an authority to have implemented its recommendation may be just as much to do with making a judgment call, based on a multidisciplinary approach, its own experience and knowledge of the context and engaging with various experts, than any simplistic categorisation can hope to capture.

Categorising implementation

When assessing implementation of the recommendations our research found that NPMs differed in terms of the categories they used. Some examples included:

- 'implemented/implemented to a large extent/ largely not implemented to a large extent/ not implemented';[39]
- 'executed/non-executed/non-executed due to lack of funds/non-executed due to lack of buildings/lack of response (information)';[40]
- 'achieved/not achieved/partially achieved/no longer relevant/not inspected'.[41]

In the **UK** some members of the NPM use percentages in relation to the level of implementation of recommendations.[42]

Parallels can be drawn from the monitoring and follow-up process developed by some human rights treaty bodies. Where they have undertaken these tasks, they have tended to use categories such as 'full/partial/pending',[43] or 'satisfactory/partially satisfactory/not satisfactory/failure to comply'[44] in their measurements. On the one hand it is arguable that implementation and compliance cannot be measured through such crude classifications. Often the information provided by these bodies does not reveal the detail on how these treaty bodies reach these conclusions. On the other hand, such categorisations can give an easy and efficient tool to identify key areas that perhaps need to be prioritised or any underlying trends.

As a visual aid to highlight the status of issues for recipients of the report, the **Dutch** NPM uses color-codes (green, light green, orange, red) in its reports for the ten regions in the country in order to convey in a user-friendly manner whether or not there is compliance with existing standards regarding access to a

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[38] See UK, HMIP, *Inspection Framework* (2014) paras 2.21–25.

[39] Austria, Human Rights Advisory Board, *Bericht des Menschenrechtsbeirates über seine Tätigkeit im Jahr 2011* (Ministry of Interior 2012).

[40] Bulgaria, *Ombudsman of the Republic of Bulgaria, Annual Report of the ombudsman as a National Preventive Mechanism on the inspections conducted in the detention facilities in 2012.*

[41] E.g. UK, HMIP, *Inspection Manual* (2008).

[42] E.g. see UK, Mental Welfare Commission for Scotland (MWCS), *Annual Report 2012-2013* (2013) 10, where it is reported that: '93% of our recommendations have been fully implemented or resulted in significant service improvement'.

[43] See e.g. Inter-American Commission on Human Rights (IACHR), *Annual Report 2013*, section D.

[44] E.g. the UN Human Rights Committee, 'Report of the Special Rapporteur for follow-up on concluding observations of the Human Rights Committee (107th session, 11–28 March 2013)' (30 April 2013) UN Doc CCPR/C/107/2.

lawyer, medical examinations, etc. The HMIP, one of the bodies in the **UK** NPM, also uses color-coding in its reports, for example, in its tables comparing responses to its prisoner surveys, as a way of highlighting where the responses indicate that an aspect of detention being monitored is significantly better or worse or even where there has been no significant change since the last survey.[45] This helps as a starting point for HMIP inspectors to orientate and focus their research immediately pre-visit and plan certain key areas that must be covered during the visit.

Yet, as discussed above, measuring implementation can be difficult and depends on what is being measured and how. As some NPMs stated, measuring implementation is not a 'mathematical' or 'mechanical' exercise and it may not always be black and white.[46] Some NPMs do not adopt rigid criteria for assessing implementation recognising that it very much depends on the nature of the concern. As the **Slovenian** NPM (Human Rights Ombudsman) told us: 'some (e.g. broken toilet seat) are easy to define as being implemented or not, while others (e.g. programme for sexual offenders) are anything but clear-cut cases'. Similarly, it has been observed that recommendations that address systemic issues are more difficult to follow-up. For example, in the **UK** a recent comparative study of inspection bodies noted that '[i]nspectorates said that the absence of an obvious implementation route for recommendations that affect whole systems is a significant challenge for them.'[47]

Assessing the extent to which recommendations of those NPMs under our review were actually implemented was not an aim of this research Project given that the grounds on which NPMs decide implementation or failure to implement are not consistent between NPMs and any comparison between them in this respect, therefore, will not be meaningful.

Typically the NPMs we interviewed have not developed or used indicators or benchmarks as tools to assess steps taken to implement recommendations. The starting point for NPMs is, of course, the recommendation itself and revisiting the establishment to observe first-hand any changes. Follow-up visits were therefore considered to be the primary practical tool to assess implementation. In addition, as discussed in Part I, Chapter 4.2, the consultations with the NPMs underscored the importance of the recommendations being drafted in a 'SMART' way in order to aid the process of measuring implementation. A clearly written, realistic recommendation will be easier to measure than one which is vague, overly broad and complex.

However, a few examples of types of 'indicators' being used to assess levels of implementation were identified. For example, the **Estonian** NPM (Office of the Chancellor of Justice) uses individual applications to the Ombudsman as one tool to measure implementation. Thus if the NPM is part of an Ombuds institution and/or has a mandate to receive and investigate complaints, a close cooperation between the department handling complaints and the NPM may be useful as the number and content of complaints may be a useful indicator of the extent to which a given recommendation is implemented.

While we would not advocate that NPMs should necessarily adopt complex indicators to assess and categorise levels of implementation, we would recommend that NPMs consider how they will measure implementation at the time of drafting recommendations and have a strategy in place to consider how they will present their assessment of the level of implementation. This is helpful for NPMs themselves to measure their own impact, legitimise their role to the public and other stakeholders, to be able to insert persistently non-complied with recommendations into a future targeted thematic or ad hoc visit, as well as the development of key focus areas for future visits.

3. PRINCIPLES UNDERPINNING FOLLOW-UP

The mandate of NPMs as set out under the OPCAT is guided by a number of fundamental principles to ensure their effectiveness such as: a preventive approach, independence, transparency, cooperation and

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[45] UK, HMIP visit reports are available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/#.VQBgA_msWSr>.

[46] E.g. the Netherlands and France.

[47] UK, National Audit Office (NAO), Inspection: *A comparative study* (2015) para 2.7 [hereinafter: UK, NAO, *Inspection* (2015)].

constructive dialogue. These principles must guide all aspects of the mandate of NPMs including any follow-up and monitoring of the implementation of NPM recommendations.

3.1 A preventive approach

An NPM is a preventive body and this shapes its working methodology and engagement with the state and other relevant stakeholders. This preventive approach has implications not only for the way an NPM issues its recommendations, but also for their content as well as the NPM's role with respect to follow-up.

The overall purpose of an NPM is to contribute to the improved treatment of persons deprived of their liberty. A preventive approach implies:

- that action is taken before torture and ill-treatment occur, with a view to proactively creating an environment where torture is less likely to happen;
- a holistic view focusing on the root causes of torture and the complex factors allowing torture to happen rather than on the individual level of violations.

The UN Committee against Torture (CAT Committee) understands the obligation of prevention as 'wide-ranging'[48] and the 'understanding of and recommendations in respect of effective measures (…) in a process of continual evolution.'[49] Indeed, article 2(1) CAT requires that 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. Thus the SPT has maintained that the obligation to prevent torture and other ill-treatment cannot be defined *in abstracto* but rather concluded:

> [T]he prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.[50]

In this sense, the SPT has emphasised that the prevalence of torture is influenced by numerous factors such as 'the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, discrimination'[51] and highlighted that the SPT must engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them. Additionally, the SPT has stressed that the availability of procedural safeguards play a key role for effective prevention.[52] Therefore, a preventive approach requires a holistic, sensitive and deep understanding of the context in which an NPM is located. From such a perspective, NPMs have the possibility to gather the relevant data to understand the structural causes of torture and ill-treatment, going beyond the consideration of its symptoms.[53] The NPM must therefore look at all levels where the causes might be found, including the broader legal, policy and institutional frameworks. Moreover, an NPM must have a clear vision and understanding of its role and what it wants to achieve.

The adoption of a preventive approach thus requires thorough reflections on, and awareness of, the role and responsibilities on the part of the preventive body as well as the establishment of adequate processes

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[48] UN Committee Against Torture (CAT Committee) 'General Comment No. 2: implementation of article 2 by States parties' (24 January 2008) UN Doc CAT/C/GC/2, para 3 [hereinafter: CAT Committee, UN Doc CAT/C/GC/2].

[49] Ibid para 4.

[50] SPT 'The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (30 December 2010) UN Doc CAT/OP/12/6, para 3 [hereinafter: SPT, UN Doc CAT/OP/12/6].

[51] Idib para 5.

[52] Ibid para 5(c).

[53] See also APT, *Regional Forum in Latin America* (2014) 42.

and procedures. The practical implementation of the preventive approach, constituting a 'multifaceted and interdisciplinary endeavour',[54] will have to be informed by knowledge and experience from different backgrounds. A preventive approach will thus often require a change of approach especially for Ombuds institutions when designated as NPMs, which have traditionally been established to receive and react to individual complaints. The preventive approach also requires cooperation and constructive dialogue. The discussions at the workshops held in Vienna and Bristol underlined that NPMs operate under the principle of cooperation and should play the role of a 'critical friend' offering constructive advice to the authorities. This includes highlighting positive examples from state authorities as well as others, including best practices from other contexts, where appropriate. The preventive approach implies that NPMs need to seek dialogue with the authorities in a cooperative spirit rather than one of condemnation and confrontation. While violations must be clearly stated and denounced, criticism should always be constructive and accompanied with the offer of advice on how improvements could be made. Best practices potentially identified should be commended and replicated in other places of detention. The dialogue and cooperation must not only involve the competent authorities in a broad sense, including the legislative and judiciary, but there could also be a role for relevant domestic civil society actors as well as international actors, in particular the SPT, as will also be outlined in more detail below.[55]

A preventive approach is consequently complex and challenging, whether in understanding the situation and its underlying causes, in drafting reports and recommendations or in the communication and cooperation with the authorities and other relevant stakeholders. A specific aspect of this complexity is the need to find an adequate balance between a trustful and cooperative relationship with the authorities on the one hand, and being an impartial, critical observer on the other hand. This difficult task requires constant (self-)reflection in the light of the main purpose of NPMs: to best contribute to the prevention of torture.

3.2 Independence

A fundamental principle for the effective functioning of NPMs is that they must be 'functionally independent'.[56] In practice this means that NPMs must be capable of working without hindrance or interference from state authorities and other actors. The members of NPMs must be independent experts with the appropriate qualifications and expertise to carry out their mandate.[57] NPMs must have control over all aspects of their mandate and functioning such as how, where and when they conduct visits to places of detention;[58] how they spend their budget;[59] and the appointment of staff. Independence is essential to ensure the overall effectiveness and credibility of NPMs. The SPT has produced guidance for the establishment of NPMs and self-assessment tools that can be used to facilitate and assess independence.[60] When applied to the issue of follow-up on recommendations specifically, functional independence implies that the findings of the NPM are based on factual evidence and the recommendations made are justifiable, credible, reliable and legitimate. These are crucial factors that can influence the overall impact of the recommendations made by NPMs.

3.3 Transparency

There was consensus among those consulted during the workshops that transparency is one of the key principles governing the NPM's work. This was underlined in a number of ways. Firstly, the concept of preventive monitoring implies that closed institutions are 'opened up' to independent scrutiny. Secondly, it is presumed that an NPM will engage in constructive dialogue with the relevant authorities and this

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[54] SPT, UN Doc CAT/OP/12/6, para 5(i).
[55] See arts. 11, 1(b) and 20(f) OPCAT; see also Part II, Chapters 2.3 and 2.5.
[56] See arts 17, 18, 19, and 20 OPCAT.
[57] Art 18(2) OPCAT.
[58] Art 19(a) OPCAT.
[59] Art 18(3) OPCAT.
[60] See SPT, UN Doc CAT/OP/12/5; SPT, UN Doc CAT/OP/1.

dialogue need not take place in secrecy. Thirdly, unlike the SPT and CPT who are bound by the principle of confidentiality and may not generally publish reports without the express consent of the state concerned, NPMs may publish reports and findings (whether in print or on-line), along with the response of the authorities, at will. This can benefit interested stakeholders, in particular the detainees in the respective institutions as well as civil society or the media. However, it was also recognised by the NPMs we consulted that in some circumstances this transparency needs to be balanced against the importance of initiating and maintaining a constructive dialogue and engendering trust with the authorities. The extent to which confidentiality should apply in such contexts raises some tensions. NPMs informed us that, for example, before publication of reports, an exchange with the authorities and the government might take place, with their replies consequently being published together with the NPM's findings. This approach may provide the government or authorities a chance to respond, but might delay a report being placed in the public domain quickly. How NPMs deal with these challenges is outlined in more detail in Part II, Chapter 3.

In any case, the identity and information of individual detainees always has to be protected to avoid reprisals and detainees have the right to confidentiality as regards the information provided.

3.4 Effectiveness

Article 2 CAT stipulates that each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture. The CAT Committee, in its General Comment 2 on article 2 elaborates that such effective measures include 'the need to establish impartial mechanisms for inspecting and visiting places of detention'.[61] The principle of effectiveness is however also applicable to NPMs themselves, when working on their key objective to improve 'the treatment and the conditions of the persons deprived of their liberty.' The SPT states in this regard that the 'effective operation of the NPM is a continuing obligation'[62] and further clarifies that the 'NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.'[63] The OPCAT moreover stipulates criteria regarding the establishment of NPMs which can be seen as minimum conditions to reach this objective, i.e. through guarantees of independence and resources, the professional expertise and multidisciplinarity of staff and the powers it is to be granted.

In applying this principle of effectiveness underlying the OPCAT, the NPM needs to employ appropriate tools to achieve tangible, concrete results in practise: Not only does the NPM's planning of visits and visiting methodology need to be conceptualised to contribute to reaching the objective stipulated in OPCAT, but the same is applicable for the follow-up process. It is should be systematically and strategically geared towards maximising impact and effecting positive change in the life of persons deprived of their liberty. How this rationale can be used in the world of NPMs will be outlined in more detail in Part III below.

4. REPORTS, RECOMMENDATIONS AND INFORMATION MANAGEMENT SYSTEMS

NPMs consulted in the framework of this Project considered that effective follow-up to recommendations will require quality reports, as defined below, SMART recommendations and often also an adequate information management system (e.g. a database) as a basis for subsequent follow-up action. The importance of consistency and comparability within the NPM and across multibody NPMs were *inter alia* mentioned as guiding principles in this regard.

While a detailed analysis of the current practices with regard to drafting reports and recommendations as well as establishing information management systems would go beyond the scope of the present Project, their importance as a basis for follow-up merits a discussion of particularly relevant aspects, including relevant practices of NPMs.

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[61] CAT Committee, UN Doc CAT/C/GC/2.
[62] SPT, UN Doc CAT/OP/12/5, para 15.
[63] Ibid para 34.

4.1 Drafting quality reports as a basis for follow-up action

Reporting is seen as an essential component of each NPM's monitoring function, the basis for constructive dialogue with the relevant authorities and a key tool for any follow-up process. The way reports and specifically recommendations are written will be instrumental for the success of the follow-up process. Thus it is helpful to reiterate some general principles that should inform any quality NPM reporting and highlight the relevance for follow-up action.[64] Chapter 4.1 will focus on the drafting of reports as a basis for effective follow-up, while the publication of reports will be discussed in Part II, Chapter 3.

Reporting in general has several functions. A report serves to inform all relevant actors about the institution's activities and provides an overview of the key challenges faced in a particular field ('public scrutiny function', 'information exchange function'). Reporting can also fulfil other additional functions, such as identifying what strategic policies should be adopted in order to address the root causes of a certain problem ('policy formulation function') and evaluating the implementation of previous recommendations ('evaluation function').[65] Furthermore, the publication of quality reports may play a key role in increasing the institution's visibility, credibility, and authority, which can again be beneficial when holding a dialogue with authorities on the implementation of recommendations.

It was considered by many NPMs we spoke to that reports should be accurate and precise. This requires that all information on which a report is based should be accurately verified and precisely described. They should also respect the principle of impartiality. Although drafting a report which is accurate and precise can be time consuming, many considered that it was important that reports should still be issued promptly. Furthermore, reports should also be action-oriented, as their very mandate is to set forth recommendations to be implemented by and to establish a dialogue with the relevant authorities. In order to maintain a fruitful dialogue with the authorities, reports should take a cooperative and constructive approach, in full respect of the role of the authorities as well as the mandate of the institution. They should also safeguard the principle of sensitivity of data. Equally important is the establishment of an information management system to organise the documents and information gathered and facilitate the drafting process.[66]

In the context of the NPMs' work, the reporting function is typically exercised through three types of reports: annual, visit, and thematic or other analytical reports.

4.1.1 Annual Reports

NPM annual reports can be considered to be an essential tool for transparency, accountability and raising awareness of the work of the NPM. They can help to publicise and disseminate information on recommendations and their implementation, as well as providing analysis on findings and specific thematic issues. Moreover they can be used as part of the tools for dialogue with the authorities and may contribute to the process of evaluating implementation and informing any policy reform.

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[64] On general principles of human rights reporting see OHCHR 'Training Manual on Human Rights Monitoring, Professional Training Series No. 7' (2001) [OHCHR 'Professional Training Series No. 7' (2001)]; OHCHR, UN Institute for Training and Research (UNITAR), UN Staff College Project 'Manual on Human Rights Reporting: Under six major international human rights instruments' (1997) [hereinafter: OHCHR, UNITAR, UN Staff College Project 'Manual on Human Rights Reporting' (1997)].

[65] See P. Alston, 'The Purposes of Reporting' in OHCHR, UNITAR, UN Staff College Project 'Manual on Human Rights Reporting' (1997) 19.

[66] Laurie S. Wiseberg, 'Human rights information and documentation', in OHCHR, UNITAR, UN Staff College Project 'Manual on Human Rights Reporting' (1997) 55.

Content

As for the content and structure of a comprehensive annual report of an NPM, both the SPT and the Association for the Prevention of Torture (APT) have provided guidance.[67] Firstly, it is recommended to include a brief introductory part dedicated to country-specific background information, covering the OPCAT and the NPM institution, with a specific focus on its functioning and operation as well as challenges encountered in the execution of its mandate. This would facilitate the dissemination of the report to those that might not yet be aware of the NPM and its role, including staff of state institutions not yet visited, the media or the general public. Secondly, the SPT and APT have recommended that annual reports should also include information on the visits carried out as well as on recommendations issued. In the case of subsequent reports, some NPMs noted that they found it useful to dedicate one part of the report to the issue of implementation as a way to raise the visibility of the status of such and as a means to encourage compliance. The **French** NPM (General Controller of Places of Deprivation of Liberty), for example, includes a chapter on follow-up and evaluation in every annual report.

The SPT in its ‘Analytical self-assessment tool’ for NPMs further specifies that NPMs’ annual reports may include:[68]

- accounts of current challenges to the protection of the rights of persons deprived of their liberty and to the effective execution of the NPM’s mandate, and strategic short and longer term plans, including setting priorities;
- analysis of the most important findings and an account of recommendations and the responses of the authorities to them;
- follow-up on issues outstanding from previously published reports;
- consideration of thematic issues;
- accounts of cooperation with other actors on the prevention of torture.

The SPT also stipulates that annual reports should ‘in addition to recommendations for change, include the outcome of the dialogue with authorities.’[69]

The amount of detail included on implementation in the annual report varies from NPM to NPM. For example, in response to requests made by civil society representatives, the **Spanish** NPM includes an Annex to its annual reports, containing all recommendations issued to authorities, including the reaction from authorities.[70] Amounting to almost 90 pages, every single recommendation by the NPM, the addressee of the recommendation, a hyperlink reference to the paragraph in earlier annual reports, if already published previously and the reaction of the authorities is included. These hyperlinks to the NPM recommendations published in previous annual reports can also be found in the text describing the general situation and findings of the NPM. In its 2013 report, the Spanish NPM also included an overview regarding the status of implementation of all recommendations. This can be very useful in providing detailed information. In cases of systematic non-implementation, there is however a balance to be struck in terms of whether NPMs also give any explanation on how to address these incidents.

The extent to which the annual report should contain this level of detail is an interesting question. For transparency and accountability and because it may often have to be laid before and on some occasions prompt debate by Parliament, the greater the detail on implementation the better. This may be particularly important if debate in the legislature is unlikely to take place on the content of each of the visit reports or other findings of the NPM, or if the annual report can attract media attention and publicity.

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[67] APT, *National Preventive Mechanisms: Drafting effective annual reports, OPCAT Briefings* (2012) 3 [hereinafter: APT, *Drafting effective annual reports* (2012)].

[68] SPT, UN Doc CAT/OP/1, para 8.

[69] Ibid 6.

[70] See Spain, Ombudsman Institution, *Annual Report 2012* 13.

Target audience and strategies for dissemination

There is also the issue of the manner in which the information is presented and who is the intended audience. Arguably, one might expect the annual report to have a broad readership and interest among not just the state authorities but also the legislature, detainees, civil society and others. In this respect, therefore, making the report, particularly if it contains a significant amount of detail, more user-friendly and accessible may increase the likelihood that its contents will be read and ultimately acted upon. The use of a number of charts, statistics, maps and of photos by the Spanish NPM in its annual report is considered good practice as it presents the information in a more user-friendly way.

The publication and dissemination of annual reports is specifically required under article 23 OPCAT, which provides that '[t]he States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms'. The aim of this obligation is to promote and support transparent working practices and act as a further safeguard for the independence of the NPM. Furthermore, it is also presumed that the dissemination of the annual reports creates an instrument for discussion on the issue of torture prevention at the national level that might also be useful for a debate on the implementation of specific recommendations. For this reason, APT defines annual reports as 'a tool for advocacy'.[71] In order to make the most in terms of visibility, therefore, one would suggest that annual reports should be published in all official language(s) of the country and translated in additional languages (e.g. English) to guarantee a broader circulation. Other options may be making the annual report available in different formats (paper and electronic version) and different platforms, such as its website and via other social media channels or libraries. The French NPM also distributes its annual reports to bookshops for sale and to prison libraries (one copy per library) for the detainees to directly have access to it. Providing executive summaries might further facilitate interest and accessibility, as might press conferences, press releases or bilateral meetings with selected journalists (see Part II, Chapter 3).

NPMs have also used other dissemination strategies to reach a wider audience. In order to facilitate a constructive dialogue and good working relationship with the SPT, NPMs will inevitably need to ensure that their annual reports are automatically shared with the SPT. In addition, NPMs could also consider sharing annual reports with other European and international bodies, such as the CPT, the CoE, the EU, the European Court of Human Rights (ECtHR), the UN Office of the High Commissioner for Human Rights (OHCHR), the CAT Committee or the UN Special Rapporteur on Torture. The extent to which these activities relate to follow-up specifically, however, varies, and depends on part on the content of these various reports and how much detail they contain on the recommendations.

4.1.2 Visit reports

Visit reports are, in practice, seen as the key means by which NPMs set out their findings on the treatment and conditions of detention observed within an establishment and the basis on which to make, where necessary, any recommendations for improvement. They are therefore the primary tool for establishing a subsequent constructive dialogue with the authorities to address any problems that have been observed. In addition, visit reports also serve to highlight and promote good practice within and among institutions.

Content

According to the SPT, visit reports should focus 'on the most important issues, i.e. reporting ill-treatment, gaps in policy, regulations, and practices, as well as the appropriateness of conditions under which inmates are living, reflecting systematic lack of protection of the rights of inmates.'[72]

In order for visit reports to have an impact and therefore increase the likelihood that the recommendations will be implemented, our research suggests that they need to set out the findings in a clear, consistent and

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[71] APT, *Drafting effective annual reports* (2012) 1.

[72] SPT, UN Doc CAT/OP/1, para 19.

accessible way. The use of standard formats for visit reports can help the process of comparing data over a period of time.[73] Problems and consequences need to be clearly stated[74] and the analysis should aim at identifying the root causes of each problem. Also good practices should be noted and filed for systematic analysis.[75]

At both workshops held in the framework of this Project, NPM representatives agreed that the length of a monitoring visit is a crucial factor to address structural concerns and retrieving the information necessary for systemic analysis and recommendations. For larger places of detention up to several days may be necessary.

We were also told that NPMs need to make strategic decisions on the extent to which systemic issues are highlighted within visit reports. One member of the **UK** NPM noted that while the NPM does comment on structural issues, such as overcrowding, within a visit report, it does so by focusing on the impact the systemic issue has at that particular institution. The UK NPM further explained that it uses consultations with the government to address the wider structural issues in regard to their consequences for a larger number of institutions.

Target audience and strategies for disseminations

It is also considered important that visit reports should be issued promptly after the visit with the main aim of producing specific recommendations for change. The primary target audience of visit reports is arguably made up of both the institution directors and governmental authorities, while in most countries the reports are shared also with the general public (see Part II, Chapter 3).

Building trust with the authorities and the credibility of the NPM are important factors that we were told have an impact on the ability of the NPM to have an effective dialogue with the authorities on implementation. In this regard, the NPMs we spoke to underscored the need for reports to be accurate and precise in the wording used, differentiating, for example, between what ‘is’ and what is only ‘alleged’ and ‘reported’.

The **Dutch** NPM is also currently looking at different options to make its visit reports more user-friendly, thus increasing awareness of the content of the report especially among staff of the visited institutions expected to implement its recommendations. For example, the NPM has recently decided no longer to print its reports, but is contemplating the use of interactive ‘mind maps’ in order to structure the report in different sections and in an inter-active manner to allow each reader to click on only those parts he/she is interested in.

4.1.3 Thematic or other analytic reports

In addition to visit reports some NPMs prepare thematic reports focusing on one or more specific issues. The aim of this type of report is to highlight particular issues and provide a more analytical insight into a problem, identifying root causes as well as systemic changes to be implemented.[76] Although the OPCAT does not expressly mention thematic reports, the SPT has acknowledged this possibility in its 2012 Guidelines.[77] Obviously, the same considerations discussed above for drafting a good quality visit report should be applied to thematic reports.

Those NPMs having published thematic reports and consulted in the framework of the Project have underlined their usefulness for targeted follow-up action. Some NPMs mentioned that with thematic

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[73] See example of internal visit note, in APT, *Monitoring places of detention: A practical guide* (2004) 239 [hereinafter: in APT, *Monitoring places of detention* (2004)]; see also OHCHR ‘Professional Training Series No. 7’ (2001) 155.

[74] APT, *Monitoring places of detention* (2004) 70.

[75] SPT, UN Doc CAT/OP/1, para 19.

[76] APT, Asia Pacific Forum APF, OHCHR, *Preventing Torture: An Operational Guide for National Human Rights Institutions* (2010) 91.

[77] SPT, UN Doc CAT/OP/1, para 22.

reports it was easier to capture public attention on a topic, which in turn proved beneficial with regard to the implementation of recommendations. For example, the **Bulgarian** NPM (Ombudsman of the Republic of Bulgaria) has issued two thematic reports, one on the situation of Syrian refugees and one on special institutions for children. The preparation of these reports was decided due to the concerning information gathered by the NPM and increased public attention on these issues. According to the Bulgarian NPM, issuing a thematic report in these situations had greater impact, as it was easier to reach the media, civil society and the general public. The **French** NPM publishes 'opinions' on specific issues in the Official Gazette.[78] For example, in 2011 an opinion on the use of phones or on the exercise of religion in places of deprivation of liberty was issued. The French NPM confirmed that the opinion gives them the opportunity to address general problems and have a wider look at a situation. Since such reports are not published every day, they receive considerable media attention. Furthermore, it is argued that publishing opinions in the Official Gazette bolsters awareness of the NPM's findings and thus potentially opens up a concrete possibility for the NPM to introduce policy proposals or put topics of concern on the political agenda. On the other hand the publication in the Official Gazette, being the traditional mechanism for communications by state authorities, could be seen as undermining the independence of the NPM. The French NPM also published a collection of its opinions and recommendations in cooperation with APT.[79] The **Croatian** NPM (Ombudsperson's Office) underlined that special thematic reports can serve to identify structural causes that go beyond what is possible in individual visit reports. The **Czech** NPM, after a series of visits to similar facilities, drafts a report that contains the most frequent misconducts, highlights general findings, structural causes and includes recommendations to the responsible authorities.

4.2 Drafting of effective recommendations as a basis for follow-up action

The OPCAT stipulates that NPMs have the power: 'to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations' and 'to submit proposals and observations concerning existing or draft legislation'[80]

The recommendations of monitoring bodies have been said to 'lie at the heart of the preventive approach'.[81] According to the SPT, they 'play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services.[82] The SPT clarified that their purpose 'is not only to bring about compliance with international obligations and standards but to offer practical advice and suggestions as to how to reduce the likelihood or risk of torture or ill-treatment occurring and will be firmly based on, and informed by, the facts found and circumstances encountered during the visits undertaken.' While they need to be tailored to the given circumstances and focused, the SPT stated that 'there is no logical limit to the range of issues that, if explored, might have a preventive impact.'[83]

The formulation in the OPCAT is clear in the sense that recommendations issued to the authorities have a concrete goal: the effective improvement of the situation of persons in deprivation of liberty and the prevention of torture and other ill-treatment. Recommendations therefore can address specific problems identified in a particular establishment through the course of a visit, however they can also raise concerns regarding systemic issues that need to be tackled at a higher level. As mentioned above, NPMs consulted in the framework of this Project have underlined the importance of effective recommendations as a basis

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[78] For the opinions, see the French NPM's website <http://www.cglpl.fr/en/presentation/>.

[79] APT and General Controller of Places of Deprivation of Liberty, *Opinions and Recommendations of the French ‚Contrôleur général des lieux de privation de liberté' 2008 – 2014* (2014).

[80] Art 19(b) and (c) OPCAT.

[81] APT and CoE, *New partnerships for torture prevention in Europe* (2010).

[82] SPT, UN Doc CAT/OP/12/6, para 5(d).

[83] Ibid para 5(f).

for follow-up action. Obviously, there are a number of factors that will have an influence on the extent to which recommendations are able to be accepted and implemented in practice e.g. the quality of a response from the state will in part be determined by the precision of the recommendation to which it relates, as well as the extent to which it may be realistic and contextual. The APT's double-SMART criteria for drafting effective recommendations are of interest in this regard.

4.2.1 APT's double-SMART criteria

Guidance on how monitoring bodies should draft their recommendations can be increasingly found both in NPM practice as well as practical orientation papers that organisations specialised in this area have produced.

The 'double-SMART' model developed by the APT has been of particular relevance in this field.[84] The criteria stipulated in this model call for a broad and holistic perspective, that takes into account a range of dimensions including the actual root causes, whether social, psychological, political, institutional or historical.

There is a balance to be made, however, in the drafting of recommendations between, on the one hand, understanding the bigger picture and identifying the systemic flaws that need to be addressed from a longer time perspective, and, on the other hand, being pragmatic and realistic.

The double-SMART criteria proposed by the APT encompasses important elements that should be considered at the time of drafting, even though it may not be possible to include all ten of them in each recommendation. During the consultations with NPMs, it was observed that, while most were aware of the existence of these criteria and some may keep these criteria in mind, NPMs do not systematically apply them in the drafting process.

The different SMART elements as set out by APT are the following:

- **S**pecific
- **M**easurable
- **A**chievable
- **R**esults-oriented
- **T**ime-bound

- **S**olution-suggestive
- **M**indful of prioritisation, sequencing & risks
- **A**rgued
- **R**oot-cause responsive
- **T**argeted

4.2.2 Practical reflections of NPMs regarding drafting of recommendations

In the consultations held in the framework of the Project, NPMs in the EU have highlighted a number of relevant practices with regard to drafting recommendations that they consider relevant in order to provide an effective basis for follow-up. Some of them should be highlighted as follows.

General considerations

The **UK** NPM's own survey on its members 'recommendations noted that effective recommendations needed to be 'clear, unambiguous, achievable and realistic.'[85] The **Dutch** NPM confirmed, that it always

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[84] APT, *Making effective recommendations, Detention Monitoring Briefings, Briefing N° 1* (2008) [hereinafter: APT, *Making effective recommendations* (2008)].

[85] UK, NPM, *Making Recommendations: A core NPM function. What makes for a good recommendation and how can the NPM follow-up on them most effectively?* (2014) para 5 [hereinafter: UK, NPM, *Making Recommendations* (2014)].

tries to be short, clear and specific in its recommendations. The NPMs from the **Netherlands** and **Estonia** both emphasised the need for factual and precise recommendations, as a basis for being perceived as a trustworthy actor that has relevant valuable expertise on the subject. The **Slovenian** NPM underlined that it always makes sure its recommendations are reasonable in the sense that it will be possible to check its realisation, as well as pointing out the necessity of taking structural and systemic problems into account when drafting recommendations in order to convey to the authorities an in-depth understanding of the problem.

Furthermore, the manner in which the recommendation is written has also been identified as a relevant factor when considering follow-up. The phrasing of the recommendations should be adapted to the urgency required for its implementation. It should be kept in mind that formulations and tone have an impact on the way targeted actors perceive them and are then willing to implement them. Therefore to whom the recommendation is addressed needs also to be considered: recommendations for personnel in places of detention may need to be formulated in a different way than, for example, recommendations addressed to a relevant ministry or government department. In order to be persuasive, the **Czech** NPM hired an 'argumentation and negotiation expert' to consult on its reports and recommendations. Meetings with this expert do not take place regularly but have been held a few times. One of the outcomes was the adaption of the language of reports and recommendations to the recipients, who are often not lawyers. Thus less legal language is now used by the NPM in order to enable those who shall implement recommendations to have a clear understanding of what they actually require.

There was also rather broad agreement that due consideration should also be given in the recommendations to staff conditions of work in places of detention. The **Slovenian** NPM, for example, tries, to the extent possible, to draft recommendations that can benefit the authorities as well, while at the same time keeping up the approach of a 'critical friend'.

Some NPMs recognised that they have issued contradictory recommendations over the years, which prompted a reflection over the consistency and the long-term changes and the values an NPM wants to promote. In the framework of this Project no clear-cut consensus could be found in the consultations with the NPMs on how to deal with substantive changes in recommendations, although most NPMs agreed that a sound justification for the recommendation was necessary in such cases. An up to date database can obviously assist in ensuring consistency of the recommendations issued not only in relation to specific places of detention but also across different institutions.

The idea to create templates/procedure for recommendations in order to apply the double-SMART criteria more systematically was also raised as a possibility by the NPM of **Malta**, and seen as a way to increase the quality and the coherence of recommendations.

When the report and recommendations are being drafted, it was recommended that time should be set aside for reflection on successful approaches and on how to develop/think of new strategies that could have a stronger impact on the situation. The NPM could thus periodically reflect on the impact of its recommendations, based on their being recorded in a systematic and standardised manner, to analyse the reasons for partial or non-implementation. The SPT in its Guidelines, for example, recommends that 'The NPM, its members and its staff should be required to regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol'.[86] Indeed this is also now included in the 'Analytical self-assessment tool' which some NPMs have been using.[87]

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[86] SPT, UN Doc CAT/OP/12/5, para 31.

[87] SPT, UN Doc CAT/OP/1.

Achievable recommendations

While there was general consensus among NPMs participating in the two workshops in the framework of this Project that recommendations need to be realistic, in practice this can raise a number of strategic considerations. For example, when the NPM identifies underlying factors and attempts to address them with a view to long-term change, it might be difficult to draft recommendations that are achievable and feasible in the short term. One tactic is to take a step-by-step approach which defines an end-goal but with specific tasks and goals within a set time-frame.

A more controversial area here is the extent to which the budgetary resources and constraints of the institution being inspected should be considered by the NPM when formulating its recommendations. Although the APT and many of the NPMs participating in the workshops did not believe that these should be taken into account, in practice, however, this may be problematic when trying to draft achievable recommendations, and in part depend upon to whom the recommendation is addressed. The UK NPM's own evaluation of its work revealed that only a 'minority' of the bodies in the NPM take the budget into account, although some 'were conscious of resources.'[88] Silvia Casale, former President of the SPT and the CPT, mentions regarding this discussion:

> A management consultant approach might take resources into account to the extent of compromising on the content of recommendations in line with the client's policy direction, whereas NPMs should not compromise on principle, but might refer to resources as an inhibiting factor in terms of the timing of implementation. If a place of detention is overcrowded, the NPM must say so and should recommend improvement, even though this may have huge budget implications.[89]

Offering solutions

The extent to which the NPM itself should be offering solutions or assuming an advisory role is an issue upon which there was less of an agreement among the NPMs consulted in the framework of this Project. The NPM of **Portugal** (Ombudsman) for example stated that it tries to offer a 'feasible path' to the authorities,[90] the **Cypriot** NPM (Office for the Commissioner for the Administration and Human Rights – Ombudsman) mentioned it will put forward 'what it wants to see as a change.'[91] Some NPM representatives cautioned against giving concrete solutions in the process of advising the state, thus going into the 'management of institution' and underlined the need for the authorities to have ownership over the implementation process. Others explained that sometimes it is necessary to propose detailed, but realistic solutions in order to make sure that authorities were indeed taking steps towards implementation and changing sometimes long-held practices. The **Croatian** NPM furthermore explained that, while it is usually left to the authorities how they implement, it also depends on the kind of recommendation, whether a very concrete proposal is given or whether this is left open for the authorities, e.g. the details of a suggested legal amendment. According to Silvia Casale, it is always 'possible to identify a series of elements in the system that need to be addressed without providing a step-by-step game plan.'[92]

The **Czech** NPM underlined that, while each of its recommendations is specific, argued and always contains a time limit for the facility, it does not suggest solutions every time, especially when the root of the problem lies in the lack of expertise. The Czech NPM considers it as 'too easy for the facility to simply fulfil our recommendation', while the cause of the problem remains.[93] Thus in the case of structural causes, this is analysed by the NPM in the report to the facility, with a recommendation then being made to the supervisory authority responsible.

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[88] UK, NPM, *Making Recommendations* (2014) para 7.

[89] Comments provided by Silvia Casale during the peer review of this Study.

[90] Consultations with Portuguese NPM, 27 February 2015. Bristol workshop, 10-11 November 2014.

[91] Consultations with Cypriot NPM, 24 February 2015.

[92] Comments provided by Silvia Casale during the peer review of this Study.

[93] Written consultations with Czech NPM, 5 March 2015.

The **German** NPM (National Agency for the Prevention of Torture) emphasised the necessity to highlight clearly issues and challenges in its reports, but explained that it does not always point out the path towards finding solutions because the authorities should have discretion with regard to the implementation of the recommendations. Thus the aim that should be achieved is clear but not the path to achieve it.

There are still some questions regarding the extent to which the NPM should, or is able to, be available to assist the authorities in places of detention if they have questions on implementation, any challenges they face, along the way. A close engagement with the authorities can in turn ensure that the NPM is able to identify any concerns and correct them before they progress. Conversely, however, there is a balance between ensuring that it is the authorities that take responsibility for implementation and whether the NPM itself has the resources to provide this on-going advice.[94]

Prioritisation of recommendations

There was also a great variety of practice among NPMs regarding the prioritisation of recommendations. Some NPMs do not prioritise their recommendations (e.g. in Austria, Croatia, Cyprus or France) although they categorise them in different ways. The **Croatian** NPM separates recommendations in its reports according to the receiving institution, and the **French** NPM does not prioritise its recommendations but adds a summary, including all recommendations, which it lists from general to specific as well as different thematic recommendations. The **Slovenian** NPM does also not prioritise its recommendations with the list including all recommendations at the end of its report being in no particular order. It does, however, place the recommendations in bold text in the visiting reports, including those findings for which they expect to receive a response from the authorities.

In contrast, the **German** NPM, for example, creates two categories within its reports, one consisting of ‘recommendations’, stemming from the core mandate of the NPM, the other being ‘further proposals for improvement’, going beyond this core mandate, with the NPM therefore not insisting on implementation. The **Bulgarian** NPM can issue ‘normal’ recommendations under article 28(d) of the Law on Ombudsman but also has additional powers to issue recommendations under article 46 of the Law on Implementation of Penal Sanctions on Detention. The latter enables it to make recommendations such as the closure, reconstruction or expansion of particular institutions or facilities within institutions in order to deal with threats to the physical or mental health of detainees.

In part the need for prioritisation may depend on the number of recommendations being issued, which can vary significantly from NPM to NPM. The Study has shown large variations in the number of recommendations issued by NPMs per year, from 6 in 2013 for the NPM of **Croatia** to 253 for the same year for the **Bulgarian** NPM, and can vary per report, for example in the **UK**, this was from 3 to 63.[95]

Several NPMs prioritise their recommendations according to urgency, for example, the **Bulgarian** NPM first stresses recommendations on life, health and physical integrity, with administrative issues and material conditions coming afterwards. The Bulgarian NPM recommendations regarding life and health are always time-bound and specific.

The **Czech** NPM also structures its visit reports according to the relevance of topics, with the criterion being the gravity of the violation. The structure of a visit report to a nursing home for the elderly with dementia thus was the following: 1. Human dignity, 2. Right to privacy, 3. Quality of care (malnutrition, hydration, etc.), 4. Safety, and 5. Freedom of movement. Furthermore it places the most important information at the beginning and at the end of its reports and generally endeavours to be as informative as possible.

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[94] Comments provided by Mari Amos, April 2015.

[95] UK, NPM, *Making Recommendations* (2014) para 4. See also UK, NAO, *Inspection* (2015) para 2.12, which noted in relation to inspection bodies in the UK (which included some members of the NPM) that government ‘departments could be overwhelmed with the volume of recommendations made’.

Where NPMs do prioritise recommendations this was seen as a useful tool for follow-up as it can provide the NPM with a specific focus for any subsequent follow-up visit. Prioritisation may be appropriate in certain but not all circumstances depending on the number of recommendations issued at any one stage and the ability to use different categories of recommendations. At the very least our research found that it would be appropriate for an NPM to have a policy on whether or not and in which circumstances it should prioritise some recommendations.

Standards

In formulating recommendations, a range of factors may be taken into account by the NPM. These include international and domestic law, regulations, jurisprudence, rules and codes of conduct. Article 19(b) OPCAT requires that the recommendations of the NPM 'take into consideration the relevant norms of the United Nations'. The reference to regional or international standards gives further credibility to recommendations and is used by most NPMs interviewed in the Study. The extent to which they do so, however, appears to be inconsistent and some NPMs have recognised the need for this to be taken more seriously. Nevertheless, as stated by the **UK** NPM, 'recommendations where their requirement is based in legislation or has emanated from good practice are more likely to be implemented'.[96] Furthermore, as noted earlier in relation to measuring implementation, the UK's HMIP uses published inspection criteria, 'Expectations', which are based on and referenced against international human rights standards.[97] Most NPMs regularly refer to the CPT's recommendations in their recommendations.

At the same time, the **Austrian** NPM (Austrian Ombudsman Board) mentioned that, while international standards are important, they are only useful to a certain extent because they constitute minimum standards that are often not sufficient. The NPM thus aims to develop its own standards through interdisciplinary expertise and drawing upon external experts. Silvia Casale underlined in this respect, that the development of standards should be guided by the *pro homine* principle, meaning 'the standards developed should be those most capable of benefitting individuals deprived of liberty.'[98] According to her, there will naturally be a difference in standards of between international and national bodies. The need for universal applicability 'tends to reduce the capacity for standards developed at the UN level to be precise in the sense of including operational specifics. […] As soon as operational details are included, the standards become less relevant to some settings.' International regional standards, e.g. by the CPT, tend to be more specific, 'reflecting the fundamental principles, but also elaborating to some degree on the technical operational details'. According to Casale, NPMs are in the best position to take the progression in standards further: 'Ideally the process of improving the situation of persons deprived of liberty should benefit from the development of NPM standards, consistent with global and regional standards but adding another layer of operational specificity.'

The **French** NPM furthermore explained that its recommendations can be based on good or bad practices, e.g. if a positive practice is witnessed in one institution this is then used in the recommendations in order to be picked up in other establishments.

Targeted recommendations

Many NPMs considered the ability to identify a particular institution or body to which the recommendation could be addressed was an important tool as it engendered a greater degree of responsibility. Inevitably many NPMs address a significant proportion of their recommendations to the actual institution visited.[99] Indeed, in **Portugal**, for example, article 38(1) of the Ombudsman Statute provides that 'The Ombudsman's recommendations shall be addressed to the body with the power to correct the illegal or unjust act or to

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[96] UK, NPM, *Making Recommendations* (2014) para 5.

[97] See UK, HMIP, *Inspection Framework* (2014) para 2.21.

[98] Comments provided by Silvia Casale during the peer review of this Study.

[99] E.g. the UK, NAO, *Inspection* (2015) para 2.5, where it is noted that HMIP 'directs over 80% of its recommendations at the prison's governor'.

remedy the wrongful situation caused by its services.' Thus sometimes the competent authority may be the administrator of the institution concerned; at other times it may be best to direct the recommendation to a particular ministry or individual within the executive or to the legislature. In the **UK** it has been noted that the NPM needs to be clear in setting out who its recommendations are for, and therefore who is responsible and accountable for giving a response.[100] NPMs should therefore have flexibility to decide for themselves who are the competent authorities to receive particular recommendations at any one time.

In general a close and regular channel of communication with specific authorities was seen as a way to create partnerships and engage the competent authorities.

Generally, clarity in the formulation, the objectives sought, the authorities addressed, make recommendations more likely to be achieved. The NPM, keeping in mind the long-term changes to be accomplished, should consider recommendations as tools to be handed to the relevant authorities, who are more likely to understand and implement them if they are precise, realistic and argued. Obviously, this is not always clear-cut in practice.

The way NPMs practically deal with addressing their reports and recommendations to the targeted addressees, is outlined in more detail in Part II, Chapter 1.2.

Testing the robustness of findings

There was consensus among the NPMs consulted that it is important to involve the visiting delegation in the drafting process, as those who personally visited the detention facility will have direct observations that are useful when drafting the report, including the recommendations.

Furthermore it was also considered crucial that visit reports and their recommendations need to be produced following a system that ensures the findings have been 'tested', are accurate and truly reflect the situation observed. Accordingly, some NPMs stressed the importance of rigorous discussion among the visiting delegation and other colleagues, when drafting their findings and assertions to ensure that the observations and recommendations can stand up to scrutiny and can be justified.[101] It was considered that this strengthened the legitimacy and credibility of the recommendations and helped to build confidence in the work and output of NPMs For example, HMIP of the **UK** NPM has established a 'challenge procedure' whereby the findings of each inspector are open to scrutiny and discussion by their colleagues. The procedure that has been established has a number stages within the course of an inspection when the findings are tested. Initially daily debriefs are held by each team. As noted in the Guide for Inspectors, in the daily debrief '[e]ach member of the team has an individual responsibility to feed back their findings in a confidential forum with colleagues and be open to challenge, as well as to challenge others. Testing, defending and validating evidence against others will ensure a robust validation process throughout the inspection.'[102] The information given at this point can help to direct further investigation and sometimes inspectors may go back to reassess their findings.[103] Subsequently, the initial findings, together with other information, is provided to the Chief or Deputy Inspector who completes a tour of the establishment.[104] Following this, a 'deliberation meeting' is held between the Chief or Deputy Director and the visiting team. The aim of the meeting is to agree the main findings. Each inspector is expected to explain their judgements and also comment on each other's in a process of constructive dialogue.[105] In this process it is stressed that it is 'important that these assessments are supported by evidence, as not only will they be fed back during the debrief […] and appear in the published inspection report, they will also be used to identify the 'risk' level of the establishment and consequently the timing of a subsequent inspection.'[106] The process is a non-

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[100] See UK NPM and HRIC, 'The UK NPM at Five Years' 4 <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/6-415_NPM_5_year_event_write_up_final.pdf>.

[101] The Netherlands and the UK.

[102] UK, HMIP, *A Guide for Inspectors* (2013) para 2.79.

[103] Ibid para 2.80.

[104] Ibid para 2.86.

[105] Ibid paras 2.88-90.

[106] Ibid para 2.91.

adversarial one and there is an established culture among the HMIP inspectors to be open to 'challenge' on their findings. A similar process of constructive dialogue and analysis of findings among inspectors has also been established by one of the bodies of the **Dutch** NPM, the Inspectorate of Security and Justice (IVENJ), as a tool to enable the inspectors to be able to explain and justify to the authorities, if necessary, why they have come to a particular conclusion with the authorities. Furthermore it has been suggested that a focus group approach could be used in some circumstances in order to test recommendations that NPM staff might not be sure about. In such cases the NPM could, for example, seek practical input from former prison officials, while fully observing security and confidentiality considerations.[107]

These examples suggest that if the NPM adopts a systematic process of constructive and robust 'testing' of findings, this can strengthen the actual and perceived legitimacy and credibility of the NPM recommendations and enable the NPM members to justify and explain the recommendations in discussions on implementation.

In addition, the number of recommendations made may have an impact on the extent to which they are implemented. As the **UK** NPM has noted, the number of recommendations its individual member institutions made per report varied significantly (from 3 – 63) and it has noted that 'large numbers of recommendations are unrealistic for inspected/monitored organisations to implement', with some suggestion that there should be no more than ten per report.[108]

4.3 Development and maintenance of an information management system

Monitoring bodies will gather a large amount of data during the course of their work and it is essential that this information is collected systematically and filed in such a way that it can be used effectively to inform future activities and strategies. In order to assist follow-up and effectively track progress made to implement recommendations NPMs should hold information on the recommendations they have made, information whether they have or have not been implemented and the reasons for this response.[109] To ensure consistency and a set reference point for monitoring particular aspects of detention some NPMs have developed standardised forms and questionnaires to aid the process of data collection and evaluation. For example, the **UK** HMIP has developed a range of tools to help gather and assess information such as detailed inspection criteria; prisoner surveys (see also Part II, Chapter 1.2); and a guide for inspectors containing a number of standardised forms.[110]

However, a common problem encountered by torture monitoring bodies in the collection of data is the lack of information and accurate records kept by the authorities. Therefore it is essential that officials and authorities in charge of places of detention keep an accurate and full record of information relating to a wide range of aspects of deprivation of liberty and conditions of detention, such as records of arrest, complaints, the use of disciplinary sanctions, the use of restraint, medical treatment requested and received, time spent in detention; as well as fundamental data on the number of places of detention, their location and the number of persons deprived of their liberty, including statistical information on gender, age, ethnic background etc.; as well as information on staff and personnel.

Many would consider an essential tool for following-up on the implementation of recommendations to develop and maintain a database of the recommendations made. It is acknowledged that a good record of recommendations results in a better follow-up visit and facilitates the process of follow-up. As well as being a practical record of the various recommendations that have been made, such databases can also keep track of time-limits for responses to recommendations; the prioritisation of recommendations; status of implementation; and also collate or enable searches of recommendations according to issues

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[107] Comments provided by Mari Amos, April 2015.

[108] UK, NPM, *Making Recommendations* (2014) para 4.

[109] See UK NPM and HRIC, 'The UK NPM at Five Years' 16.

[110] See UK, HMIP´s website under 'About our Inspections': <http://www.justiceinspectorates.gov.uk/hmiprisons/about-our-inspections/#.VTIzpSHBzGe > accessed 12 June 2015.

and themes. It is important that all recommendations are recorded, therefore not only should formal written recommendations be entered in databases but also any verbal recommendations. For example, the **Danish** NPM has established the procedure of registering in the Ombudsman's statistics system any verbal recommendations, suggestions, etc. made during monitoring visits, as well as subsequently on the telephone following the visit, which are not reflected in the subsequent written report.

Many NPMs do not have such a database or are only beginning to create one.[111] For some, therefore what information there is on implementation is only documented, for example, through the visit report or annual report.

In the **UK**, some bodies in the NPM have developed databases to capture recommendations as an aid to follow-up. For example, HMIP has developed a 'recommendations database', among other databases, that holds a whole range of information that feeds into all inspections. As well as supporting visits, the information contained in this database is also useful in other contexts such as when submitting information to a parliamentary inquiry. Likewise, the Regulation and Quality Improvement Authority (RQIA), holds an 'Inspection Activity Monitoring System', which captures and records recommendations. The Office of the Children's Commissioner has developed a 'recommendations log' which is a record of any written response to a recommendation and which is updated regularly, and has also developed an 'impact log' which takes this a step further to look at the impact any recommendations may have had.[112] In the UK it has been recognised that 'creating a database of recommendations that can be searched by theme could enable more sharing of good practice and strengthen consistent across the 20 NPM bodies.'[113] Similarly, in **Cyprus** the NPM follow-up visits are carried out based on the findings of the previous visit and on complaints received. An internal database system records information on the implementation of recommendations. The database system is the same as that used for handling individual complaints, namely that the recommendation is recorded and if it has been implemented a note is made, otherwise the recommendation is 'flagged up' in order to follow-up at a later stage.

In **Estonia**, the NPM has an internal digital document management system that does not include a specific list of recommendations, but recommendations and findings can be found by searching by 'key words'. Included in this document management system is information on whether the recommendation has been: implemented, not implemented, or partially implemented, including information on what action has and has not been taken in relation to a recommendation. Furthermore, the Estonian NPM has a general document register on its website, where all its documents that are not classified and thus public are listed.[114]

A database does not have to be complex. In **Bulgaria**, the NPM produces a table of recommendations and when an answer is received this is also noted. This information is then used during follow-up visits as part of the tool to check whether the recommendation has been implemented. Within this process it was noted that prioritising recommendations at the outset helps the process of follow-up by providing a focus. The table of recommendations has been developed as an internal tool but in the last annual report the table was published as an appendix. The decision to publish the table was to encourage compliance and transparency. In the **Netherlands** the Prison Service has developed its own database of recommendations of the IVENJ, to help the Prison Service itself to follow-up on the recommendations. The findings from our research suggest that, provided the appropriate attention is paid to confidentiality and protection against reprisals, other authorities or institutions also consider putting in place similar databases to systematically record recommendations from NPMs as a way to assist in follow-up.

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[111] E.g. Austria.

[112] UK, NPM, *Making Recommendations* (2014) para 11.

[113] See UK NPM and HRIC, 'The UK NPM at Five Years' 5.

[114] According to the Estonian Public Information Act, para 11, the document register is a digital database which is maintained by a state or local government agency or a legal person in public law in order to register documents received by the agency and prepared in the agency and to ensure access thereto. This general document register is available in Estonian here <http://adr.rik.ee/okk/> for the Estonian Public Information Act see <https://www.riigiteataja.ee/en/eli/522122014002/consolide>.

PART II:

TOOLS FOR AN EFFECTIVE FOLLOW-UP AND IMPLEMENTATION. GOOD PRACTICES AND CHALLENGES

PART II: TOOLS FOR AN EFFECTIVE FOLLOW-UP AND IMPLEMENTATION

Introduction

The OPCAT is clear on the aim NPMs are to achieve: 'improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment'. The NPM should not only regularly visit places of detention and make recommendations to the relevant authorities but also 'submit proposals and observations concerning existing or draft legislation'.[115] While the OPCAT, in relation to follow-up to recommendations, puts a focus on the dialogue with the state, the SPT specifies in its 'Analytical self-assessment tool' that the follow-up should also include a dialogue with 'other relevant national and international actors, including civil society'.[116] (See Part II, Chapter 2)

The present Part illustrates good practices of follow-up and the challenges met by NPMs in that regard. The text boxes at the beginning of each section are intended to give a concise summary of the different categories of tools, pointing out good practices as well as the challenges met by NPMs in the follow-up processes. This Part can only provide an overview and an initial analysis of the tools used by NPMs. Their applicability and value depends on the specific context in which each NPM operates and would thus require further specific and in-depth research and analysis. In this regard this Part is primarily intended as an inspiration for NPMs to develop their own methods and an invitation for further reflections and exchange.

The research and consultations within this Project have shown that most NPMs have not reflected much on how they do follow-up while recognising that this would be useful to enhance their impact. Most follow-up tools move along familiar paths of the explicit mandate of NPMs as set out in the OPCAT: visits to places of detention and the written dialogue with the authorities surrounding the reporting process. Beyond that, the dialogue with the competent authorities as well as other actors is rarely institutionalised. Especially with actors other than the competent authorities there are often no sustainable lines of communication and cooperation, and when there is a dialogue this has rarely a special focus on follow-up and implementation of recommendations. The publicity work of most NPMs often does not go beyond the publication of (annual) reports and reacting towards relevant developments, as there is mostly no communication plans for the NPMs. Overall, NPMs in the EU spend relatively little resources on follow-up and the tools used are not part of a comprehensive follow-up strategy. There are concerns in regard to the resources required for effective follow-up and sometimes reluctance in view of the effectiveness of an increased interaction with the relevant stakeholders and its implications on the (perceived) independence and impartiality of the NPM.

1. DIALOGUE WITH THE COMPETENT AUTHORITIES

'The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.' [117]

Obligation to dialogue

The OPCAT expressly prescribes a duty for the state and NPM to establish a dialogue on implementation. In some countries this has been transposed in national law, in the founding instrument or other legislative document concerning the mandate of the respective NPMs. For example, in the **UK** multiple NPM structure there are legislative provisions for particular state authorities to respond to NPM recommendations. Thus in England and Wales the local policing bodies[118] must prepare comments and invite the Chief Constable to submit comments on the published report of Her Majesty's Inspectorate of Constabulary (HMIC). The

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[115] Art 19 OPCAT.

[116] See e.g. SPT, 'Self-assessment matrix for National Preventive Mechanisms' <http://www.ohchr.org/Documents/HRBodies/OPCAT/NPMSelf_assessmentmatrixEN.doc> [hereinafter: SPT, Self-assessment matrix].

[117] Art 22 OPCAT.

[118] Namely, the Police and Crime Commissioner, or the Mayor's Office for Policing and Crime, British Transport Police Authority, City of London Police Authority as appropriate.

policing bodies are also responsible for publishing these comments as they think 'appropriate' and for sending a copy of their comments to the Secretary of State.[119] Similarly, in many other countries such as **Austria,**[120] **Estonia**[121]**, France,**[122] **Germany,**[123] **Malta**[124] and **Slovenia**[125] the authorities are required in domestic law to respond to the recommendations within a stated timeframe or a 'suitable period' **(Germany)**. In **Bulgaria**, the timeframe specifies that the authorities notify the Ombudsman within one month of any action taken to address the recommendations; for **Portugal** it is 60 days,[126] although for urgent matters the timeframe is 10 days.[127]

Although the legal obligation to consider the recommendations of the NPM and enter into a dialogue with it on implementation measures does not guarantee implementation, it nevertheless appears to be a good basis for any follow-up. It can ensure that the authorities have a duty to consider and respond to the recommendations and the NPMs have a clear legal basis to demand discussions on implementation measures with them.[128] Having a specific time frame in which to respond can also prove useful in prompting a reply from the authorities. Moreover, and as recommended by the APT, the law should include that the NPM has the right to determine which authority it will address its recommendations to.[129]

Some NPMs have the possibility to 'escalate' the dialogue to higher authorities in the event that there is a failure to engage in a meaningful discussion on implementation or failure to implement. For example the Ombudsman Statute of **Portugal** affirms that: 'If recommendations are not complied with, and whenever the assistance requested is not forthcoming, the Ombudsman may address the competent superior or, should it be the case, to the supervising minister'.[130] Similarly, the NPMs of **Poland** (Human Rights Defender) and **Malta** involve the higher authority level when a visited institution neither implements the recommendation nor provides for a reasonable justification. However, the extent to which such powers can be utilised by the NPMs is not always clear. Some member visiting bodies of the **UK** NPM have employed a specific process whereby the issue is escalated through senior levels.[131]

The research and consultations within this Project have shown that many NPMs have not or have only just recently started strategic reflections on how to conduct the follow-up process. However, NPMs are already using a number of different tools, which will be examined in the Chapters below.

Principles on dialogue

While the OPCAT does not specify on how and with whom the dialogue should be held, the SPT formulates some principles for the dialogue with the state in its 'Analytical self-assessment tool':

- the NPM 'should maintain a dialogue with both governmental authorities and institution directors/ managers regarding the implementation of recommendations'[132]

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[119] UK, Police Act 1996, section 55(2).

[120] Austria, Law of the Austrian Ombudsman Board, art 148(c); Croatia, Ombudsman Act, art 8(3).

[121] Estonia, Chancellor of Justice Act, arts 28 and 35(2).

[122] France, Act of the General Controller, art 5.

[123] Germany, State treaty, art 2(3).

[124] Malta, Prison Regulations, art 108(2); Malta, Board of Visitors for Detained Persons Regulations, art 7(2).

[125] Slovenia, Ombudsman Act, art 7.

[126] Portugal, Ombudsman Statute, art 38(2), which states that 'The body to which a recommendation is addressed shall, within sixty days upon its receipt, inform the Ombudsman of its position on the issue.

[127] Portugal, Ombudsman Statute, art 29(4), which states that 'The Ombudsman may stipulate, in writing, a time limit of no less than 10 days for the fulfilment of an urgent request'.

[128] APT and IIHR, *Implementation Manual* (2010) 101.

[129] Ibid 102; see also *APT, Monitoring Police Custody: A practical guide* (2013) 87 [hereinafter: APT, *Monitoring Police Custody* (2013)].

[130] Portugal, Ombudsman Statute, art 38(4).

[131] See e.g. Northern Ireland Policing Board, Annual Report and Accounts for the Period of 1 April 2012 – 31 March 2013, Belfast (2013) 69. The HMIP Scotland can escalate matters to SPS Chief Executive or if required to the Cabinet Secretary for Justice, and the HMIP for England and Wales can also escalate matters to the Ministry of Justice, UK NPM Recommendations Survey. The RQIA has also developed an Escalation Policy and Procedure and can escalate serious concerns to a Trust's Chief Executive should the inspector find any significant risk to health, safety and care of patients / service users, see RQIA Escalation Policy and Procedure (2013).

[132] SPT, UN Doc CAT/OP/1, para 22.

- the NPM should 'establish sustainable lines of communication' and 'a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations'[133]
- the dialogue should 'involve both written and oral exchanges'[134]

However, there is no specific guidance on how to conduct this dialogue beyond the NPM functions stated in the OPCAT, namely through visiting of places of detention, issuing recommendations and commenting on draft laws and policy.[135] It is thus largely left up to each NPM to decide with whom and how to interact following-up its recommendations to ensure their implementation.

1.1 Follow-up visits

Visits to places of detention are seen by NPMs as the main tool to follow-up to recommendations. The possibility to verify the actions taken by the authorities by visiting the relevant institutions at any given time is a particular strength of NPMs. There are however different views on what a follow-up visit actually constitutes, how it differs from any other visit and what purpose it serves.

Some NPMs carry out specific follow-up or control visits with the sole purpose to address the implementation of recommendations. There are different approaches, for example, they can be used to regularly check the implementation of recommendations, particularly for 'high risk establishments' and to follow-up particularly negative or urgent observations and individual cases that necessitate a timely check-up.

For other NPMs a follow-up visit is simply a periodic visit, which can play an important role not only to verify implementation but to explain to the authorities the background and importance of the recommendations and discussing how they could be implemented. Most NPMs hold a final meeting with the director of the visited institution after each visit, and many agreed that this opportunity should be used to discuss implementation measures and find prompt and practical solutions for issues under the direct control of the institution. Few NPMs reflect on how the dialogue could be enhanced to contribute to the authorities' willingness to implement, e.g. through a special workshop.

As a fundamental tool for follow-up consideration must be given as to how visits can be better used to assess and promote the implementation of recommendations. While this can be done through periodic visits, it also appears useful to carry out specific and targeted follow-up visits. This can be done without spending significant additional resources and allows NPMs to flexibly and promptly react to concerning developments. Thus it is recommended that NPMs develop the planning, procedure and methodology of visits with a view to strengthening follow-up and facilitate implementation of their recommendations.

Our research identified that repeat visits, sometimes specifically called 'follow-up' visits, to an establishment are often seen as one of the key tools[136] that NPMs use to assess implementation of their recommendations.[137] Revisiting a place of detention is a way to observe first-hand the extent to which areas of concern have been addressed and how, and to maintain a constructive dialogue with the administrative authorities and staff. 'Assurance about implementation can be weak without follow-up work or an inspector re-visiting.'[138]

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[133] Ibid paras 30 and 31.

[134] Ibid para 22.

[135] See e.g. ibid paras 22-24; and SPT, 'Self-assessment matrix'.

[136] UK, HMIP, *Inspection Framework* (2014).

[137] E.g. Bulgaria, Cyprus, Malta, the Netherlands, Portugal, the UK, Croatia, Estonia; see also UK, Her Majesty's Inspectorate of Prisons for Scotland (HMIPS), *Report on HMP Addiewell Follow-Up Inspection 12-16 June 2012* (2012); UK, Criminal Justice Inspection Northern Ireland (CJINI), *Annual Report and Accounts 2012-2013* (2013) 6; UK, RQIA, *Mental Health and Learning Disability: Announced Inspection, Ward J Mater Hospital Belfast Health and Social Care Trust*, 21 – 22 May 2013 (2013).

[138] UK, NAO, *Inspection* (2015) para 11.

A range of approaches can be observed; typically it was observed that NPMs carried out follow-up activities as part of a 'regular' visit i.e. it was not expressly classified as a 'follow-up' visit and there are no discernible changes in the visiting methodology. However, some NPMs carry out specific 'follow-up visits' in order to directly follow-up on previous observations and recommendations, with different purposes.

➡ Specific visits to mitigate risks and assess implementation

In the **UK**, some of the bodies in the NPM undertake unannounced visits on the basis of a risk assessment.[139] For example the HMIP undertakes full follow-up inspections for 'those establishments that are deemed "high risk" on the basis of their previous healthy prison assessments and any further intelligence', where the follow-up visit focuses on all the recommendations made in the previous visit and looks again at the areas most at risk.[140] In addition, there are short follow-up inspections which are done in 'low-risk' institutions and which look at the progress made on recommendations in the last report.[141] For other bodies in the UK NPM structure some of the follow-up visits may be focused on thematic areas.[142] Similarly, the **Austrian** NPM carries out regular follow-up visits, specifically to those places where there are a greater number of detainees. Likewise, one body of the **Dutch** NPM automatically revisits an establishment one year after a visit, although it can also carry out *ad hoc* visits if it considers this to be necessary. The procedures of NPMs governing the follow-up visits vary, for example the visiting plans of the Bulgarian NPM is based around the previous report's conclusions and the timeframe between initial visit and follow-up visit of approximately one year. The report of the follow-up visit may therefore include conclusions on the extent to which the previous recommendations have been complied with.

➡ Specific visits to follow-up irregularities

Other NPMs undertake specific 'follow-up' visits, outside of their 'regular' visits, only when serious concerns have been raised. The **German** NPM carries out follow-up visits where there have been particularly negative findings in visited facilities. The focus of these follow-up visits is exclusively on aspects which were identified in the recommendations issued after the previous visit.[143] Similarly, the **Slovenian** NPM stated that it carries out a control visit when it is reasonable to check the implementation of the NPM recommendations aimed at eliminating irregularities. The French NPM reported that the prevalence of complaints from a particular establishment may be a factor in deciding to do a follow-up visit.

For the **Croatian** NPM follow-up visits are expressly provided for in the law. Article 8 of the Act on NPM stipulates: '[u]pon the delivery of the report, the persons taking part in the activities of the National Preventive Mechanism are authorised to carry out a control examination of the place or institution where the cases of torture and other cruel, inhuman or degrading treatment or punishment were found.'

In practice, many of the consulted NPMs stated that their capacity to conduct regular follow-up visits is often limited, particularly where there are a large number of institutions to be visited. As a result, follow-up visits may only take place to a few institutions. Engagement and collaboration with other organisations that are present regularly in places of detention or who also carry out visits may help to alleviate these challenges.

➡ Using regular visits and direct talks to assess and promote implementation

Several NPMs have emphasised that every visit provides an opportunity to follow-up and promote the implementation of recommendations. As the HMIP in the **UK** has noted, 'every inspection following up a

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[139] UK, HMIP, *Inspection Manual* (2008) 59.

[140] Ibid.

[141] Ibid, 63.

[142] E.g. UK, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), *Programmed Work Plan for the Fiscal Year 2013-2014* (2013) 4.

[143] SPT 'Replies of the national preventive mechanism of the Federal Republic of Germany to the recommendations and requests for information made by the SPT' (18 February 2014) UN Doc CAT/OP/DEU/2/Add.1, para 50.

previous full inspection includes an assessment of progress in implementing previous recommendations'.[144] The **Slovenian** NPM stated that, a regular visit will often also constitute a follow-up visit, as the place was visited before.

Some NPMs reflected on how to better use the dialogue during visits, i.e. how best to discuss the issues with the staff as well as the director of the institution. Many issues addressed by the NPM are of a practical nature and often can and should be resolved directly by the institution. Moreover, the better informed the authorities are, the greater the likelihood that they will participate in the development of solutions to implement a recommendation. For example, for most NPMs and other monitoring mechanisms it is common that the visiting delegation holds a meeting with the person in charge of the institution at the end of every visit.[145] This not only gives the delegation the opportunity to transmit urgent observations and recommendations but also provides for an immediate exchange of views and direct communication with relevant personnel. A frank and cooperative discussion on the preliminary findings and recommendations can further strengthen the trust and cooperation between both sides and makes it possible to directly identify those recommendations which the institution itself can implement (such as displaying leaflets, etc.). In this regard many NPMs suggested that the implementation of recommendations should follow a 'subsidiarity principle': the practical issues under the direct control of the staff or the director should be resolved by the institution immediately and only the issues requiring an intervention at a higher level, such as the ministry, should be taken up with the governmental authorities. In terms of the latter, the NPM can offer itself to promote the development of prompt solutions with the higher level administrative authorities.

The **Portuguese** NPM stated that it has achieved numerous changes during visits by directly discussing its recommendations with the staff. Evidently, the longer and more in-depth a visit is, the more opportunities there will be for discussing implementation measures and developing concrete solutions to the problems found. For example, in the **Netherlands**, visits by the IVENJ can take place over several days during which it is in constant dialogue with the authorities, including on immediate implementation measures. In order to further enhance the dialogue during the visit, the IVENJ currently considers offering the staff presentations of the NPM's report and recommendations during a special meeting for staff. Furthermore, the Dutch NPM has recently participated in a training workshop on learning methodologies and techniques to influence behaviour.[146]

When an NPM can visit the same place of detention on a more frequent basis, e.g. as in Malta or for some of the bodies in the UK NPM, it is argued that the presence of the NPM not only has a deterrent effect but can ensure a sustainable dialogue, create a greater awareness of the concerns of the detainees, and establish a relationship of trust with the authorities.

From our research conducted in the framework of this Project it can be concluded that periodic visits are in themselves an important form of follow-up as they enable the NPM to verify information provided by the state authorities and enter into a direct dialogue with the directors and staff on implementation. Visits as a form of direct dialogue with the visited institution can be particularly useful in regard to privately administered places of detention as they are not part of the NPM's dialogue with the state. The periodicity of visits will depend on a number of factors including the number of institutions within a state and staffing and other resources of the NPM. It is recommended that NPMs reflect upon their visiting methodology and the interaction with the authorities and consider how the visits can not only be used in the best possible way to follow-up and assess the implementation of recommendations but also to motivate the authorities to implement and to find prompt and practical solutions to problems under their direct control.

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[144] UK, HMIP, *Inspection Framework* (2014) para 3.1.

[145] See also APT and IIHR, *Implementation Manual* (2010).

[146] For more information see the Dutch NPM's website: <http://www.inspectieloket.nl/vernieuwing_toezicht/programma_opleidingen/Nalevingscommunicatie/>.

In addition to periodic visits, the authors of this Study would consider that targeted 'follow-up' visits with the aim of reviewing measures taken to respond to particular recommendations should also be considered as part of an effective follow-up strategy. If follow-up is carried out as part of the routine monitoring visits there is inevitably a danger that some significant period of time might pass before a further visit is carried out. Such follow-up visits can be a useful and efficient means to focus on particular issues of concern and facilitate the process of implementation. Moreover, they can be performed with little efforts, such as with a reduced timeframe and by only a small visiting delegation. However, internal reflections on the purpose of follow-up visits, its procedure, methodology and outcome would be necessary.

1.2 Written dialogue and exchange of information

The written dialogue is the main way of interaction with the authorities for most NPMs, starting with the submission of the visiting report, which forms the main reference for the NPM and the authorities to rely on throughout the follow-up process. It is a key principle, as recommended by the SPT, that the dialogue should be held with both supervisory authorities and institution directors and managers, in order to build trust and jointly develop solutions to improve the treatment of persons in detention.

Consequently, sharing the visit reports both with the visited institution and the relevant supervisory body can be considered good practice. In order to ensure a timely exchange of information, a discussion of findings with the visited authorities and an opportunity to check the evidence on which the findings have been based, some NPMs have found the development of preliminary reports to be a useful tool.

Moreover, NPMs often request additional information after a visit to complete their reports and some have used surveys, both targeted towards the authorities as well as among the detainees. This is a very useful means to receive specific information in preparation of further follow-up action.

The written dialogue may also serve to keep the authorities informed about certain issues. A few NPMs have used thematic reports and circulars as additional means to increase awareness on important issues that also lay the ground for an increased dialogue with the authorities.

All NPMs maintain a written dialogue with the authorities, starting with the submission of their findings and recommendations to the authorities. The nature and scope of the written dialogue ranges from simply exchanging the report and seeking replies to exchanging additional information. It also varies in format and focus depending on whether it is aimed at the institution visited or the supervisory authority. In addition, depending on the nature of the issue to be addressed, the written dialogue may also be addressed to a wider range of actors such as parliamentarians, the judiciary, CSOs, or professional bodies (see Part II, Chapter 2). The consulted NPMs followed a clear and established procedure for their written dialogue and for many NPMs it represents the main form of interaction.

➡ Communication of the visiting report to the visited institution

The authors of this Study underline the importance of the above-mentioned SPT principle that '[t]he NPM should maintain a dialogue with both governmental authorities and institution directors/managers regarding the implementation of recommendations.'[147] This even more important regarding visits to non-state places of detention where the link to the competent supervisory state authority is weak and they may otherwise be excluded from any follow-up to the visit. This principle is not followed by all NPMs but for example by the NPMs in **Luxembourg**, which sends its reports to both the visited institution and the supervisory authorities, and in **Croatia**, where the NPM makes separate recommendations to the

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[147] UN Doc CAT/OP/1, para 22.

institution and the supervising authority. The workshops and consultations in this Project revealed that correspondence only with the supervisory authority may lead to the visited institutions feeling excluded from the dialogue with the NPM and not knowing the content of the NPM's report and its recommendations can lead to a 'monitoring fatigue', negatively influencing the cooperation and willingness to implement recommendations. Thus it is important that the exchange of findings and recommendations also happen with the visited institution, in order to be transparent and to build trust with the detention authorities. One of the bodies in the **Dutch** NPM has emphasised the issue of accessibility of NPM reports and recommendations and is currently reflecting on how awareness about its reports and recommendations could be increased among the staff directly, e.g. by making them more reader-friendly or presenting them directly to the staff.[148] Conversely, places of detention may not wish for the state or supervisory authorities to be informed immediately about any shortcomings before they have had an opportunity to address them. NPMs may therefore need to bear in mind these political sensitivities in order to ensure a cooperative and collaborative dialogue with officials in the places of detention.

➡ Preliminary reports for a prompt and direct dialogue with the visited institution

Transparency necessary to build a relationship of trust is best ensured if feedback on the key NPM findings happens in a timely manner. However, for practical reasons, the finalisation of a first draft of the visit report may take the NPM several months. Consequently, some NPMs have decided to issue preliminary reports prior to a full version.

The **French** NPM follows a two-step procedure when exchanging the visiting reports with the authorities. Firstly, an initial report (*rapport de constat*) is drafted by the members participating in the visit and this is shared with the director of the place visited in order to correct possible factual mistakes, give the director the chance to include developments that occurred after the visit or allow him/her to state if the institution disagrees with any of the findings. Then, after receiving a reply from the head of the facility, the visit report is finalised by the members of the visiting delegation and sent to the minister in charge (who provides his observations within usually 3 months), before the NPM eventually publishes the visit report together with the authority's reply. Similarly, the **Dutch, Estonian** and the **Slovenian** NPMs do a factual check via a summary, preliminary or draft report to the authorities giving them a short time-frame to reply. The **Slovenian** NPM when it visits social care homes and psychiatric hospitals also applies a two-step procedure, with the specific aim of improving the dialogue with the institution visited. First a preliminary report, including the analysis and recommendations, is shared with the institution visited and then the full report is sent to the responsible supervisory authority/ministry, including the inspected institution's response. Initially this procedure was chosen for social care homes and equivalent institutions – where unlike prisons and other institutions under the exclusive responsibility and control of the state – there is often a weaker connection between the institutions and the responsible ministry. It has proven useful to give the institution the opportunity to view the NPM's findings and make comments if necessary, before it is passed on to the supervisory organ. This two-step procedure has also once been used for a prison and proven beneficial as well: the two-step procedure was said to guarantee that the visited institution promptly received the undistorted views of the NPM and allowed for a more intense dialogue on the operational level, thus strengthening transparency, trust and cooperation.

It appears that a preliminary report is a very useful way to ensure a prompt written communication of the findings to the authorities and ensure a factual check. However, a challenge may be the additional resources required and a risk of prolonging the process of finalising and publishing the report.[149] Thus, the

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[148] See also Part I, Chapter 4.

[149] Due to the fact that the French General Controller (head of NPM) checks all reports and the time-frame for the authorities to reply, it can take several months until the supervisory institution receives the report and up to two years before the report is finalised and published. This is naturally problematic in terms of transparency and enabling follow-up by external actors. See France, General Controller of Places of Deprivation of Liberty, *2013 Annual Report*, 18-19, 64.

establishment of a two-step procedure will require reflections on its purpose and execution, including the internal reporting methodology.

Surveys assessing the scope of a problem

It is common among NPMs to request additional information after a visit, mostly in order to draft the report and recommendations. Some NPMs have furthermore used targeted thematic surveys among the detainee population to receive additional information about certain issues.

For example the HMIP in the **UK** a detainee survey is a fundamental part of an inspection. Typically visits undertaken by the HMIP take two weeks. The first week involves the completion of the 'Inspectorate survey'. Members of the research team conduct a survey of a representative proportion of the detainee population, which is a key source of evidence, gathering detainee perceptions. Participants are chosen at random across all wings/units of the establishment. The survey is confidential and anonymous. Researchers talk to each selected detainee to explain the purpose of the survey, and go back to each cell to collect the survey later that day or the following morning. Distribution and collection of the survey takes up to two days.[150] The results of the survey are not only helpful in making comparisons between detainee responses from the inspected establishment and the collective responses from detainees held in similar establishments, but also as part of a follow-up procedure to monitor current responses and those gathered at the last inspection, alongside a breakdown of responses by protected characteristics.[151] The surveys are regarded as an essential part of 'the triangulated evidence base for inspection and provide a robust and representative 'customer' view of the treatment and conditions in custodial establishments.[152] The questions that form part of the survey are based on published inspection criteria known as 'Expectations'.[153]

The **Austrian** NPM uses surveys among the authorities as part of its follow-up process: After the identification of re-occurring problems in detention, it starts an in-depth inquiry on the systemic dimension of the problem, collecting information from its own NPM reports and requesting the authorities to provide detailed information and data. This information has been vital in order to jointly develop step-by-step plans for the implementation of recommendations.

Thematic reports and circulars to increase the awareness of systemic issues

The written dialogue beyond the communication of the visiting report may not only help the NPM but also the authorities to receive additional information. A few NPMs use additional ways to inform the authorities about specific issues, e.g. through thematic reports and recommendations that create a good basis for a targeted dialogue on specific issues. In **Bulgaria**, for example, thematic reports have been used as a tool to react to emerging problems, such as to focus on the worsening situation of Syrian refugees in Bulgaria and children held in closed institutions. In these instances, issuing thematic reports was considered to contribute to achieving better impact and to enable the NPM to reach a wider audience as it provided a way to explain clearly the issues involved to the media and general public.

The **Swedish** NPM has also prepared a special analysis on substance abuse and presented the findings to the responsible authority. The NPM can also hand over specific thematic issues that arises at an institution to other specialised monitoring bodies. For instance, following questions surrounding *inter alia* the handing out of medication to persons in an arrest facility in Stockholm visited by the Swedish NPM, it included the Swedish Health and Social Care Inspectorate in the list of recipients of the report. The inspectorate then conducted a follow-up inspection to the facility some months later. It emphasised that the approach constituted a good basis for dialogue as well as for developing future plans.

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[150] UK, HMIP, *Inspection Framework* (2014) paras 3.11-14.

[151] Ibid para 3.12.

[152] Ibid para 3.14.

[153] Ibid paras 2.21- 25 and 3.14.

In **Estonia**, the NPM uses circulars which are sent to all relevant institutions under inspection to draw their attention to the main shortcomings identified. By widely distributing these circulars they can create a greater awareness of good and bad practices in specific institutions. The Slovenian Ombudsman sends out a weekly Newsletter that often also includes a short summary of important NPM findings.

1.3 Action Plans

Requesting the authorities to develop action plans detailing their plan for implementation can be a particularly effective tool for follow-up. An action plan, if developed on the basis of NPM recommendations and taken as a practical tool to advance their implementation, can be a very useful way to strengthen a strategic follow-up process, by setting clear goals, responsibilities and timeframes, providing a framework for support and advice by the NPM, as well as the monitoring and evaluation of state action.

A specific and very interesting example of using the dialogue specifically to develop follow-up action with the authorities is to request institutions to develop action plans setting out how they will implement their recommendations. Action plans can be a practical tool to measure implementation, to strategically work towards the implementation of recommendations, providing a set of agreed measures that need to be taken in order to address a particular problem and to support and evaluate the steps taken by the authorities.

Some bodies in the **UK** NPM have adopted the practice of requesting action plans. Typically these action plans state which recommendations have been accepted, partially accepted or rejected, and, in the case of accepted recommendations, how the inspected body plans to address these.[154] The action plans appear to vary in sophistication, with one body requiring the provider to send a ‘Quality Improvement Plan’ which outlines the actions taken within the timeframe required. The extent to which action has been taken on the Plan is then assessed at the next inspection visit or the inspecting body may ask for a report more quickly if there are concerns about some issue that requires urgent action.[155] HMIP as one of the bodies in the UK NPM also requests an action plan from the establishment inspected detailing how the latter will respond to the recommendations that have been made. The action plans of the HMIP set out in table form the recommendations made; whether the recommendation is rejected or accepted; the response in the form of any action taken or planned – if the recommendation is rejected stating why the recommendation is rejected; who has responsibility for implementing the response; and the target date when the action will have been taken. If the action requires on-going or long-term action this is also stated.[156] The measures taken to implement the action plans are then assessed and monitored in subsequent visits to the institution concerned. HMIC, another body in the UK NPM, in addition to giving recommendations, provides ‘improvement actions’, namely those that may be less important than recommendations but which could perhaps be implemented quickly or with limited resources.[157] The Criminal Justice Inspection Northern Ireland (CJINI) publishes action plan reviews and inspection follow-up reviews. These are not presented separately to Parliament but their findings can be included in the CJINI’s annual report.[158] In addition, also in the UK one NPM body asks the inspected institution to provide an annual review on self-assessment against the recommendations.[159]

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[154] UK, NAO, *Inspection (2015)* para 2.14.

[155] UK, NPM Recommendations Survey, response from RQIA.

[156] In the UK action plans for prisons are published by the HMIP, see for example HMP Brixton Action Plan (14 May 2015) <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/03/Brixton-Action-Plan-2014.pdf > accessed 16 June 2015.

[157] UK, NPM Recommendation Survey, Response from HMIC 1.[158] See for more information CJINI´s website: <http://www.cjini.org/TheInspections/Action-plan-reviews---inspection-follow-up-revie.aspx>.

[159] UK, NPM Recommendations Project. Summary of Findings, para 14.

Similarly, in the **Netherlands** the IVENJ can request the inspected institution to develop an action plan for the implementation of their recommendations, although it was noted that the Prison Service usually takes the initiative on developing action plans themselves.

Those NPMs consulted considered that action plans can be an extremely useful tool, setting out concrete measures and a clear time frame, sometimes negotiated between the NPM and the institution that is required to implement recommendations.[160] These provide an additional set of criteria or indicators against which implementation can be measured. Additionally, the process of developing action plans can in itself be a device to encourage implementation and establish constructive dialogue with the relevant authorities and individuals.

1.4 Meetings and personal exchanges with the authorities

The SPT expressly recommends that the dialogue should also involve oral exchange, for example through regular meetings, round-tables or working groups, etc. This is acknowledged by all consulted NPMs that confirmed the need for a regular personal contact to build trust, explain the findings in more detail and encourage the implementation of recommendations. Several NPMs stated that they experienced deadlocks in the dialogue with the authorities that could be resolved through personal meetings. It was argued that authorities are more likely to make concessions in a confidential meeting than in writing.

Some NPMs hold only irregular and informal meetings with the supervisory authorities when the need arises, mostly where access to the relevant authorities is easy to obtain. Others have made good use of institutionalised *fora* for regular exchange. The process followed depends on the national context, access to and relationship with the supervisory authorities and may be particularly complicated in federal states. In any case specific attention must be directed towards keeping meetings effective and resource-efficient as well as to ensure that close interactions do not endanger the NPM's perception as an independent actor.

In line with the SPT recommendation that a dialogue should 'involve both written and oral exchanges' most NPMs hold meetings with the supervisory authorities in between the visits in some form, often rather sporadic and irregularly. At the same time, all consulted NPMs have underlined the importance of an oral dialogue to explain the findings and recommendations and avoid misunderstandings and more generally build a trustful and cooperative relationship increasing the willingness to implement the NPM' recommendations.

➡ Irregular and *ad hoc* meetings

Many NPMs only hold irregular meetings with the supervisory authorities, not following any specific procedures and organised on an *ad hoc* basis according to specific needs. While this may in part also be due to limited resources, some NPMs, particularly in smaller countries, have commented that a regular, formalised rather than cause-related exchange would be unnecessary and even ineffective where there is an uncomplicated and easy access to the authorities.

The **Cypriot** NPM holds meetings with the directors of the visited institutions and mid-level government representatives (e.g. head of departments), although these do not systematically follow the submission of each report, but rather if specific problems arise, if certain issues need to be clarified or if recommendations are not implemented. In **Malta**, direct meetings are only held in urgent cases. In **Luxembourg** the NPM built up trust with authorities in a series of meetings, including at the ministerial level. Furthermore, the NPM is available via phone 24 hours and has established that in cases of emergency, such as deaths in custody, the authorities call NPM staff immediately, with the NPM staff being at the spot within 30 minutes. In **Bulgaria**,

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[160] See e.g. the practice of the RQIA in the UK which reviews draft actions plans and can request revisions to be made if they consider the action plan does not address the issues sufficiently.

meetings with the authorities are held following thematic reports and when discussing steps on how to implement recommendations.[161] The **Estonian** and **Dutch** NPMs use thematic and specific roundtables and conferences as a forum for exchange with representatives from different state institutions. The Dutch NPM has specifically mentioned such fora as a useful instrument to invite staff from places of detention. The **Hungarian** NPM (Commissioner for Fundamental Rights or Ombudsman) emphasised the importance of convening or participating at conferences or round-tables on thematic issues to follow-up the reports and recommendations and enter into a more substantive discussion with the relevant actors. The discussions are internally documented by the NPM and can then also be followed up at a later stage.

In some countries, meetings with the highest ministerial level have proven to be particularly effective. While this appears to be relatively easy in small countries (e.g. **Cyprus, Malta**), in larger jurisdictions the NPM may not always have direct and easy access to individuals at this level. A good example for securing access to the highest level is **Slovenia**, where the Ombudsman has a legally granted right to a personal audience with the President of the Parliament, the Prime Minister, and the ministers within 48 hours after his request.[162] While this procedure is only used in exceptional circumstances of particular urgency the Ombudsman has already threatened its use, which has prompted the authorities to act quickly. It is thus regarded as a useful tool.

➡ Regular and institutionalised meetings with authorities

Several NPMs have stated that a regular, periodic exchange, going beyond *ad hoc* dialogue, would be useful. The Head of the **Dutch** NPM meets the Head of the Prison Service, Secretary of State and persons responsible in the ministry several times a year and has stated that this was useful for getting their recommendations implemented.

The **German** NPM has set up an interesting example of institutionalised exchange, including several phases of direct interaction with the Government. The dialogue is held predominantly with the heads of the competent department of the ministry in charge, who act as focal points for the NPM. Directly after the visit, the NPM systematically calls the responsible focal point to inform him/her about the observations and preliminary recommendations made in the final meeting with the director of the institution. This helps building trust by increasing the transparency of the NPM's work. The talk also involves a discussion on the steps necessary for the implementation, taking into account the challenges and obstacles faced by the authorities, e.g. lack of resources. This exchange can also inform the drafting of the final recommendations. The German NPM's experience has shown that the written exchange between the NPM and the authorities often takes some time and can be very formal. Thus, the personal and direct exchange on the findings and recommendations is useful in order to explain the background of the recommendations. At the same time the German NPM stated that it is cautious to avoid any unjustifiable influence by the authorities on the report and recommendations. After the report was submitted and the response from the authorities shows that further explanation or discussion of the recommendation and its implementation is necessary, the NPM may meet the relevant focal point in order to discuss the implementation of specific recommendations. These meetings take place regularly but only on the state (*Länder*) level and provide an opportunity to reach an agreement on the findings and the next steps necessary for the implementation of recommendations. They are often joined by the State representative responsible for the individual measure in discussion. Moreover, the German NPM has also participated in meetings between the department heads of the state (*Länder*) ministries in charge, to create awareness of the NPM's work and exchange information. It is the intention to use this forum with different ministries more systematically in the future in order to enhance the implementation of its recommendations and foster the exchange of best practices. This direct dialogue was said to have helped significantly in creating awareness and acceptance of the NPM's mandate and helped to overcome some differences of opinion with authorities.

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[161] See BIM and HRIC, 'Baseline study on follow-up of NPMs in the EU: Country Chapter Bulgaria' (November 2014).

[162] Slovenia, Ombudsman Act, art 46.

The **Swedish** NPM has also mentioned that advantage of 'semi-formal focal points', not only to have persons the NPM can address for strategic questions, receive information and constructive feedback from, but in order to have someone within the authorities, who can explain the NPM's work to other persons within the institutions.

In conclusion, while the need for oral exchanges with the supervisory authorities is evident, it depends on the circumstances in each country on how an NPM wants to conduct it. For some, it may be sufficient to meet authorities *ad hoc* when necessary, for others, especially where the access to the relevant supervisory authorities is difficult to obtain, a regular forum may be useful. Such exchange should however be closely evaluated in view of its outcomes and effectiveness and to ensure that the NPM maintains professional distance safeguarding its position as independent actor. As noted above it is also important that a note of any oral exchanges, detailing the focus and decisions made, is recorded and adequately documented in order to facilitate follow-up.

1.5 Working groups

A particularly interesting tool to ensure a regular, institutionalised and structured dialogue are specific working groups with the authorities. Some NPMs have established working groups on a permanent basis to enable an on-going discussion of the NPMs' work, while others established working groups on an *ad hoc* basis in order to deal with a specific topic. They can either exclusively bring together state actors or include external experts and civil society members.

Working groups have shown the potential to generate more responsibility from the authorities to engage in a pro-active dialogue with the NPM. Moreover effective and sustainable solutions often require the involvement of and coordination between several state actors. While the general risk of ineffective oral exchanges without outcome remains, working groups with a clearly defined goal and composed of the relevant and competent stakeholders and experts have proven to be a useful forum to jointly develop concrete plans and solutions for complex problems, and to assign responsibilities among the different actors.

An example of good practice that the Study identified was to institutionalise direct and targeted exchange with the authorities through the creation of a permanent or *ad hoc* working group. If properly conceived it may combine the benefits of a regular oral exchange with structured and outcome-focused meetings. Moreover, a working group including different authorities from different levels of the state allows for a coordinated approach and might also allow bringing in external expertise.

➡ Special thematic working groups

In **Austria**, for example, there is a working group on police detention to discuss pending problems and possible solutions. Members of the NPM take part in this group and have stated that it presents a highly useful forum for direct interaction and finding solutions to complex problems.[163] Moreover, two *ad hoc* working groups have been established in the process following a survey on systemic problems, both including NPM representatives: one by the Ministry of Justice to deal with the treatment of mentally ill criminal convicts in preventive custody (*Maßnahmenvollzug*), the other by a state (*Länder*) Government on social care homes for juveniles. While in the first case the working group has recently presented a study proposing legal and institutional changes, the other working group has already developed a step-by-step action plan on implementation together with the institutions concerned as well as the responsible ministry. Both working groups have furthermore included external experts to support the process. In Luxembourg, a special working group on the reform of the Criminal Code and the Criminal Procedure

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[163] E.g. by the previously overly strict criteria for being transferred to an 'open regime' in detention were re-defined in joint discussions.

Code, including prison directors, the Ministry of Justice, NPM experts and independent experts met twice a month, before subsequently sharing the results with civil society.

General working groups

In **Bulgaria**, the Government set up an inter-agency working group consisting of representatives from different ministries, the judiciary, the prosecutor's office, and civil society, where issues raised by the NPM and CPT reports are discussed. While the working group is focused on the necessary legal amendments, the NPM notes that it uses it as an opportunity to discuss the bigger picture and to include other preventive measures. According to the NPM, the experience with the working group has been very positive as the participants are responsive towards the issues raised by the NPM and are willing to make changes. According to the Bulgarian NPM, this has led the Ministry of Interior to establish a special working group focusing on medical issues.

In **Cyprus** the NPM created a general working group consisting of focal points from each ministry, which meets at least twice a year or anytime the NPM considers it necessary. The goal of the working group was to create an environment where officials from all authorities and the NPM can discuss general issues of interest for them. The group also serves as a platform to resolve issues and discuss measures that might require coordination between the different authorities as well as to address common problems with the help of the NPM. So far the working group mainly has discussed the NPM's annual reports and the CPT report. In the future it is planned to arrange thematic meetings to discuss subjects that might be of interest to participants.[164] The rationale behind the establishment of the working group is to enable informal and personal exchange and to address and solve problems collectively, rather than shifting the responsibility from one to another. The NPM considers that the experiences with the working group are very positive, noting that it has proven to be a useful platform for authorities to coordinate among themselves. The challenge so far has only been to find a date where everyone, and especially those knowledgeable and with influence, are available. Due to the success of the working group the Cypriot NPM decided to establish a similar forum for NGOs which ultimately would be merged with the other working group.

Also in the **UK**, NPM bodies take part in working groups established by the state (advisory or ministerial boards) as observers, providing information and advice.

Overall, NPMs' experiences with working groups have been very positive and achieved constructive dialogue and tangible impact. However, as for regular meetings, participation in such working groups will of course require resources from the NPM. Some NPMs warned that such meetings might take up valuable time and problems risk being 'talked to death', with little practical impact. Thus, it is recommended that working groups define clear goals and outcomes from the beginning and evaluate the impact achieved over time.

1.6 Training

Some NPMs carry out training for state authorities including personnel in places of detention, and have described this as a useful forum for dialogue with the authorities, particularly at the operational level.

Training activities have shown to provide room for the NPM to present its work and explain the rationale behind the recommendations it makes, and for the authorities to voice their concerns

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[164] See BIM and HRIC, 'Baseline study on follow-up of NPMs in the EU: Country Chapter Cyprus' (November 2014).

and problems. It thereby creates credibility as well as visibility for the NPM and thus constitutes a chance to establish trust and a cooperative relationship, ultimately contributing to increased willingness to implement recommendations.

However, some NPMs have expressed reservations about performing training activities, which may go beyond the NPM's core mandate and require too many resources. In such cases, they may nonetheless consider to occasionally participate in or evaluate relevant activities carried out by others.

While for many NPMs, the main task is to monitor places of detention, report on the treatment of detainees and make recommendations, some NPMs also develop training activities for different actors and several NPMs have found this to be highly beneficial for their follow-up work.

Many NPMs (e.g. in **Cyprus, Estonia, France, Poland**) have carried out training for police officers, judges, heads of social care homes, staff of places of detention and others. For example in **Cyprus**, the NPM has given an initial training for police officers working in the Migration Detention Centre in 2013 that included an extensive presentation on human rights and the treatment of detainees. The initial training is repeated every 6 months on different human rights issues that arise in the specific place of detention. During 2014, the NPM also participated in a training program for prison staff with presentations on human rights of prisoners, particularly focusing on non-discrimination and the treatment of foreign prisoners. Moreover, the **Cypriot** NPM provides human rights trainings to police officers as per request of the Police Academy. Throughout all of these trainings, the NPM explains its mandate and powers as NPM and also introduces some findings and recommendations. The **Estonian** NPM, besides providing human rights trainings to social care service providers has used trainings for its own staff to invite representatives of the monitored institutions, e.g. the Estonian Social Insurance Board, and has held a specific information and training day at its offices inviting representatives of the Ministry of Social Affairs and the Estonian Health Insurance Fund.

According to these NPMs' experiences training has not only been useful to strengthen the capacities of the participants and increase the visibility of NPMs but also to explain the rationale behind the recommendations to the authorities and ultimately also increase their willingness to implement them. It has been described as an important place for dialogue, providing the officials with room to explain their own arguments and concerns and thus ultimately constitutes an important means to establish better contacts with officials and strengthen mutual respect and trust, particularly those on the lower, operational level.

Other NPMs decide not to carry out training for resource reasons or do not see this as part of their mandate. However, participation in training only from time to time may still be useful to present the mandate and work of the NPM and to evaluate the state's training efforts. The **German** NPM for example does not carry out training itself but established contacts with the national training academies for prison staff to advise on the development of effective human rights training and from time to time also participated as an observer in order to present the NPM mandate.

While it depends on each NPM's strategy and resources whether it carries out trainings, they may play an important role in the prevention of torture. Thus, at least an occasional participation in trainings by NPM members may be useful to present the NPM and its recommendations as well as to evaluate the training's effectiveness in view of torture prevention.

1.7 Warning and enforcement powers

A few NPMs have the power to issue warnings to the authorities or even enforce their recommendations. However, the use of such powers may require caution in view of the preventive approach of NPMs. NPMs with such powers will need to balance their use against the need to find systemic solutions to complex problems and maintaining the sensitive relationship between them and the authorities, which is built upon the premise of cooperation rather than confrontation.

Few NPMs, notably those formed on the basis of existing inspection bodies, have special powers to ensure the implementation of their recommendations by warning or penalising authorities or even exercising enforcement. For example for some of the bodies of the **UK** NPM such powers range from issuing a warning notice, issuing fixed penalty notices, and prosecution,[165] 'improvement notices', urgent procedures and 'failure to comply notices'.[167] Similarly, some members of the **Dutch** NPM have enforcement powers. For example if the Health Care Inspectorate (IGZ) receives a report which suggests serious shortcomings in the quality of care, or less serious shortcomings which are nevertheless of a structural, ongoing nature, the Inspectorate will take enforcement action. The measures available range from advice and encouragement to correction and coercion.[168]

Some bodies in the UK NPM with enforcement powers reported a greater likelihood of compliance with their recommendations.[169] The RQIA has noted that 'the appropriate use of enforcement powers, including prosecution, is important: to secure compliance with legislation and minimum standards; and, to ensure that registered providers are held to account for failures to safeguard the health, safety and welfare of service users.'[170]

Conversely, such enforcement powers can also raise challenges and may impact on the collaboration and constructive dialogue that the NPM may have with the inspected institution. As has been noted by the UK NPM 'members should be cautious that this doesn't detract them from making observations about problems that have no apparent ready solution, or making observations about matters that are relatively minor to the inspected/monitored body, but important to the detainee.'[171] Although, therefore, on the one hand having strong enforcement powers may at first glance seem to be an attractive tool for NPMs, on the other hand some cautioned against over-using them in practice, preferring to stress the importance of a constructive dialogue with the relevant authorities as key to ensuring implementation. For example one body of the **UK** NPM considered that enforcement powers may cause a negative relationship with the inspected/monitored body because those with enforcement powers could be wary of making recommendations or raising issues that they would not be prepared to follow through to enforcement action.[172]

1.8 Individual complaints and investigations

NPMs regularly receive individual complaints and requests when monitoring places of detention. While it is not the NPM's mandate to investigate the cases, some NPMs use them as a means to assess implementation of recommendations and to identify systemic issues. Moreover, individual

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[165] UK, Care Quality Commission (CQC), *Enforcement Policy* (2013) 8.

[166] E.g. UK, RQIA, Health and Personal Social Services (Quality, Improvement and Regulation) Order 2003, art 39.

[167] Ibid arts 21; and Regulations of RQIA.

[168] The Netherlands, National Preventive Mechanism, *Second Annual Report 2012*, 27.

[169] UK NPM, *Making Recommendations* (2014) para 8.

[170] UK, RQIA, *Enforcement Policy* (2013) para 3.1.

[171] UK NPM Recommendations Project. Summary of Findings, para 8.

[172] UK NPM, *Making Recommendations* (2014) para 8.

cases can serve as evidence to support recommendations, and promote their implementation in the dialogue with the authorities, as well as the communication and cooperation with other actors and the NPM's public relations.

In order to avoid false expectations NPMs should have a clear policy and procedure on how to deal with individual complaints. Generally, but only if the alleged victims provides his/her authorisation, individual cases should be submitted to a body with the mandate to handle them, and followed up in order to protect victims from reprisals. In order to adequately deal with and use individual complaints in the follow-up process, NPMs should maintain a close cooperation with the relevant complaints mechanisms or the relevant department, in case of Ombuds institutions.

While NPMs regularly receive individual complaints and requests during their visits to places of detention the OPCAT does not grant them the mandate to investigate individual complaints. Instead, they are meant to intervene preventively, before a violation has occurred (see also Part I, Chapter 3.1). NPMs need to make a decision as to how to deal with complaints and requests, e.g. to transmit them – with the informed consent of the victim and an adequate consideration of the risk of reprisals – to the responsible authorities, such as the relevant departments of Ombuds institutions, internal state complaint mechanisms and the police and prosecution.

Individual cases received by an NPM may be useful in the follow-up process. A few NPMs consulted consider the number of complaints as an indication of systemic problems, possibly also a lack of implementation of recommendations and useful information for follow-up action. Thus, an analysis of the follow-up to the cases by the responsible bodies may provide useful information on the issue of impunity, remedy and reparation. For example in **Austria** individual cases received during the NPM visits and individual complaints to the Ombudsman Board are used to further examine whether these are systemic practices. They are not only followed-up by the Ombudsman Board under an urgent procedure to cease the violation and afford necessary protection but the Ombudsman Board has in the past also initiated additional follow-up action, including a survey on the scope of the problem and the establishment of a working group to develop a step-by-step plan to resolve the problem.

Furthermore, individual cases can provide useful evidence to illustrate problems, support recommendations and promote their implementation in the dialogue with the competent authorities and the cooperation and communication with other actors as well as the NPM's publicity strategy (see Part II, Chapter 3).

A key consideration when dealing with individual cases always has to be a 'do no harm approach', focusing on the protection of the victim, including protection of the victim's identity or from reprisals. Thus, NPMs should develop a clear policy and procedure to deal with individual cases received during visits. The policy and procedure should also be clearly explained to the complainants in order not to raise false expectations.[173] Moreover, NPMs should closely cooperate with the independent complaints mechanisms in the country. How this is managed may depend on the relationship the NPM has with these mechanisms, including whether the NPM is itself embedded in an Ombuds institution that also has a mandate to receive and investigate individual complaints.

Another possibility to follow-up on specific findings of the NPM through cooperation with the Ombuds institution would be the opening of inquiries by the Ombuds institution. For example, in **Sweden** out of 111 visits between 2011 and March 2015, 19 own-initiative inquiries were undertaken, three of them directed at the police and involving concerns that had been identified during a whole number of inspections of police stations. This approach is also being used by the **Austrian** Ombudsman Board.

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[173] APT, *Monitoring places of detention* (2004).

1.9 Commenting on and proposing draft legislation and policy

The NPM mandate to submit proposals and observations concerning existing or draft legislation is specifically mentioned in the OPCAT. This mandate should be understood broadly to extend to all state policies relating to the mandate of the NPM.

Many of the consulted NPMs comment on laws and policies and some Ombuds institutions can conduct reviews of constitutional laws. However, they are not always informed about and included in the process of drafting relevant laws and policies. Some NPMs also stated that in view of the targeted expertise and considerable resources required it can be difficult to fulfil this part of the mandate.

Commenting on laws and policies is not only a specific right of NPMs but also an important part of the follow-up process ensuring the implementation of recommendations. Thus effective procedures and regulations need to be set up within the NPM and with the authorities to ensure that they are systematically included in the law drafting process. Moreover, it can be useful if NPMs cooperate with external experts from civil society, particularly universities and research institutes, to facilitate the task. In addition, NPMs may participate in consultations, special commissions and working groups on relevant law reforms.

In order to ensure an effective follow-up, the authors of the Study recommend that the role of the NPM should not only be reactive in the commenting on draft legislation and policies but that it should also actively propose and advocate for necessary legislative changes and their implementation. For this purpose it may be useful to issue specific opinions or thematic reports.

The OPCAT specifically grants NPMs the mandate '[t]o submit proposals and observations concerning existing or draft legislation'.[174] According to the SPT, this requires that the state inform the NPM of any relevant draft legislation or policy and take into consideration the NPM's view in the legislative process.[175] The NPM's mandate however is not limited to reactively commenting on draft laws and policies. The SPT emphasises: 'The NPM is mandated to assess draft and existing legislation against the state's international obligations and against other international standards. Therefore, the NPM should propose and advocate for necessary legislative changes and their implementation, e.g. with parliamentarians and government, in conjunction with other relevant actors when appropriate.'[176]

➡ Commenting and reviewing draft laws and policies

Most NPMs in the EU are given this mandate by law or regulation, some, e.g. in **Austria**, including an obligation of the state to submit relevant draft laws and regulations to the Ombudsman Board, granting a reasonable period for review.[177] However, NPMs reported that they sometimes had to act on their own initiative to ensure that they were able to provide comments due to the lack of a clear procedure for drafting laws that includes a referral to the NPM/Ombudsman. Thus, the **Slovenian** NPM has recommended in the consultations held in the framework of this Project that the inclusion of the Ombudsman in the legal drafting process should be specified by law.

The **French** NPM noted that it is regularly requested by the authorities to comment on draft laws and has been heard in Parliament regarding draft laws and legislative proposals 16 times since 2008. It can 'issue opinions, prepare recommendations to public authorities and make proposals to the Government as to the modification of applicable legal provisions and regulations'.[178] Similarly, most Ombuds institutions

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[174] See art 19(c) OPCAT.
[175] SPT, UN Doc CAT/OP/12/5, para 28.
[176] SPT, UN Doc CAT/OP/1, para 28.
[177] Austria, Law of the Austrian Ombudsman Board, art 7.
[178] France, Act of the General Controller, art 10.

have extensive experience in commenting on laws and policies. In **Estonia**, the Ombuds institution even has a constitutional review competence and can analyse whether national laws are in accordance with the Constitution and international treaties. This competence also includes the possibility to ask the Parliament for modifications of the law or to turn to the Supreme Court to overturn the law.

The task of commenting on laws and policies requires significant resources and expertise. Thus, not all NPMs are able to fulfil this task. The **German** NPM has only been able to respond to requests to comment on draft legislation after an increase in resources at the end of 2014. Before, it tried to include comments on legislative shortcomings into its visiting reports and suggested that a good way to become more active in commenting on laws and policies in times of scarce resources would be by way of cooperating with civil society experts, including universities or research institutes.

Other NPMs, such as those in **Bulgaria** and **Estonia**, take part in working groups or commissions on the reform of certain laws (see Part II, Chapter 2.1), which can be a useful way to ensure the NPMs' involvement in the legal reform process.

Proposing legal and policy changes

NPMs can also proactively propose legal and policy changes. This is often done within the visit or annual reports of an NPM. However, in order to achieve better visibility for an issue of concern and facilitate the follow-up process it can be useful to issue thematic reports or specific opinions and recommendations.

A good example is the express competence for the **French** NPM that has the right to 'issue opinions, make recommendations to the public authorities and propose to the Government any amendment to applicable legislative and regulatory provisions. After having informed the authorities responsible, he may publish these opinions, recommendations or proposals, as well as any observations made by these authorities.'[179] Moreover, the General Controller can address opinions to the authorities about Projects relating to construction, re-construction and refurbishment of all places of deprivation of liberty.[180] Since 2008, the French NPM has produced 36 opinions and policy recommendations, some of them related to a policy in a specific place of detention, others of a more general nature. They have been published in the Official Gazette as well as compiled in a booklet published in French, English and Spanish.[181]

The recently established **Hungarian** NPM has also drafted specific policies, e.g. regarding guardianship for mentally disabled or ill persons or regarding protection of children against prostitution. In this regard it has specifically drawn on the relevant international obligations, e.g. the UN Convention on the Rights of Persons with Disabilities or the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

In conclusion, although commenting on draft laws and policies may require significant resources, the authors of this Study would recommended NPMs to fulfil this part of their mandate as it is of crucial importance for the follow-up to recommendations. This will require the establishment of adequate procedures within the NPM and with the authorities. Further, it may be helpful to cooperate with other institutions and external experts to facilitate the process. NPMs should not only react but also bring forward their own proposals for legal and policy changes. Doing this via thematic reports and specific opinions and recommendations may be a very useful way to generate greater visibility and enhance the follow-up process.

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[179] Ibid art 10.

[180] Ibid art 7.

[181] Association for the Prevention of Torture (APT) and General Controller of Places of Deprivation of Liberty, *Opinions and Recommendations of the French ‚Contrôleur général des lieux de privation de liberté' 2008 – 2014* (2014) <http://www.apt.ch/content/files_res/avis-et-recommandations-cglpl_en-for-web.pdf>.

1.10 National action plans and state reports to international bodies

The process of developing National Action Plans (NAPs) on human rights as well as the reporting to international bodies such as the CAT Committee and the Universal Periodic Review (UPR) is a good opportunity for a strategic involvement of NPMs. However, so far only very few NPMs appear to have used these processes as an opportunity to strengthen follow-up and implementation of their recommendations.

It is thus advisable for NPMs to be closely involved in the development of NAPs and the international state reporting processes. This may not only help to present its recommendations and promote their implementation on a strategic level but can also be used for the monitoring and evaluation of the goals set for the prevention of torture and other ill-treatment on a national level. At the same time the NPM needs to ensure a professional distance and maintain an independent position towards the state.

The development of NAPs on human rights is a useful process for the state to define strategic policies on human rights, including the prevention of torture and other ill-treatment, developing concrete actions and evaluation tools. It is recommended by the UN that a NAP should be developed in an inclusive and participatory manner, including with the close involvement of NHRIs.[182] NPMs should emphasise this recommendation to ensure their meaningful inclusion in the process and use this opportunity to present their findings and recommendations.

Some countries in the EU have developed NAPs on human rights. In **Croatia**, the Ombudsman submitted comments to the NAP, with the NPM commenting on the part that concerns persons deprived of their liberty. The NAP was described to be a useful tool to refer to when conducting visits and entering into a dialogue on implementation. In **Austria**, the process of developing the NAP is coordinated by the Ombuds institution. However, the members of the NPM conducting the visits (visiting commissions) have so far not been included in the process.

In **Estonia**, there is no general NAP on human rights but several thematic development plans have been developed. The NPM was consulted in the drafting process and invited to comment, i.e. regarding the Development Plan for Children and Families, and the Development Plan for Prevention of Crime and for Criminal Policy.[183] Moreover, the Estonian NPM has been consulted in the process of preparing reports to international organisations, e.g. the state report to the CAT. There is no clear policy about how far it can and should participate in the preparation of a state report. Consequently it has expressed the need for guidance from the SPT in this regard.

The authors of this Study would recommend that NPMs play a key role in the development on NAPs concerning the measures for torture prevention taking into account their specific first-hand knowledge and expertise and advocate for an overall inclusive and participatory process. The NAP can then be used as a reference in the follow-up process to monitor and promote the implementation of NPM recommendations.

Moreover, the process of developing a state report to treaty bodies and the UPR provide a good opportunity for NPMs to give their expert input and promote the implementation of its recommendations. In so doing, however, they should maintain their professional distance and independent position towards the state. Some NPMs regularly give their input into the relevant treaty body reporting process – especially as concerns the CAT Committee. The authors of this Study consider that this is another good means by which NPMs can promote their recommendations at the national and international levels.

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[182] OHCHR ‘Handbook on National Human Rights Plans of Action, Professional Training Series No. 10’ (2012).

[183] Estonia, Ministry of Justice, ‘Guidelines for Development of Criminal Policy Until 2018’ <http://www.just.ee/sites/www.just.ee/files/guidelines_for_development_of_criminal_policy_until_2018.pdf>.

2. COMMUNICATION AND COOPERATION WITH OTHER ACTORS

As noted at the start of this Study, cooperation and dialogue are basic principles underpinning any follow-up and monitoring of the implementation of NPM recommendations. In addition to establishing and maintaining a constructive dialogue with relevant state authorities, as discussed in Part II, Chapter 1, the process of follow-up and implementation of recommendations can be strengthened by establishing a dialogue and cooperation with a range of other actors at the national, regional and international levels.

The SPT explicitly recommends that '[t]he NPM should maintain a dialogue with other relevant national and international actors, including civil society and consider all relevant information received from them.'[184] Moreover, the SPT states that an 'NPM should establish sustainable lines of communication […] with other relevant national and international actors in the field of prevention of torture, including the SPT, and with civil society organisations' and 'establish a strategy for cooperation with other national and international actors, including the SPT, on prevention of torture and on follow-up of cases of suspected or documented torture or ill-treatment'.[185]

Our research identified that developing a relationship with national actors such as members of Parliament, professional bodies, CSOs, and the media can help to strengthen follow-up and encourage implementation, although there was no consistent practice among the NPMs for working with these actors. Similarly, good lines of communication between the NPM and other NPMs, as well as relevant international and regional bodies, such as the SPT and CPT, can also assist the process of follow-up and the sharing of good practice. Thus, many considered that NPMs should be flexible and inventive regarding their communication and cooperation with other actors. It is considered useful to strategically identify the stakeholders relevant for the follow-up to its recommendations and establish various channels of communication, coordination and possibly even cooperation with them.

2.1 Interaction with Parliament

Parliament is an important partner for the NPM that can help generate greater visibility of its findings and promote the implementation of its recommendations.

Most NPMs interact in one way or another with their national Parliament. Most common is the presentation of annual reports, while a few NPMs can even bring specific issues of implementation to the attention of the Parliament. Some NPMs had positive experiences with exchanging information as well as discussing specific issues in specialised committees (e.g. on human rights, prisons, health care etc.). Additionally, interaction with parliamentary groups and individual MPs may be useful for follow-up to recommendations. As it is not always easy to identify the right contact points, a thorough analysis and documentation of stakeholders is advisable.

However, while regular interaction with Parliament is important, it should be informed by a clear strategy. Caution should be exercised in view of potential political influencing with the objective of maintaining a position of an independent and neutral actor.

Parliament was identified as an important partner for NPMs and can support the implementation of recommendations by setting relevant topics on the political agenda, influencing public opinion, holding authorities to account, developing policies, and passing the necessary laws. Nevertheless, the discussions and consultations held in the framework of this Project indicated that there was no consistent approach for engaging with members of Parliament and the extent to which NPMs were able to establish a constructive dialogue with Parliament varied considerably among NPMs. This may depend in part on the composition of the NPM: if the head of the NPM has held a political role in the past, for example, this may impact negatively or positively on its ability to interact with Parliament and Parliamentarians.

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[184] SPT, UN Doc CAT/OP/1, para 23.
[185] Ibid paras 30–32.

There are a number of ways in which NPMs generally engage with Parliament:

Presentation of reports to Parliament

The SPT recommends that the state should ensure that the annual report of the NPM 'is presented to, and discussed in, by the national legislative assembly, or Parliament.'[186] This not only helps to underpin the principle of transparency but can also provide a platform for dialogue between the NPM and the legislature. Moreover, in light of the express mandate set out under the OPCAT for NPMs to provide proposals and observations on existing or draft legislation,[187] the SPT also recommends that NPMs advocate and lobby with parliamentarians for necessary legislative changes and their implementation.[188] The extent to which the presentation of annual reports before Parliament impacts on implementation depends in part on the depth and detail of the recommendations that are contained in the reports. As noted above, this varies significantly from NPM to NPM.

In most countries the NPM's annual reports are submitted to the Parliament; especially for Ombuds institutions this is a common duty (e.g. in **Austria, Croatia, Cyprus, Portugal** etc.).[189] Some NPMs also present and discuss the report in the plenary or sessions of special committees (e.g. in **Austria, Bulgaria, Croatia, Cyprus, Estonia, Slovenia**, etc.). In **Portugal**, after the delivery of the Ombudsman and NPM report to Parliament and its publication online and in the Official Gazette, they are summoned to a meeting with the Parliament's Committee of Constitutional Matters and Fundamental Rights, to discuss the content of the report. One MP serves as rapporteur of the Committee, drafting a document on the annual report that is finally discussed together with the Annual report in a plenary session of the Parliament. In **Croatia**, the Ombudsman report is even put to a vote, although the Parliament does not have the possibility to reject it.[190] While this may increase the likeliness of Parliamentarians to participate in discussions, a no vote was said to have been problematic in the past.

Presentations in Parliament may provide for a useful forum to strengthen the visibility of the NPM and its positions and to discuss issues of implementation. However, in some institutions despite a requirement to lay the annual report before Parliament, this can be little more than perfunctory and debate may not necessarily follow. Some NPMs, particularly those embedded within Ombuds institutions (e.g. **Austria, Estonia**), enjoy a right to speak in the Parliament. This has at times been a useful platform for follow-up, for example, in **Estonia**, the right to speak was *inter alia* used to discuss the issue of rehabilitation of children with addiction. In the framework of the discussion, the NPM also organised a roundtable in Parliament. Other NPMs attend parliamentary hearings or debates upon request (e.g. in **France, Netherlands**).

Bringing issues of non-implementation before Parliament

A particularly interesting tool is the express right enjoyed by a few NPMs to bring issues of implementation before Parliament. For example, the **Bulgarian, Croatian**, and **Portuguese** NPMs have the possibility to inform the Parliament if recommendations are not being implemented.[191] In addition, the Portuguese Ombudsman Statute equally provides for the possibility that '[i]f the executive body of a local council does not comply with the recommendations of the Ombudsman, he may address the deliberative assembly';[192] and '[s]hould the Administration act in defiance of his recommendations or should it refuse to cooperate

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[186] See SPT, UN Doc CAT/OP/12/5, para 29.
[187] Art 19(c) OPCAT.
[188] SPT, UN Doc CAT/OP/1, para 28.
[189] E.g. Austria, Law of the Austrian Ombudsman Board, art 148; Cyprus, Cyprus, Ombudsman law, art 12.
[190] BIM and HRIC, 'Baseline study on follow-up of NPMs in the EU: Country Chapter Croatia' (November 2014).
[191] For example art 7 of the Croatian Ombudsman Act states: *"If the bodies mentioned in the paragraph 3 of this article have not in a proper term taken measures in accordance with his requests or in accordance with his recommendations, the Ombudsman shall inform about that the Sabor of the Republic of Croatia (Parliament) and appeal to the public. The Ombudsman may publish his warnings, notices, requests and recommendations in the means of public communication, and those institutions have to publish them."*
[192] Portugal, Ombudsman Statute, art 38(5).

as requested, the Ombudsman may address the Parliament stating the reasons behind his actions'.[193] This gives the NPM very useful leverage towards the authorities and increases the possibility of parliamentary involvement in the follow-up process.

➡ Cooperation with special committees and parliamentary groups

Many NPMs attend parliamentary sessions relevant to their work, mostly specialised committees, (e.g. **Croatia, Cyprus, France, Malta, Slovenia, the UK**), on invitation or on their own initiative. parliamentary committees were seen by these NPMs to be a useful means to engage in a meaningful way with members of Parliament and advocate for implementation of their recommendations. They have moreover said to be a very useful entry point for communication and cooperation with Parliament, leading to parliamentary debates and the ordering of studies on NPM relevant subjects. For example, the **Croatian** NPM has recently presented a consolidated report on general problems in psychiatric care institutions to the parliamentary Human Rights Committee, to which it also invited directors of psychiatric institutions and relevant ministries. The presentation generated great interest among Parliamentarians and was widely reported in the media, with a tangible impact for the concerned institutions. The Croatian NPM has therefore stated that equivalent interactions with the Parliament will play a prominent role in the NPM's future follow-up strategy. In **Austria**, there is a special Ombudsman Committee that deals with the issues the Ombudsman addresses to Parliament, including those relevant to the work of the NPM. NPM issues can however also be discussed in other committees (e.g. Social Affairs Committee).

In **Germany**, parliamentary groups have often shown great interest in the NPM's work and followed up subjects and individual visits in order to learn what happened after the visit. Moreover, for the German NPM the observation of parliamentary activities has proven useful. For example parliamentary inquiries relating to the NPM's area of work have provided it with relevant information that is consequently documented to assess the status of implementation. Such activities may moreover provide a good entry point for the follow-up to recommendations of the NPM, e.g. by advocating for necessary reforms. We were also informed of some examples where NPMs took members of Parliament on visits with them which contributed to a greater understanding of their work.[194]

➡ Informal contacts with members of Parliament

It was suggested that informal contacts with individual members of Parliament (MPs) could also be beneficial for the follow-up process. There are a number of ways in which NPMs have developed informal relationships with parliamentarians in general, although these have not necessarily been for the purpose of follow-up specifically. For this purpose, it has been suggested that NPMs could establish a list of influential Parliamentarians or those well-disposed to the work of the NPM.[195] For example, as a result of its good contact with the Parliament, the **German** NPM is sometimes approached by Parliamentarians before they make a parliamentary inquiry or to receive input into background papers. Similarly, in **Estonia**, the NPM advisers are often approached to provide their expertise to parliamentary processes. In **France**, members of Parliament have the right to conduct visits to places of detention and could be invited to participate in an NPM visit to enhance the dialogue. This possibility has however only be used once. For the **Hungarian** NPM individual and informal contacts to Parliamentarians have proven useful to raise issues of concern and place them on the agenda of specialised committees or the plenary

In some countries cooperation with the Parliament may be particularly challenging due to a federal system distributing competences among federal and state authorities (such as in **Germany** where the main competences for police and justice lie with the states (*Länder)* requiring interaction with all 16 state

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[193] Ibid art 38(6).

[194] Comments provided by Mari Amos, April 2015.

[195] See Summary of the Workshop report Vienna/Bristol 2014.

Parliaments). Moreover political instability (as identified by the NPM in **Bulgaria**) may be an obstacle to cooperating with the Parliament.

Cooperation and communication with the Parliament may be achieved through different channels. While the presentation of an annual NPM/Ombudsman report is common, it may not always lead to a fruitful discussion on implementation, in part because the level of detail on the recommendations included in the report varies significantly among NPMs. Thus, the engagement with specialised committees or 'friendly' MPs or parliamentary groups may be particularly useful. In general, it was considered that a more targeted and strategic cooperation can be achieved by carrying out a stakeholder analysis and documentation of the MPs responsible and interested in supporting the NPM's positions. The consulted NPMs however also expressed caution as cooperation with Parliaments could also lead to the actual or perceived politicisation of the NPM, and the topics it brings forward could be used selectively to serve political interests rather than the persons affected. Thus, it was suggested that NPMs should be careful to maintain a professional distance in order to preserve their independence and avoid politicisation. The extent to which these tactics were employed by NPMs in the context of follow-up specifically, however, was difficult to discern from our research.

2.2 Interaction with the Judiciary

The interaction with the judiciary remains a challenge for NPMs. While most have recognised the important role of judges in the prevention of torture, there remains a reluctance among some NPMs to cooperate with the judiciary due to perceptions that this may interfere with judicial independence.

In some jurisdictions where supervising magistrates or the judiciary have a role in oversight of detention, this provided opportunities for interaction with the NPM. In addition, NPMs have also found ways of engaging with the judiciary, including informing them of the NPM's activities, and through meetings and participation in events with judges. One NPM invites judges to the final meetings with the prison director, while another has intervened as an expert in judicial proceedings. Moreover, working groups and advisory councils appear to be a useful *forum* for a regular interaction with the judiciary. Finally, in countries where judges have a visiting mandate, the benefit and necessity of cooperation is self-evident. The need to engage prosecutors has also been mentioned as important by NPMs in some jurisdictions.

Overall, there seem to be different ways in which NPMs can cooperate with the judiciary without any risk of interfering with judicial independence. In view of the key role of judges in the prevention of torture such cooperation is moreover necessary. However, most NPMs remain cautious and have expressed the need for guidance from the SPT as well as further discussion on this subject.

Although all NPMs acknowledge in general the important role for the judiciary in the prevention of torture and other forms of ill-treatment, many of the NPMs consulted do not have an institutionalised form of communication and cooperation with the judiciary. This was claimed to be due both to reservations on the part of the judiciary to cooperate with NPMs and the NPMs' fear that interaction would interfere with judicial independence, as well as partly due to the specific mandate of Ombuds institutions, that is restricted to the control of the actions of the executive branch. However, a few NPMs already have experience in cooperating with the judiciary that provide interesting entry points for further reflections on strengthening cooperation.

➡ Submission of reports

For example in **France**, the NPM disseminates its annual report to judges including the Supreme Court as well as the appeal courts, to increase the awareness of the work of the NPM. Similarly the **German**

NPM sends its report to the Association of Judges but has not yet received a response. The **Polish** NPM generally sends its visiting reports to the competent court supervising the relevant place of detention.

Cooperation with visiting judges

A particularly interesting process of interaction has evolved in **Slovenia**, where judges are obliged to regularly visit detainees and inquire about their treatment. In order to strengthen the dialogue with judges, raise their awareness about the issues detected and follow-up individual cases of violations, the NPM has invited court presidents to final meetings with prison directors. In addition, in some states judges may visit places of detention, including care homes and psychiatric institutions in order to process their cases.[196]

Participation in court proceedings

In France, the NPM has participated in court proceedings. The General Controller had been requested to appear as a witness in an individual case. However, it argued that testifying in an individual case on the general situation of a particular place of detention would have been in violation of his duty of confidentiality.[197] Moreover, it intervened during an administrative court proceeding following the urgent recommendations on the 'Baumettes' remand prison in Marseille and proceedings initiated by an NGO in order to achieve emergency repairs in the prison. The French NPM is also considering intervening before the Supreme Court in specifically important cases and has written an *amicus curiae* brief in a case before the ECtHR. Although participation by NPMs in court proceedings is uncommon, there is considerable potential for such opportunities to be used with respect to follow-up on recommendations.

Meetings and exchanges

In addition, some general opportunities for NPMs to interact with the judiciary were identified, although the extent to which these are specifically relevant to follow-up is not always clear. For example, in **Austria**, representatives of the Ombudsman participate in *fora* where judges are present (e.g. seminars, ongoing trainings, etc.) to explain the NPM's mandate and to discuss issues of relevance for both institutions. In **Estonia** the Ombudsman (Chancellor of Justice) is a member of the Council for Administration of Courts that mainly deals with administrative questions but provides an excellent forum for dialogue with judges. The **French** NPM has had several meetings with judges including the head of Supreme Court. Some NPMs have noted that another possibility to interact with the judiciary is to invite judges to events and to participate in training for the judiciary (e.g. in France). A permanent interaction with the judiciary can be found by integrating them in working groups or, as in **Portugal**, nominate a judicial representative to be part of the inter-institutional advisory council (see Part II, Chapter 2.4). While this does not yet seem to be the case in the examples mentioned, the described fora could also be used to specifically discuss the issue of (non) implementation of recommendations and the role of the judiciary. The NPM in **Luxembourg** furthermore emphasised the need for trust building that has to be bolstered by professional legal competence 'as each professional group, including judges, speak their own language.'

Overall, therefore, one could conclude that in many jurisdictions cooperation between NPMs and the judiciary appears to be a particularly underdeveloped and sensitive area. At the same time the experience of a few NPMs shows that there are many useful ways to cooperate without any risk of interfering with judicial independence. In addition, there is a need to consider further how such opportunities can be extended with respect to follow-up on recommendations. At the consultation workshops of this Project, many NPMs have expressed a need for further reflections on good ways to interact with the judiciary and guidance in this respect from the SPT.

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[196] Comments provided by Mari Amos, April 2015.

[197] For more information on the French NPM´s intervention before the *Cour d'assises* see <http://www.cglpl.fr/2013/intervention-de-jean-marie-delarue-devant-la-3eme-section-de-la-cour-dassises-de-paris/>.

2.3 Interaction with civil society

The cooperation and communication with CSOs is seen as crucial for NPMs, given their important role in the prevention of torture.

All NPMs exchange information with CSOs, mostly *ad hoc*, e.g. before visits, and some NPMs have regular or institutionalised exchange with CSOs, e.g. through periodic meetings, in working groups or in inter-institutional advisory councils. However, it appears that the communication with CSOs has not often been specifically or systematically used to strengthen the implementation of recommendations of the NPM.

Civil society encompasses a range of actors including interest groups, professional organisations (e.g. bar associations, medical associations, etc.), research institutes and universities. While some NPMs already exchange regularly with such institutions, the interaction could be strengthened, to benefit from their specific expertise as well as their leverage on promoting NPM recommendations.

CSOs are considered to play a very important role in monitoring places of detention, promoting the prevention of torture, providing assistance to torture survivors, among other activities, in many EU member states. Therefore, they can be important actors in the process of following up and advocating that the recommendations of the NPM are implemented. Contrary to article 11(c) OPCAT, which obliges the SPT to cooperate with 'organisations working towards the strengthening of the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment', the OPCAT does not provide any corresponding obligation on NPMs to cooperate with CSOs. However, in its 'Analytical self-assessment tool' the SPT recommends that NPMs 'should establish sustainable lines of communication' not only with the relevant ministerial and detention authorities but also CSOs.[198] However, the SPT does not go into detail about how this cooperation should be carried out and for what purposes. According to APT, CSOs can serve three important functions: to provide first-hand information on visiting institutions; to promote the NPM's visibility; and to assume a watchdog role and provide an external scrutiny of the practice of the NPM.[199] Strengthening the NPM's visibility can not only support the NPM in its work in general, but also help to promote awareness of the NPM among the detainee population;[200] additionally, the debate about the OPCAT[201] can contribute indirectly to follow-up and to implementation of recommendations. In turn, NPMs can also follow-up the findings of CSOs if the latter have themselves visited places of detention.

Among the consulted NPMs, cooperation and communication with CSOs was seen as very important, in particular for the exchange of information in the preparation for visits, as it might help NPMs to identify the most problematic penitentiary institutions and thus to strategically plan their visits. Furthermore, the information provided by CSOs was said to be a useful indicator of the implementation of recommendations.[202] It is common for all consulted NPMs to exchange information on the situation of detention with CSOs. NPMs are also in the position to advocate for access by CSOs to places of detention. CSOs are also perceived as an important source of information to prepare visits and reports and an important actor to follow-up on the work of the NPM on an individual level by providing e.g. legal or humanitarian assistance to victims, or on a systemic level by advocating for change. This may depend on the manner in which CSOs are able to engage with the NPM, and may differ, for example, for those NPMs which include CSOs as part of the actual NPM (e.g. Slovenia), or whether the NPM has formalised its cooperation in other ways such as through monthly meetings, working groups, etc. Some NPMs have expressed concern about the lack of reliable CSOs with expertise on the prevention of torture

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[198] SPT, UN Doc CAT/OP/1, para 30.

[199] APT, *Guide to Establishment and Designation of National Preventive Mechanisms* (2006) 69 [hereinafter: APT, *Guide* (2006)]; APT and IIHR, *Implementation Manual* (2010) 207.

[200] APT, *Guide* (2006) 69.

[201] APT and IIHR, *Optional Protocol to the Convention against Torture: Implementation Manual* (1st edn, 2005) 153.

[202] See also APT, *Guide* (2006) 69.

and other ill-treatment, particularly in relation to less 'traditional' places of deprivation of liberty such as psychiatric institutions, institutions for persons with disabilities, and juvenile centres. Others have stated that particularly in large countries, a broad cooperation with CSOs is difficult due to the many actors and a tailored interaction on a case-to-case basis would be more suitable.

➡ Integration of civil society in the NPM

The relationship between an NPM and CSOs depends in part on the extent to which the CSOs may be formally part of the NPM. In **Slovenia**, for example, CSOs (currently eight) are part of the NPM conducting visits and drafting reports and recommendations together with NPM staff of the Ombudsman office. In **Croatia**, two members of civil society and the academic community are part of the NPM and mainly participate in visits. In **Austria**, civil society experts are part of the NPM within the six regional visiting commissions. They are however not involved in the official communication with the authorities and are largely excluded from the follow-up measures taken by the Ombuds institution. In **Denmark**, the parliamentary Ombudsman has concluded formal agreements with the Danish Institute of Human Rights (the National Human Rights Institution) and the NGO DIGNITY (formerly the Rehabilitation and Research Centre for Torture Victims, to provide direct support in the delivery of the NPM mandate.[203] These bodies provide direct practical assistance and advice to the NPM through essential specialist medical and human rights experts.[204] Appointed staff from these three organisations form an OPCAT Working Group, which carries out the NPM mandate - both the inspection activity itself as well as the drafting of reports and statements concerning new legislation.[205] In addition an OPCAT Advisory Council has been established to manage cooperation between these three bodies. The Council meets regularly to discuss OPCAT related issues.[206]

➡ Regular meetings with civil society

Many NPMs also have regular meetings with CSOs, although these are usually not institutionalised but organised on an *ad hoc* basis. In **Malta**, the NPM not only exchanges information with CSOs but also specifically examines their reports. In **Portugal** the NPM has also participated in meetings organised by CSOs to present its mandate and work and discuss issues of concern. Interesting practices come from Poland and Slovenia. In **Poland**, CSOs have formed a Coalition for the Implementation of the OPCAT that meets annually with the NPM to share knowledge and experiences.[207] Additionally, there are quarterly meetings with a selected NGO and irregular meetings with others. The **Slovenian** Ombudsman organises monthly meetings with all interested NGOs on different themes, including those of relevance to the NPM.[208] The **Estonian** NPM stated that 'there is a constant on-going (formal as well informal) exchange of information about the situation in closed institutions, actual topics and problems that need to be resolved etc., between members of NGOs and advisers of the Chancellor of Justice.'[209] Additionally, the NPMs with advisory councils or inter-institutional working groups have established a forum for regular exchange with CSOs. The extent to which these meetings are used to discuss issues of follow-up, however, is not entirely clear.

Overall, although it appeared from the consultations that NPMs recognise the importance of cooperating with CSOs, this cooperation does not always extend to supporting the NPM in the follow-up to

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[203] See Denmark, Parliamentary Ombudsman, 'OPCAT Tasks General Principles' (2009).

[204] Ibid 1.

[205] Ibid para 4.2.

[206] See ibid para 4.1.

[207] Poland, Human Rights Defender, *Report on the activities of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2012* (2013) 10.

[208] Slovenia, Human Rights Ombudsman of the Republic of Slovenia, *Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013* (2014).

[209] See CoE NPM Newsletter of April – May 2011: <http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/npm_newsletter/npm_newsletter_no15-16.pdf>

recommendations. Some NPMs seemed to deliberately maintain professional distance to ensure their independence. There is still a need for a substantive discussion on how different organisations can contribute to follow-up.

➡ Cooperation with professional organisations, research institutions and academia

Civil society is understood to encompass not only NGOs but also a whole range of other civil society actors, including professional organisations, such as medical and bar associations, research institutes and universities, that have been identified as having the potential to play a useful role to support the NPM as it monitors the implementation of its recommendations.

Some NPMs already maintain good contacts with such organisations. For example the **French** NPM has signed a number of Memoranda and Agreements with existing institutions over the years, including the Defender of Rights, the National Commission on Information Technology and Liberties and the National Council of Doctors. In addition, contacts with professional unions and bar associations are regularly maintained and further developed. Through these contacts the NPM obtains useful information and can furthermore explain its recommendations. The **Estonian** NPM also meets the bar association once a year to discuss different topics related to the NPM's mandate (e.g. about state legal aid to persons in psychiatric care). The **Slovenian** Ombudsman holds talks with representatives of professional unions in the framework of visits in order to hear about their concerns. Moreover, in the past they have addressed a question of treatment to the Extended Professional Board for Psychiatry and received an answer that was used to specify the NPM's position.

The **German** NPM noted that it has had positive experiences cooperating with researchers, e.g. in the field of juvenile detention, to exchange opinions and also received support on commenting on and interpreting legislation. A recent expert conference on human rights in detention carried out with the Centre for Criminology has brought to light common interests and a potential for increasing cooperation. According to the German NPM, also a strengthening of cooperation with the German Bar Association and the General Medical Council is seen as useful and worth exploring.

In **Austria**, the coordinators of two visiting commissions of the NPM have their offices located within the Ludwig Boltzmann Institute of Human Rights, allowing for the permanent contact and communication with other torture prevention experts.[210]

➡ Institutionalised cooperation with civil society

The **Hungarian** Ombudsman is legally obliged to 'cooperate with organisations and national institutions aiming at the promotion of the protection of fundamental rights'.[211] Thus, with the designation as the NPM it has also established a Civil Consultative Body (CCB) to assist it in carrying out its duties.[212] The CCB is composed only of civil society, i.e. of four professional organisations (Medical Chamber, Psychiatric Association, Dietetic Association, Bar Association) and four selected NGOs aimed at protecting the rights of persons deprived of their liberty. They meet at least twice a year and have the mandate to suggest inspection priorities, visits, the involvement of external experts and comment on the working methods, reports, materials and publications as well as the training plan of the NPM.[213] Although the recently established CCB has not yet done it, it would in principle also be possible to deal with issues of follow-up to recommendations.

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[210] For more information see <http://bim.lbg.ac.at/en/assistance-commissions-austrian-ombudsmen-board-office-commission-4-and-5>.

[211] Hungary, Act on the Commissioner for Fundamental Rights, section 2(5).

[212] Hungary, Commissioner for Fundamental Rights, Directive 3/2014 of the Commissioner for Fundamental Rights on the establishment and rules of procedure of the Civil Consultative Body assisting the National Preventive Mechanism in carrying out its duties.

[213] See Hungary, Civil Consultative Body Directive, section 6.

The advantages of a good cooperation and communication with professional organisations are evident for NPMs. However, such cooperation and lines of communication appear in some jurisdictions to be not very well developed and considerations on which relevant organisations exist in a country and how the experiences and expertise can be used for the NPM's work would be highly useful. Furthermore there is a lack of clarity on the extent to which such contacts and relationships are used specifically with respect to follow-up on recommendations.

2.4 Inter-institutional advisory bodies

Few NPMs have inter-institutional advisory bodies that evaluate their work and can provide advice on specific issues when requested, but do not play a specific role in advising and consulting on the implementation of recommendations. However, the participation of different state actors allows for a useful forum for coordination and together with the expertise of non-state actors, efficient and realistic steps for the implementation of recommendations could be jointly developed. The linkage to the different levels of state and civil society provide the NPM with excellent entry points for coordination and leverage to achieve change.

Some countries have established advisory bodies to their NPM that are composed of state and non-state actors. Although it is acknowledged that to date these bodies have not been involved in follow-up activities, due to the inter-institutional composition and involvement of key decision-makers and stakeholders they have the potential to be useful in promoting implementation.

The **Austrian** Ombudsman Board for example is supported by a Human Rights Advisory Council (HRAC), composed by a chairperson, a deputy chairperson and 32 members, 16 being nominated by ministries and the *Länder* (states) and 16 by NGOs. While it does not form part of the NPM, it can provide advice in all areas of the NPM's activities, particularly in determining monitoring priorities as well as providing background analyses and legal opinions on human rights questions. Currently, the HRAC does not play a particular role in the follow-up process. It does not have access to visiting protocols or the communication between the NPM and the authorities on the follow-up to recommendations. The lack of involvement of the HRAC in the follow-up processed has been criticised by civil society experts who consider that this body is in an ideal position to foster dialogue between civil society and government representatives on implementation and to develop realistic and targeted solutions that would meet with acceptance by the authorities.[214] The previous advisory and monitoring body of the police, that was in place before the NPM came into existence, had established a permanent working group that continuously evaluated the implementation of recommendations and published an annual account of the status of implementation and an explanation when a recommendation was not fully implemented.

Similarly, the **Portuguese** Ombudsman is assisted by a Consultative Council composed of representatives of the parliamentary Commission of Fundamental Rights, the Supreme Judicial Council, the Supreme Council of the Public Prosecutors, the Portuguese Lawyers Bar Association, the Medical Association and the Psychologist Association, three individuals 'of recognized ethical and civic status' and two NGO representatives. Its main competences are to evaluate the activities of the NPM, namely reviewing visiting protocols and the annual report and by recommending visits. Although it is not specifically intended to discuss and follow-up on recommendations it could do so, especially as regards a specific subject.

These experiences suggest that it could be useful to reflect on how inter-institutional advisory bodies could be specifically used to consult and promote the follow-up action of the NPMs. If effective these could eventually be a good practice example for an institutionalised and targeted exchange between the key actors in the field of torture prevention.

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[214] See also BIM, Official opinion regarding the establishment of the NPM submitted to Parliament on 4 July 2011 <http://www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_06859/imfname_224762.pdf>.

2.5 INTERNATIONAL COOPERATION

2.5.1 Cooperation with other NPMs

Cooperation among NPMs in Europe has been useful to exchange ideas on common issues of concern, working methods and institutional practices. Multilateral and bilateral exchanges have increased over recent years, including joint workshops, conferences and visits as well as an NPM newsletter to share views on specific challenges encountered. The consulted NPMs recommended extending these and using them to exchange on follow-up procedures as well as comparative measures for the prevention of torture that can inform the development of recommendations and plans for their follow-up and implementation. As personal meetings between NPMs are not always easy to organise and take quite some time they also expressed the need for an online forum for an easy, permanent exchange and documentation of relevant information.

During the Project workshops the European NPMs emphasised the usefulness of a peer-to-peer exchange for their work and mentioned several good examples of multilateral and bilateral cooperation.

The South-East Europe NPM Network (SEE Network) is one example of multilateral cooperation, which evolved out of a CoE NPM Project that brought together and fostered a European NPM Network financed by the EU and the CoE. The NPM Network Project held thematic meetings every two months, joint onsite visits, annual NPM Heads and Contact Persons' meetings and issued a bi-monthly NPM Newsletter from 2009/2010 to 2012.[215] A strand of the Project remains in action, namely the bi-monthly European NPM Newsletter, sent to all CoE region NPMs and a wide circle of interested third parties including the SPT, CPT and many NGOs.[216] It gives updates on the developments and news from the CoE region NPMs – as well as providing a platform whereby NPMs can pose questions to each other on particular challenges encountered and seek peer advice. Related networks, such as the International Ombudsman Institute (IOI), have also been said to influence the NPMs' work.[217] Furthermore, the NPMs in the Nordic countries (**Sweden, Denmark, Finland, Norway**) engage in lively exchange on best practises and their work in general.

Some NPMs also retain active bilateral exchanges with other NPMs in Europe, or share annual reports. For example there have been meetings between the Austrian and German as well as the Swiss NPM and joint visits were conducted by the Czech and the French NPM in France and the Czech Republic; the UK and the French NPM in France and in the UK; as well as joint visits between the Swiss, Dutch NPMs and HMIP, one body in the UK NPM.

The NPMs at the workshop described their experience with networks and exchanges as very positive, and stated that they could also be used to share experiences on follow-up practices and specific thematic topics in order to learn about good practices for the prevention of torture in other states. These could then help the NPMs in their dialogue with the authorities in order to propose concrete solutions from a comparative perspective. Thus, most consulted NPMs expressed the wish for more exchange and coordination including with NPMs beyond Europe. As personal meetings require considerable organisation and resources, NPMs at the Vienna and Bristol workshops proposed the establishment of an online-based forum of exchange between NPMs and international actors as this would not require the resource-intensive attendance at meetings.

In addition in multibody NPM structures, it was also noted that there was a need to ensure cooperation and exchange of information, including recommendations, across these various bodies to ensure joined-

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[214] 214 See also BIM, Official opinion regarding the establishment of the NPM submitted to Parliament on 4 July 2011 <http://www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_06859/imfname_224762.pdf>.

[215] See CoE website <http://www.coe.int/t/dghl/cooperation/capacitybuilding/npm_newsletter_en.asp>.

[216] See CoE website < http://www.coe.int/t/dgi/hr-natimplement/npm_newsletter_en.asp>.

[217] For more information the IOI's website <http://www.theioi.org/>.

up and cross-sector learning. This would enable the sharing of good practice and strengthen consistency across the various bodies that constitute the NPM.

2.5.2 Cooperation with the SPT

Cooperation between the SPT and NPMs is expressly promoted by the OPCAT and should be considered a guiding principle of these bodies.

Procedures have been put in place by the SPT that aid cooperation and communication with NPMs, such as the establishment of regional teams and a country focus for its members. It was considered important by those we spoke to that these avenues for dialogue and exchange of information should be used proactively by NPMs and the SPT members.

Similarly, to help establish and maintain a line of communication with the SPT research conducted in the framework of this Project found that it would be useful for NPMs to establish a focal point within their own organisation with responsibility for communicating with the SPT.

In the spirit of transparency and to assist the exchange of information NPMs should always send their annual reports to the SPT.

In order to evaluate and strengthen their activities and working methodologies it was considered important that NPMs consult guidance developed by the SPT such as the 'Analytical self-assessment tool' and the Guidelines. Useful legal, policy and strategic guidance can also be found in the SPT's annual reports.

As a further tool in follow-up activities, many encouraged NPMs to encourage their respective state to authorise publication of the SPT's visit reports.

The OPCAT expressly envisages and promotes cooperation between NPMs and SPT.[218] There are a number of procedures and opportunities that can be used to aid the establishment of effective cooperation and communication between the SPT and NPMs. First, the SPT has established regional teams and distributed responsibility for countries between the SPT members. These regional teams act as focal points for NPMs and other actors, and the identification of specific SPT members for each state party provides a useful and direct point of contact that NPMs can use to make and maintain communication with the SPT. These focal points can be useful for sharing information with the SPT generally and, if necessary, specifically raising issues of concern in relation to the findings of the NPMs and any lack of cooperation with the implementation of recommendations. Similarly, research conducted in the framework of this Project found that it would be useful if NPMs considered establishing a focal point for contact with the SPT within their own organisation to aid the process of cooperation and exchange of information with the SPT.

Under the OPCAT the SPT has a specific advisory role to play in relation to NPMs. As well as conducting 'advisory visits' to provide guidance on the effective functioning of NPMs, the SPT has developed a number of tools to help guide and strengthen the preventive mandate and potential impact of NPMs. While these do not tackle the issue of follow-up in any detail, the SPT's 'Analytical self-assessment tool' includes a number of provisions related to follow-up of NPM recommendations. For example it states that NPMs should monitor and analyse their activities on an ongoing basis and apply any lessons learnt.

In the UK the SPT´s 'Analytical self-Assessment tool' was adapted and used as a basis for conducting a survey on how recommendations are made and followed-up by the various members of the UK NPM. The purpose of this survey was to review current approaches and to use this information to feed into

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[218] Arts 11(b), 20 (f) OPCAT.

discussions on how to strengthen the impact of their work.[219] Similar exercises, using the self-assessment tool as a starting point, could be undertaken by NPMs in other countries in order to inform their approach to follow-up.

While the general statements and recommendations in the ‘Analytical self-assessment tool’ are useful in emphasising the need for a follow-up strategy, a number of NPMs consulted under this Project recommended that the SPT could consider developing more specific guidance for NPMs on follow-up and assessing implementation.

The SPT also encourages NPMs to submit annual reports, which are subsequently posted on the SPT’s website. As well as supporting the principle of transparency, submitting an annual report to the SPT can offer an additional avenue for NPMs to publicise their work, findings and recommendations, provided that such information is included in the annual report. Depending on the number of visit reports produced by the NPM, these can also be submitted to the SPT for their information. Indeed, the SPT informed us that it examines all reports it receives and provides feedback to NPMs. However, if the number of reports produced is large then strategic choices will have to be made to avoid flooding the SPT with information and ensure that any information shared is relevant, useful and for a purpose.

Prior to a visit by the SPT to a state party the NPM concerned should share a range of information with the SPT, including of course its recommendations and any data on the status of implementation. The SPT can subsequently use this information to inform its own visit, for example by deciding which places of detention to visit or any particular issues to focus on, as well as of course using the visit to discuss the recommendations and implementation measures with the NPM and relevant authorities directly.

In relation to the SPT’s own recommendations, the SPT Guidelines expressly state that NPMs should ‘[…] actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.’[220] Therefore it is envisaged that the relationship between the SPT and NPMs should be collaborative and mutually reinforcing. However, the extent to which NPMs can follow-up on the SPT’s own recommendations will depend on whether the state party concerned has agreed for these to be made public. As NPMs are not under any similar principle of confidentiality with respect to their own recommendations, there is greater opportunity for the SPT to assist the process of follow-up on the NPM recommendations and we have been informed that there have been occasions on which NPMs have approached the SPT for assistance in implementing the formers’ recommendations.[221] Moreover, the Guidelines of the SPT are currently being discussed in view of strengthening the guidance on follow-up processes.

2.5.3 Cooperation with the CPT

While the CPT is not explicitly mandated to support NPMs, the CPT’s work can be useful for the follow-up to NPM recommendations in several ways. A CPT visit can be used to support the NPM and its recommendations, for example by organising joint meetings with the authorities and the CPT raising the NPM’s concern with the authorities or in the visit report. Moreover, the NPM can use the CPT’s reports and standards to strengthen their own recommendations and their implementation. NPMs can furthermore get in contact with the CPT’s respective desk officers for guidance, although this possibility has hardly been used in the past. However, the need for a closer cooperation with the CPT was expressed by several NPMs and the establishment of a direct and permanent line of communication was proposed, e.g. through telephone.

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[219] For details of the UK’s methodology in applying the self-assessment tool in practice see UK, NPM, ‘Self-assessment of the UK NPM’ (2015).

[220] SPT, UN Doc CAT/OP/12/5, para 38.

[221] Comments provided by Mari Amos, April 2015.

In its 22nd General Report, the CPT describes the relationship with NPMs as 'united in our goals, distinct in our roles'.[222] The CPT bases its cooperation with NPMs largely on its perception of each NPM, its independence and effectiveness.[223] It generally uses its own 'measuring rods' and does not generally follow-up NPM recommendations. However, the CPT has emphasised the importance of coherent standards and methods for the prevention of torture, and the need to avoid diverging approaches that could undermine the work of both the CPT and NPMs. For that purpose, the CPT has increased its interaction with NPMs over recent years, e.g. through participation at national and international events and expressed its commitment to continue to support the work of NPMs.

While NPMs can provide valuable information to the CPT before and during a visit – e.g. on the situation in detention and which places to visit – the exchange of information from the CPT to NPMs is limited by the principle of confidentiality. However, a CPT visit can be very useful for the NPM to raise its concerns. If the state authorities agree, the NPM can take part in the CPT delegation's meetings with the authorities, especially the final meeting, to promote its recommendations and increase the visibility of its work. The CPT can further take up the concerns and recommendations of the NPM in its visit report. Moreover, NPMs are seen to be ideally placed to follow-up the CPT visits and monitor the implementation of its recommendations. This can of course only be effectuated once the NPM is fully informed of the CPT's findings and recommendations. Thus, the CPT recommends that – despite the confidentiality principle – states should submit the visit report to the NPM without delay.[224]

In the workshops most NPMs stated that they have met the CPT during its visit and have found the interaction very useful. They have also said that they follow-up on the recommendations of the CPT and use CPT recommendations and standards in their reports, recommendations, and follow-up work. Moreover, NPM participants emphasised that the 'CPT Standards'[225] have become a very important source of information and point of reference which they used in their daily work and in emphasising their recommendations. At the same time, some have expressed that the meaning and scope of the Standards are not always clear and that additional CPT guidance in this respect would be very helpful. The CPT stressed that NPMs could get in contact with desk officers at the CPT Secretariat for information and guidance. However, it was confirmed by the CPT in the workshops and consultations that there is no uniform strategy for cooperation with NPMs but it rather depends on the circumstances in each country and the effectiveness of the respective NPM. Moreover, it was stated that so far there is a lack of systematic and structured follow-up to the CPT's recommendations by the CPT itself, which is currently under consideration.

Overall, there are evident synergies between the work of the CPT and NPMs and effective coordination and cooperation can benefit their work and increase their impact. While contacts have increased over the last years, both the CPT and NPMs appear to lack a clear strategy on how to cooperate most effectively. Thus, the authors of this Study recommend that any strategic approach to follow-up procedures within NPMs should specifically address the communication and cooperation with the CPT and how it can be improved during but also in between the CPT visits. Moreover, as suggested at the Vienna workshop, it would be useful to consider the establishment of a permanent and sustainable line of specific communication with NPMs at the CPT, e.g. in form of a special phone line.[226]

2.5.4 Cooperation with the EU

In recent years the EU has become more active in the area of criminal justice and detention. However, there is a lack of coordination among the different Directorate-Generals. It was suggested that,

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[222] CPT '22nd General Annual Report 1 August 2011 - 31 July 2012', CPT/Inf (2012) 25, Strasbourg, 6 November 2012, 15.

[223] Ibid 16.

[224] Ibid 19.

[225] CPT 'CPT standards' CPT/Inf/E (2002) 1 - Rev. 2015.

[226] See Workshop report Vienna/Bristol 2014.

the introduction of a focal point for detention in the European Commission could help to address this issue. Furthermore, CSOs have criticised that many staff members working at the European Commission not only lack awareness of CPT and NPM mandates, but on fundamental rights in general and have stressed the need for more training in this regard.

So far, there is very limited exchange between EU institutions and NPMs and the SPT. Engagement between the EU and CPT appears to be on an *ad hoc* basis. There are a number of suggestions how NPM and CPT expertise could be made better use of by the EU:

It would be useful for the EU to include the CPT and NPMs more strategically in policy discussions, legal drafting and monitoring of the implementation of EU law.

The expertise of NPMs could be collected in order to make it accessible for national and regional contexts, e.g. an information hub could be introduced at the EU Agency for Fundamental Rights (FRA).

The EU could support and/or establish initiatives that would facilitate substantive exchange between NPMs, the CPT and SPT, such as networks of torture monitoring bodies. These should be set up with a long-term approach in order to strengthen relationships in a sustainable manner and might also facilitate jointly written reports by NPMs to the EU in order to contribute more effectively to policy or legislative drafting processes.

The EU could fund research on the relationship between mutual trust and fundamental rights specifically in human rights sensitive areas like freedom, security and justice

The EU could take CPT or NPM recommendations as a basis for granting funds to EU member states.

General background on role of the EU in the prevention of torture

In its 2009 resolution on the Stockholm Programme,[227] the European Parliament (EP) called for the construction of an EU criminal justice area to be developed through, *inter alia*, minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU.[228] This is reiterated in the 2011 EP Written Declaration on infringement of the fundamental rights of detainees in the EU.[229]

The Stockholm Programme also stipulated that ensuring mutual trust between member states is still viewed as one of the main challenges for the future.[230] As the principle of mutual trust implies that conditions of detention and procedural safeguards are equivalent in every State, while in reality large discrepancies exist, there is serious controversy with regard the principle's implementation and its ramifications on fundamental rights protection in Europe. Concerns exist with regard to making sure that fundamental rights obligations of the Charter of Fundamental Rights of the EU as well as the European Convention of Human Rights, by which all EU member states are bound, are respected when national authorities are implementing EU legislation. The European Arrest Warrant (EAW),[231] including the discussions surrounding

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[226] See Workshop report Vienna/Bristol 2014.

[227] European parliament resolution of 25 November 2009 on the Communication from the Commission – An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009)0090.

[228] For more information on torture prevention in the EU see the article written in the framework of this Project Birk M and Zach G, 'Torture Prevention in the EU – Many Actors, Few Outcomes?' in European Yearbook of Human Rights (2015, forthcoming).

[229] Written Declaration on infringement of the fundamental rights of detainees, from MEPs – 06/2011, 14.02.2011.

[230] European Council 'Stockholm Programme – An open and secure Europe serving and protecting citizens' [2010] OJ C115/1, para 1.2.1.

[231] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision [2002] OJ L190/1.

its implementation, is an example of the critical relationship between mutual trust and fundamental rights in general and the prohibition of torture and ill-treatment in particular.

The European Commission's Green Paper on Detention affirmed that '[d]etention conditions can have a direct impact on the smooth functioning of the principle of mutual recognition of judicial decisions. Pre-trial detainees and convicted prisoners alike are entitled to a reasonable standard of detention conditions. Prison overcrowding and allegations of poor treatment of detainees may undermine the trust that is necessary to underpin judicial cooperation within the European Union.'[232] This means that mutual trust can be undermined by the inconsistent law and practice regarding detention by member states which the EU needs to address. The EU is therefore understood to have competence also for conditions of detention in certain cases. Furthermore, the Analysis of the replies to the Green Paper on Detention highlighted 'the practical issue of finding up-to-date information concerning the prison conditions […] of other member States.'[233]

In recent years the EU has become more active in the area of justice and home affairs and has issued a number of framework decisions (FD) and, after the adoption of the Treaty of Lisbon, a number of directives that affect the sphere of torture monitoring bodies' work. This includes: the EAW, the FD on the Transfer of Prisoners,[234] the FD on Probation Decisions and Alternative Sanctions,[235] the FD on the European Supervision Order[236] as well as the Procedural Rights Package, consisting amongst others of the Directive on the right to information in criminal proceedings,[237] the Directive on interpretation and translation,[238] the Directive on the right of access to a lawyer in criminal proceedings.[239]

NPMs and the EU

While NPMs of France, Spain and UK have provided input to the Commission's Green Paper on Detention, the consultations held in the framework of this Project have shown that the majority of NPMs have almost no direct lines of communication with EU institutions, with some NPMs saying they have had no contact with EU institutions at all. The consultations also showed that for NPM staff, who often already face a heavy workload, keeping track of relevant EU legislation is a challenge. It was also noted that there have been very limited contact and cooperation between the EU and SPT, aside from a few meetings with different DGs to introduce the SPT.

At the same time it was acknowledged that NPMs could play an important role with regard to several of the fundamental rights challenges the EU is facing in the implementation of its legislation as well as, more in general, in the monitoring of the fundamental rights situation in EU member states. Indeed, NPMs' regular monitoring of places of detention generates valuable information and expertise that could

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[232] European Commission 'Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention' (14.6.2011) COM(2011) 327 final.

[233] For the Analysis of the replies to the Green Paper on Detention see the DG Justice´s website <http://ec.europa.eu/justice/newsroom/criminal/opinion/110614_en.htm>.

[234] Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union [2008] OJ L327/27.

[235] Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions [2008] OJ L337/102.

[236] Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention [2009] OJ L294/20.

[237] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.

[238] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1.

[239] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

assist the EU to address some of these challenges. For example, in the context of EU mutual recognition measures, such as the EAW or the FDs on transfer of prisoners, one of the challenges EU member states' authorities often encounter when implementing EU law - and thus when deciding on the surrender of a person or the transfer of a prisoner to another EU member state - is the lack of reliable information on detention conditions of other EU member states. NPMs' work could be used to address this shortcoming. Beyond the implementation of EU law, reports of NPMs (and of course of the CPT and SPT) can also serve as a useful source of information to monitor the fundamental rights' situation in EU member states.[240]

Nonetheless, so far neither the European Commission, nor the FRA or any other EU body regularly collect relevant and useful information produced by NPMs, nor is there any institutionalised coordination or cooperation with NPMs. One of the few exception, in this regard, seems to be FRA's recent work on forced return monitoring, which looks at the current state of play of forced return monitoring systems put in place by the EU member states under the Return Directive, and thus also to the EU NPMs, where they carry out the monitoring.[241] Still, within the EU institutions the expertise and first-hand knowledge of NPMs as well as the main torture prevention monitoring bodies remains mostly unused.

Furthermore, the consultations held in the framework of this Project clearly showed that there is a high demand for exchanging good practises and expertise between NPMs themselves, as well as with the CPT and SPT. Thus it was suggested that the EU could possibly facilitate such meetings. Due to existing workloads, it was suggested that personal meetings could be complemented by an online platform. In addition, as some topics related to the broad preventive mandate could be highly technical and specialised, it was suggested to involve also external experts, e.g. psychiatrists, doctors.

Increasing exchanges between NPMs would not only make NPMs more effective, but would also reinforce the ties between NPMs in Europe. This could help to develop 'joined-up' learning and possibly the identification of common approaches and positions, which could strengthen the input and impact of NPMs within relevant EU initiatives, for example through the drafting of "joint NPM reports" in case of important policy or legislative proposals at the EU level.

CPT and the EU

Unlike the one with NPMs, for EU cooperation with the CPT there is a structure in place at the higher political levels e.g. through a permanent high-level dialogue between the EU and CPT. However at the operational, working level the opportunity for dialogue does not appear to being in place. It was noted that there is a lack of coordination within the EU, with one DG not always knowing what the other DG does. This can on the one side hinder the exchange of information as well as cross-sector learning and decision-making within the Commission itself; and on the other side make it difficult for the CPT, as well as NPMs and SPT, to engage with relevant EU institutions in an effective and strategic way. In addition the lack of awareness of the CPT's mandate within the Commission, and the frequent change of interlocutors were identified as obstacles for a strategic and impactful engagement of the CPT, and equally NPMs and SPT. The introduction of a focal point for detention issues at the Commission was therefore suggested to aid cooperation, collaboration and dialogue between the EU and torture monitoring bodies. A recent development to foster better coordination has been the establishment within the Commission of an informal working group on detention issues, consisting of members coming from several DGs and the EEAS. The working group has met a few times.

Although cooperation appears to have improved in some areas, for example with EU agencies such as FRA and FRONTEX, the CPT is not systematically included in relevant EU law drafting processes or policy

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[240] See FRA website <http://fra.europa.eu/en/theme/asylum-migration-borders/forced-return>.

[241] See EU Court of Auditor 'The External Borders Fund has fostered financial solidarity but requires better measurement of results and needs to provide further EU added value' (Special report 2014) n 15, 33, where the Court criticised the support and subsequent funding (through the External Borders Fund) of a temporary detention centre for migrants in Greece.

discussions. There are however exceptions, such as the Green Paper on Detention, where the CPT was involved. As noted earlier in relation to NPMs, the expertise and the reports (where public) of the CPT, as well as the NPMs and SPT, could be useful for the EU to monitor the respect of fundamental rights at national level, especially within the implementation of EU law.

Moreover, at the final conference of this Project it was suggested that the EU should consider taking CPT or NPM recommendations more into account when granting funds both to EU member states and third countries, e.g. the member states of the European Investment Fund. For example, as recently highlighted by the EU Court of Auditor in respect of Greece, citing a report by the CPT, the EU should avoid funding detention centres for migrants where detention conditions are said to be in violation of the 'principle of respectful treatment and dignity'.[242] Similarly, it would be important, if EU finances for example the construction of prisons in accession countries, that these at least do not contradict existing recommendations by torture monitoring bodies.

3. PUBLICITY

A strategic approach to communications, including not only the publishing of NPM reports but also public relations, is seen as a crucial element in the work of a NPM. Publicity also has a useful role in follow-up and promoting implementation, e.g. pressure on the authorities to comply can be exerted by the publication of visit and/or annual reports detailing information on progress made in the implementation of recommendations.

The great majority of NPMs in the EU publish their annual reports and most also their visiting reports. Many also present annual reports or thematic reports in Parliament. These are sometimes followed up by press releases to better engage with the media. In order to allow for a more timely engagement with the media — not awaiting the often-lengthy process of finalisation of a report — some NPMs publish urgent recommendations or press releases directly after a visit. Beyond the publication of a report, a few NPMs also have the possibility to issue public warnings or appeals for non-implementation of recommendations.

Overall, only very few NPMs have contacts with media beyond the dissemination of a report. Many are concerned as to the unfavourable public opinion towards criminal detainees and the risk of being misrepresented in the media or a media story damaging the reputation of the NPM as an objective and neutral actor for the protection of the rights of persons in detention. To mitigate these risks, some recommended conducting a stakeholder analysis and thus identifying journalists 'friendly' to the NPM and its topic as well as being proactive in public and media relations and dedicating specific resources for public relations work. Moreover it was also suggested that it would be useful to develop an NPM communication and public relations strategy with a specific focus on promoting the implementation of recommendations.

There are several ways in which NPMs use publicity to follow-up their recommendations and promote their implementation. The most common one is the publication of and dissemination of annual and visit reports. While the publication and dissemination of the annual reports is an obligation for states parties under article 23 OPCAT, the SPT states that '[v]isit reports, including recommendations, should be published, if the NPM considers it appropriate to do so.'[243] However, in any case the SPT recommends that NPMs should establish 'a policy for publicising reports, or parts of reports including the main findings

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[242] See EU Court of Auditor 'The External Borders Fund has fostered financial solidarity but requires better measurement of results and needs to provide further EU added value' (Special report 2014) n 15, 33, where the Court criticised the support and subsequent funding (through the External Borders Fund) of a temporary detention centre for migrants in Greece.

[243] SPT, UN Doc CAT/OP/1, para 22.

and recommendations'.[244] In addition it also suggests that NPMs should 'establish a strategy for making its mandate and work known to the general public and should establish a simply [*sic*] and accessible procedure through which the general public might provide it with relevant information.'[245]

With respect to any publicity that a report and its finding generate, the NPMs consulted in this Project use publicity in two ways: on the one hand to generate more awareness and support for the work of the NPM, its findings and recommendations, and on the other to put pressure on the authorities and promote the implementation of specific recommendations. The extent to which there is publicity, however, will depend on the extent to which the recommendations are detailed in the various reports.

Publication and dissemination of annual reports

According to article 23 OPCAT NPMs are obliged to publish their annual reports and all NPMs consulted as part of this Study, with the exception of Malta do so. Moreover, some NPMs hold press conferences to present their annual report (e.g. in Austria, Bulgaria, Croatia, France) and in this framework give interviews to newspapers, TV and radio stations. Most NPMs also present annual and thematic reports in the Parliament (see Part II, Chapter 2.1).

Publication and dissemination of visit reports

While the OPCAT is silent in respect of the publication of NPM´s visit reports, the great majority of NPMs also publish and disseminate visit reports (e.g. **Cyprus, Estonia, France, Germany, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Sweden** and **UK**) while others publish a list of their recommendations (e.g. **Bulgaria, Croatia** and **Spain**). There are some NPMs that also publish summaries of their visiting reports in English, e.g. **Estonia** or **Slovenia**. The **German** NPM did not publish its visiting reports at the outset, but changed its approach in order to make them accessible to other institutions, as well as CSOs. It also aimed to increase the transparency of its work and to make it more interesting for the media.

The consulted NPMs publishing their reports consider this as an important element to generate publicity for the NPM. Moreover, the APT emphasises that it promotes transparency and accountability.[246] The published reports are considered to provide a 'reference point',[247] which helps the Government to understand the methodology and standards that the NPM applies, and contributes to the mutual strengthening of standards for detention conditions. The publication of the visit reports can be a useful and easy way to disseminate information on any measures taken to comply with recommendations in previous reports. For example in the **UK**, the HMIP publishes its visits reports to prisons and these include a section on information on progress on recommendations since the last report. At the same time, as noted above, there may be instances where more impact may be achieved by keeping a visit report confidential at first in order to build constructive dialogue with the relevant authorities. Therefore, NPMs considered it important that they should be free to make strategic decisions on the publication of their reports. In addition, NPMs need to adopt a 'do no harm' approach, and take measures to prevent reprisals or threats.

Most NPMs publish their visit reports without specifically approaching journalists and wait for the media to respond. Others, such as the HMIP in the **UK** generally share the embargoed visit reports with the local press a day before their publication, with a press briefing sometimes following. HMIP also responds to interview requests by the press. Most NPMs do not release their reports immediately after a visit but only after the internal procedures are concluded and the responsible authorities have had the opportunity to comment. This process can take up to several months and some NPMs at the Vienna workshop noted that the delay in publication can lead to a decrease of interest by the media.

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[244] Ibid para 33.

[245] Ibid.

[246] See also APT and IIHR, *Implementation Manual* (2010) 244.

[247] APT and OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Monitoring places of detention: a practical guide for NGOs* (2002) 69.

Publication of urgent recommendations and press releases

In view of the delay in publication visit reports some NPMs release a statement immediately after the visit, before the publication of the report. For example the NPM in **Portugal** issues a press release directly after individual visits if it seems useful to address some preliminary issues. The **French** NPM, after a two-week period for the authorities to reply, publishes urgent recommendations and the authorities' reply (if available) in case of particularly disturbing findings. This procedure has been used five times since the French NPM came into existence in 2006[248] and has enabled immediate follow-up action by the NPM, and a follow-up by NGOs and their lawyers, e.g. by bringing the matter to court.

The publication of urgent reports and recommendations also creates media attention that might shape public opinion and thus prompt the authorities to implement recommendations quickly, e.g. to address a particularly disturbing situation, while at the same time it gives CSOs the possibility to exert pressure on the authorities.

Direct appeals to the press or warnings regarding non-implementation

Few NPMs use specific tools in cases of continued non-implementation of recommendations. The **Croatian** Ombudsman may, if recommendations are not followed and measures not implemented within a given deadline, 'appeal to the public'. [249] The Ombudsman may also publish 'warnings, notices, requests and recommendations' by means of public communication and the institutions in charge are obliged to publish the recommendations as well.[250] So far it has however not utilised any of these measures. The NPM in **Slovenia** can issue press releases or publicise the failure to comply 'in mass media at the expense of the body if the latter, after a repeated requirement, has not adequately responded to his [the Ombudsman's] proposals or recommendations'.[251] In the past it has presented concrete findings from NPM visits at press conferences in order to generate bigger media attention and put pressure on the authorities. According to the Slovenian NPM the threat of going public has proved effective in prompting a response by the ministry on occasion. However, the response by the authorities was often not more than a generic acceptance of all recommendations rather than a detailed consideration of each. The German NPM also had a similar experience where the involvement of the press has led to recommendations being considered at a higher level, and eventually to their implementation. Today all visit reports are made public and the NPM stated that 'it seems that the announcement in the report that its content will be made public, induces authorities to reply and discuss our recommendations. So far, there is no report which has not been answered at all.'

Further public relations activities

Although publication of visits reports can be a useful means to increase awareness, it is not sufficient in ensuring that the report reaches all key stakeholders. However, only a few NPMs consulted have conducted activities beyond the publication of the reports and the providing of responses to the press.

The NPM in **Luxembourg** not only presents all its reports to the press and does press releases, but through good contacts with the media makes sure that important topics are being shown in the evening news which are viewed by a large number of citizens and influence newspapers to take up the topic.

The **Austrian** Ombudsman has recently established a working group on public relations of the NPM where the publication of NPM findings, the use of the website and dealing with the media will be discussed among the heads of the visiting Commissions and the responsible Ombudsman representatives.

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[248] For a list of the urgent recommendation of the French NPM see <http://www.cglpl.fr/rapports-et-recommandations/dernieres-recommandations/>.

[249] Croatia, Ombudsman Act, art 7.

[250] Ibid.

[251] Slovenia, Ombudsman Act, art 40.

The **French** NPM dedicates specific resources for public relations work and has a media officer who works half-time as an inspector and can thus also directly report from her work. It also increasingly uses social media channels to create visibility for its work, e.g. Twitter. Moreover, for some time it employed a photographer to join the visits, and was thereby able to provide journalists with picture material, which it said helped in increasing media interest. Nevertheless, the French NPM noted that it adopted a cautious approach towards the media, not trying to be in the media all the time but strategically deciding which topics should be publicised. The NPM tries to avoid any emotional reaction but rather to maintain a reputation as a factual, objective observer.

Another way to facilitate proactive interaction with the media is to maintain a databank of relevant and interested journalists including their topics of interests as well as their written articles as done by the **German** NPM, in order to be able to contact the right person if needed. This can also help to keep track of journalists who are favourable to the work of the NPM and perceived as partners.

➡ Proactive and strategic interaction with the media

Most NPMs consulted agreed that occasional *ad hoc* publicity activities are not sufficient to generate the interest of the media and promote the implementation of recommendations. Instead of merely reacting to the issues that come up, an NPM needs to engage proactively with the media. However, a general concern voiced at the workshops and in the consultations is that public opinion is often unfavourable to rights of criminal detainees and that publicising certain findings may even create a backlash. Another challenge is that the media are often rather focused on individual cases and scandals. Media reports will rarely be able to represent the detailed analysis contained in the NPM's reports but tend to address issues selectively according to what appears most interesting to the public. Thus, it was mentioned by several NPMs that publicity not only has potential for strengthening the NPM's work but can also misrepresent the NPM, damaging its reputation as a neutral and objective actor.

For this reason, our research found that it is important that NPMs thoroughly reflect on publicity and how to deal strategically with the media, specifically with respect to follow-up on recommendations. Any publicity and communication strategies and policies should also consider how they extend to any external experts and other persons who participate in the mandate of the NPM and what their role should be. This may require the support by media or public relation experts. While several Ombuds institutions have reported having a general media strategy, the research was not able to identify a specific NPM publicity strategy or a particular focus on how to use publicity to follow-up recommendations and promote their implementation. Many consulted NPMs however acknowledged that further reflections in that regard and the development of a specific strategy would be highly useful.

PART III:

A SYSTEMATIC CHANGE PERSPECTIVE: 10 BUILDING BLOCKS OF AN EFFECTIVE FOLLOW-UP STRATEGY

PART III: A SYSTEMATIC CHANGE PERSPECTIVE

Preliminary remarks

This Part differs from the previous one as it goes beyond the collection and analysis of good practice but proposes a conceptual framework for the development of an effective follow-up strategy of NPMs.

As mentioned in the introduction of this Study, Part III was added in the course of the Project because of two interrelated reasons: Firstly, it became increasingly clear that systematic follow-up strategies of NPMs were still lacking, a finding which was confirmed in the context of the final conference; secondly, the applicability of tools and means of follow-up depends on the context and circumstances in which an NPM operates. Thus, which tools are used and how must be embedded in an overall strategy of the NPM.

As a consequence, the authors felt that it was worthwhile to look at the experience of other organisations/ institutions, working in the broad field of human rights, and see whether their attempts to enhance effectiveness of their work can be useful for NPMs. Furthermore, academic literature was consulted in order to identify insights which can be of help to the work of NPMs.

The ten building blocks of an effective follow-up strategy of NPMs which are presented in this Part are the result of this effort. They are meant to constitute food for thought for strategic approaches of NPMs. It should be clear that this is a first attempt to present a more coherent frame for coming to grips with NPM strategising. The idea is to test it out and see whether it can be useful in practice; and how it can be improved. Feedback, comments and proposals for improvement are very welcome.

1. INTRODUCING A SYSTEMATIC CHANGE PERSPECTIVE: NPMS AS AGENTS OF CHANGE

The very purpose of NPMs can be summarised in the following way: NPMs contribute to systemic and sustainable change towards improving the treatment and the conditions of detainees and preventing torture and ill-treatment. In the light of the purpose of the OPCAT, NPMs clearly are ‘agents of change’.

This Study shows the many ways in which NPMs already contribute to a process of positive change in places of detention. The good practices described in the preceding Parts can be seen as examples where the authors of this Study think the potential of NPMs for contributing to change is particularly strong. At the same time, the research revealed that there is little concrete reflection on the actual impact of NPMs and, indeed, about the ways in which change within places under the OPCAT mandate happens. Furthermore, systematic and strategic approaches to maximising NPM’s impact are still in the process of being developed.

Several reasons might explain this: NPMs are mostly relatively young institutions. Thus, they are often still primarily concerned with ensuring a set-up according to the minimum requirements of the OPCAT (e.g. full independence from the state, developing a plan and methodology for visits etc.) and establishing themselves in the broader societal context (e.g. ensuring the authorities’ awareness of their mandate and visibility to the public). As state institutions, set up by law, NPMs are not regularly confronted with questions of impact and effectiveness. At least in EU countries, NPMs do not normally depend on donors/ external funding agencies from where impetus for evaluation has arisen in other areas. Formal working procedures, including regarding follow-up to recommendations, dominate, particularly where Ombuds institutions have been designated as NPMs; with long standing working procedures and being accustomed to a reactive and legalistic approach.

However, after almost a decade of NPM practice, the demands for accountability and for strengthening the effectiveness of the NPM’s work are increasing, both internally and externally. The 2014 Regional Forum on the OPCAT in Latin America, where participants from 17 countries from the region participated with a view to strengthening the effectiveness of preventive bodies, put it this way: ‘One of the main challenges faced by torture prevention mechanisms is ensuring that their recommendations are implemented and lead to real changes in the practice of deprivation of liberty. Impact obviously constitutes the litmus test of the work of monitoring bodies.'[252] This statement encapsulates well what surfaces as a need throughout the OPCAT implementation practice.

This need is also emphasised by the SPT's 'Analytical self-assessment tool', which states:

> The NPM should develop a strategy for its work in order to achieve the maximum impact on problems and challenges relevant to its mandate in the local context. Activities and their outcomes should be monitored and analysed on an ongoing basis and the lessons learnt should be used to develop its practices. Such an assessment could be based on a framework, starting with existing challenges, such as resourcing issues, and an assessment of activities currently undertaken and moving through a range of additional factors […][253]

This tool has been used by the **UK** NPM, which has described it as very useful for its self-evaluation and it was also in the UK that the first external evaluations of the NPM took place.[254]

There are clearly increasing reflections about the impact achieved and how it could be strengthened, both nationally and internationally. While many deem that the time is ripe for strengthening the strategic approaches of NPMs with a view to fostering their role as agents of change, the consultations and discussions held with NPMs have also shown that for most NPMs this is a new terrain.

Towards a better understanding of the theoretical basis of change

A useful approach to developing the work strategically in order to achieve maximum impact is making use of so-called 'theories of change', which shall be briefly presented to gain a general understanding of its origins and added value for NPMs:

> Theory of change can be defined as the conceptual model for achieving a collective vision. A theory of change typically addresses the linkages among the strategies, outcomes, and goals that support a broader mission or vision, along with the underlying assumptions that are related to these linkages. Theories of change can be expressed in many forms but ultimately should explain how you get from 'here' to 'there'.[255]

'Theories of change' seem first to have emerged in the 1990ies, in the context of approaches to improve evaluation of community initiative programmes in the USA. Activists and donors alike wanted to know whether and how the objectives of their programmes were achieved, or simply put, 'how and why an initiative works'.[256] A second strand was the field of international development cooperation, where earlier approaches to professionalise social practice in the form of the logical framework analysis have been supplemented by more comprehensive attempts to understand, evaluate and improve programmes within a broader policy context, applying 'theory of change' approaches.[257]

'Theories of change' have now been increasingly taken up by organisations working in the field of human rights in the broad sense, including human rights based approaches to development. Oxfam, Action-Aid, Hivos International and Amnesty International, just to mention some of the more prominent ones, employ

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[252] APT, *Regional Forum in Latin America* (2014) 72.

[253] SPT, UN Doc CAT/OP/1, para 5, where among the 'additional factors' the SPT mentions e.g. '[…] analysis of problems / challenges; and of good practices identified; cooperation with other actors; resources budgeted; strategies and working methods to be adopted when implementing activities; recommendations submitted to authorities; follow-up actions on recommendations, including dialogue with the authorities; any changes observed, and an assessment of implementation of recommendations; systematisation of observations, recommendations issued, and the responses received from the authorities, including implementation; analysis of how and why both successes and failures in effectiving [*sic*] change have occurred; resources spent; consideration for the need to develop alternative strategies or approaches.'

[254] UK, NAO, *Inspection* (2015).

[255] Organizational Research Services, *A guide to measuring advocacy and policy. Prepared for the Annie E. Casey Foundation* (WA 2007) 11.

[256] Weiss (1995), as quoted in Stein and Valters, *Understanding 'Theory of change' in international development: a review of existing knowledge* (Asia Foundation and London School of Economics 2012) 3 [hereinafter: Stein and Valters (2012)].

[257] Stein and Valters (2012) 3.

variations of a 'theory of change'-approach with a view to 'Proving and Improving our Impact', as Amnesty International calls its internal impact assessment toolkit.[258]

Theorist and practitioners alike highlight several characteristics as added values that 'theory of change'-approaches bring to the development of strategic thinking and action.[259] They appear to be very relevant in an NPM context for a number of reasons. First and foremost, a 'theory of change'-approach requires systematic critical reflection on one's ideas and assumptions about why and how change can be brought about. This is done by identifying and questioning underlying assumptions, and thus making them explicit. Secondly, it departs from linear thinking (partly present in other planning approaches) and is based on a more accurate, a systemic and comprehensive view of the social world. Thirdly, it systematically combines thinking with action in order to achieve concrete results, in this case to further the NPM's mission: to effectively contribute to a better protection of human rights in settings where there is risk of abuse.

Why should NPMs adopt a systematic change perspective?

'Proving and improving impact' is a good way of summarising the rationale behind embarking on more systematic thinking about one's work and its impact, and this rationale can be easily transferred to the world of NPMs. In more detail, the reasons can be seen as the following:

- **Enhancing accountability:** A systematic change perspective can help to show that one's work is effective and does achieve its main objectives. It thus contributes to enhancing accountability of one's work towards the respective constituencies, the Parliament in the case of most NPMs.
- **Better performance:** It contributes to improving the work and impact of organisations. This is associated with improved strategic planning, implementation, monitoring of implementation and evaluation so that lessons learned may be fed back into the on-going work.
- **More transparency:** It also contributes to make one's work transparent, which in turn leads to greater public awareness of the subject matter dealt with by NPMs, namely the prevention of torture and protection of human rights in closed institutions.
- **It strengthens strategic, conscientious and thoughtful use of resources.**

2. TEN BUILDING BLOCKS OF AN EFFECTIVE NPM FOLLOW-UP STRATEGY

As mentioned above, this Chapter presents ten building blocks which are considered to contain key elements for developing an effective follow-up strategy. They draw on different sources. They are partly based on academic insights, in particular from social sciences, on how social change can be brought about, and partly inspired by concrete practical examples of organisations trying to understand and improve their work in different areas, in particular in the fields of international development and of human rights. These (mostly civil society) approaches to systematic ways of thinking about and bringing about change are a treasure trove from which a lot can be learnt.

The insights and practical tools are adapted here to the field of preventive human rights monitoring in closed institutions by NPMs. The following general considerations should be taken into account:

- The ten buildings blocks should be understood as what the name suggests: blocks with which to build one's strategy for strengthening effectiveness and impact. The sequencing of the building blocks tries to follow the logic of NPMs' work, but they are not aligned in a rigid order. They are rather to be used in a flexible way. Experience will show what are the best ways for building an effective NPM's work.
- The building blocks vary among each other. Some contain a more general presentation of concepts and ideas, while others present very practical tools for NPMs to use.
- The presentation of the building blocks starts with a set of questions that appear to be relevant to the work NPMs before giving a more detailed explanation of the main concepts. If applicable, examples from existing NPM practice are then added.

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[258] Amnesty International, *Impact Assessment Toolkit* (2011).

[259] Stein and Valters (2012), 9-10; consultation with Amnesty International, 9 March 2015.

Building Block 1: Situation analysis

Relevant questions

- How do we make sure that we understand correctly what is happening in places of detention?
- How do we apply the fact-finding methods in an adequate way?
- How do we go about evaluating the situation? In light of which standards (national, international human rights standards, other standards)? What do we do if there are no standards? Do we use human rights standards correctly?
- How are we able to identify systemic causes and structural fault lines leading to human rights violations in closed institutions?

Any strategy to improve the situation in the areas of applicability of the OPCAT requires a proper understanding of what is happening in and at places of detention. A sound factual basis is indispensable for any attempt to achieve change. The OPCAT and the national laws implementing the OPCAT provide the necessary framework and tools for the NPM to understand the situation in places where persons are deprived of their liberty. The main tool for this purpose is the visit, including *inter alia* the unrestricted access to all places of detention and persons deprived of their liberty as well as to all relevant accompanying information.

A sound methodology for carrying out visits and tailor-made training of NPM personnel to this effect helps to ensure that monitoring bodies gather the relevant data in order to adequately understand the situation at hand in a correct way. Several NPM representatives stressed the fundamental role that sound evidence and accuracy in fact-finding play in having impact.[260]

The facts found during the visit are then evaluated against normative standards, which are typically a combination of national and international human rights standards, in particular 'the norms of the United Nations regarding the treatment of persons deprived of their liberty'.[261] The applicable international standards are a mixture of hard law and soft law, with quite detailed provisions in some areas (e.g. prisons) and a lack of clear standards in other areas (e.g. social care homes). The fact that the framework for evaluating the factual situations is a human rights framework tends to add importance to the work of NPMs. Human rights language has also by now developed into a strong moral language.[263]

In order to promote systemic/structural change, the situation analysis cannot stop at merely pointing at the problems found and assessing them against national or international standards. This is a basic understanding of any systematic approach to sustainable change. It is not about treating the symptoms but looking at the causes. This is also very clear in the OPCAT context: NPMs have to look at the systemic causes and structural fault lines which are conditioning the problems identified.[264] One can argue that this is a defining characteristic of preventive human rights monitoring as such.

Understanding the causes of human rights violations entails an analysis of their origins as well as an identification of where they are to be found. Are they rooted in legal deficiencies? Are they related to a public policy which is in contradiction with human rights principles? Are they characteristic of the broader organisational/institutional setting in which places of detention are located? Or are they directly caused by

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[260] E.g. the UK HMIP.

[261] Art 2(2) OPCAT.

[262] See APT Database on detention issues: <http://www.apt.ch/detention-focus/>.

[263] See M Midgley, 'Towards an ethic of global responsibility' in T Dunne and NJ Wheeler (eds), *Human Rights in Global Politics* (1999) 160.

[264] Implied in SPT's guiding principles to preventive mandate see SPT, UN Doc CAT/OP/12/6, para 5.

the concrete functioning of the particular place where they are found? These so called 'levels of analysis' are relevant components of a holistic approach to preventive monitoring.[265]

Quite naturally, because of the sheer impression that a visit makes on the monitors, NPMs tend to be mainly focused on the direct functioning of the particular places visited. In addition, the legislative level – i.e. problems rooted in the legal set-up – is clearly present in the thinking of most NPMs; this is probably not surprising given the fact that many persons with a legal background work in NPMs. Less clearly developed, on the other hand, is the focus on the examination of relevant public policies and their effect on problems found. Examples are found in the practice of the UK and the French NPMs which have carried out specific monitoring of public policies. The level of the higher administrative system/institutional arrangements is addressed most often in thematic reports/approaches (e.g. in Bulgaria, Croatia, France) which normally gather facts from several institutions and identify some common problems the causes of which lie at the system level. A comprehensive systemic analysis naturally requires a multidisciplinary perspective (see Chapter I.4 above).

Building Block 2: Visualising desired change

Relevant questions

- Are we clear what we are trying to accomplish? What is our purpose?
  What is our mission/vision?
- What are the areas/dimensions in which we think change needs to take place: in the treatment of persons deprived of their liberty and conditions of detention, in the concrete functioning and the management, at the organisational level/institutional arrangement, at the level of public policies, at the level of the law?
- What needs to change in terms of the responsible authorities' knowledge and understanding, skills, attitudes and values? In terms of the culture in places of detention?
- How can recommendations best express and contribute to the change we want to see? Are the recommendations SMART?

A 'change perspective' requires considering the question about the desired outcomes or the vision of the world that an organisation is working for.

The OPCAT itself contains such a vision in its text: The ultimate goal of the visiting system is 'to prevent torture and other cruel, inhuman or degrading treatment or punishment' and 'improving the treatment and the conditions of persons deprived of their liberty'.[266] In other words, the OPCAT contains the vision of a world free from torture and cruel, inhuman or degrading treatment and in which the treatment and the conditions of persons deprived of their liberty are in line with their inherent dignity and their human rights.

Mission statement

This vision must be made operational. The mission statement of an organisation translates its vision into a statement of purposeful action. In other words: Mission statements are expressions of the basic purpose of an organisation in the light of the vision it has for the future. 'As a formal document, a mission statement should answer some very basic, yet vitally important questions: what is our purpose? Why do we exist? What are we trying to accomplish?'[267] Mission statements as planning tools have first been developed in the business field, but they have increasingly been taken up in other contexts. Research has found that mission statements help clarify a shared identity of organisations and thus are helpful for improving strategic planning and performance.[268]

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[265] APT, *Monitoring Police Custody* (2013) 16.

[266] Arts 1 and 19 (1) OPCAT.

[267] Bart C, 'Industrial Firms and the Power of Mission' (1997) 26 Industrial Marketing Management 371.

[268] Ibid.

The members of the **UK** NPM and the **French** NPM[269] have mission statements, without necessarily calling it such. The **German** NPM has expressed its basic purpose in a slogan it uses for its work, prompted by the need to have its mandate better understood by its counterparts. Other NPMs consulted do not yet have a clear mission statement; some have referred to the respective laws that establish the NPM or article 19 (1) OPCAT.

Dimensions of change

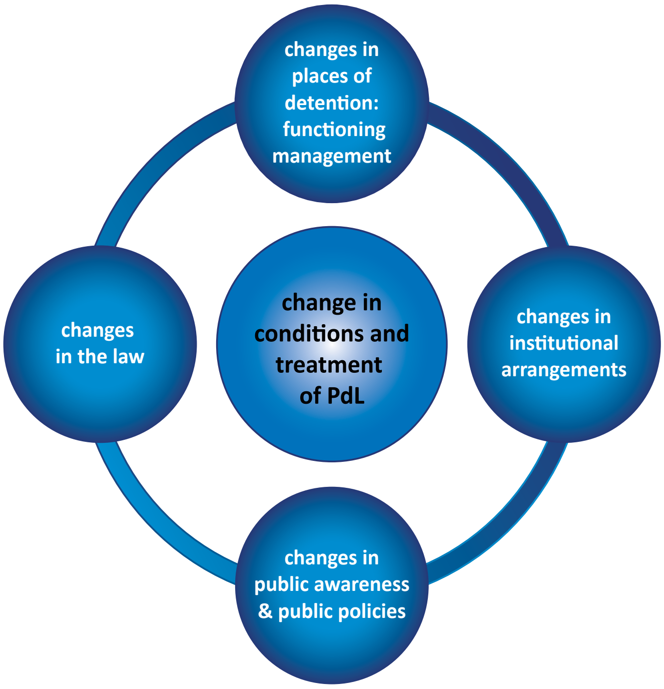
It is a common feature of a systematic change perspective to identify the dimensions in which change needs to take place. Two relevant experiences are worth mentioning here which can serve as guidance for NPM strategic planning.

In its approach to impact and evaluation,[270] Amnesty international has identified four dimensions in which desired human rights change should take place; 1. Changes in people's lives, 2. Changes in practice and accountability, 3. Changes in law, policies and standards, 4. Changes in civil society, media and other channels of influence. These dimensions also provide the analytical frame for its situation analysis.

If these 'dimensions of change' are translated into the NPM context, they could read as follows:

At the core, change must take place with regard to the treatment of persons deprived of their liberty and the conditions of detention. In order to achieve this:

- Changes might need to take place in the concrete functioning and management of the respective place of detention,
- Changes might need to take place at the higher organisational level/institutional arrangement, e.g. in the ministerial bureaucracy, in the central prison administration
- Changes might need to take place at the level of public awareness and public policies, e.g. with regard to public security
- Changes might need to take place at the level of the law


changes in places of detention: functioning management
changes in the law
change in conditions and treatment of PdL
changes in institutional arrangements
changes in public awareness & public policies

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[269] The mission statement of the French NPM says as follows: 'Sa mission: veiller au respect des droits fondamentaux - Le Contrôleur général veille à ce que les personnes privées de liberté soient traitées avec humanité et dans le respect de la dignité inhérente à la personne humaine' <http://www.cglpl.fr/missions-et-actions/sa-mission/>; for an English translation of the mission statement see <http://www.cglpl.fr/en/the-tasks-of-the-controleur-general-des-lieux-de-privation-de-liberte/>.

[270] Amnesty International, *Impact Assessment Toolkit* (2011), further developed in 2013, see <http://www.intrac.org/data/files/Afternoon/3Amnesty_International_-_final.pdf>.

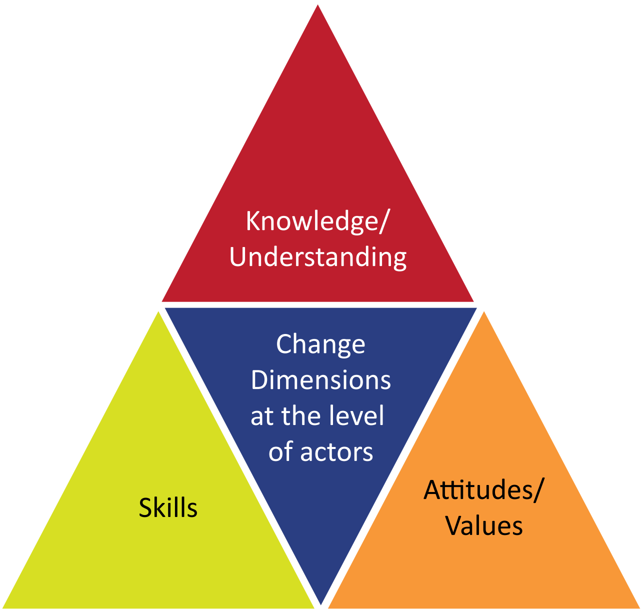
Dimensions of change regarding duty-bearers and rights-holders, including issues of institutional culture

Another way of looking at dimensions of change is to focus on the three dimensions of learning that have been developed in the context of human rights training and education, but can be seen to be relevant in the broader field of human rights practice. These dimensions envisage enhancing the capacity of duty-bearers to be better able to respect, protect and fulfil human rights as well as rights-holders to claim their rights.[271] In the context of preventive monitoring, the most relevant duty-bearers are staff and management at places of detention as well as officials at the system administration/ministry level.

A wide range of activities, including but not limited to awareness raising and capacity development measures, might be undertaken to promote change in the following three dimensions:

- Change at the level of **knowledge and understanding** about required professional and human rights standards, including about the role and function of NPMs
- Change at the level of **skills** so as to perform one's duties according to the required professional and human rights standards, in particular communication skills
- Change at the level of **attitude and values** which determine how people perceive others, in particular detainees, how they act in the world, their worldview and their concept of the human being.

While NPM's presence in closed institutions and their interviewing of detainees probably contributes to a stronger awareness and knowledge about their rights, a more systematic way of thinking how NPMs could strengthen rights-holders' capacities for claiming their rights seem not yet to exist.[272]



It is clear that, in particular, changes at the level of attitude and values can only be understood through a close look at the institutional culture and group dynamics, operating in places of detention as 'total institutions',[273] with very specific characteristics. The prevailing culture within places of deprivation of liberty has a direct bearing on the behaviour of people, both staff and detainees. If NPMs want to achieve positive human rights change in closed institutions, they need to be aware of cultural risks factors in places of detention as well as the characteristics and strategies for human rights based culture change.[274]

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[271] UN General Assembly (UNGA) Res 66/137 (19 December 2011) UN Doc A/RES/66/137, art 2.

[272] This question was strongly raised during the final conference in April 2015.

[273] 'Total institutions' are defined as 'places of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.' See E Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books 1961) xiii.

[274] For a detailed discussion of how preventive monitoring can change institutional culture in detention see APT and Penal Reform International (PRI), *Institutional Culture in Detention: a Framework for Preventive Monitoring* (PRI 2013).

As mentioned in Part II, Chapter 1.6, several NPMs such as **Cyprus, Estonia, France, Poland** carry out training for authorities as part of their mandate and have stated that this does not only aim at strengthening the participants' activities but also provides an excellent opportunity to influence their attitudes and values. Particularly innovative are the current reflections within the **Dutch** NPM on how to more effectively bring about change in the attitudes of staff in places of detention. NPM representatives have recently received a targeted training on this subject and are also considering how their working methods could be adapted, e.g. in regard to the content of the reports and its direct dissemination and presentation to detention staff.

Expressing change in SMART recommendations of NPMs

NPMs make recommendations to the authorities with a view to achieving the objectives of the OPCAT. They express what they want to see as concrete change. The question of how to develop recommendations in a way that they have an impact has been a prominent topic in the evolving practice of preventive monitoring in recent years. This is understandable in view of the paramount importance of recommendations in the monitoring process: Recommendations contain a condensed problem description and they provide for an orientation of the NPM's work which does not remain stuck in the problem mode and focus on the past, but is fathoming possible solutions to the problems found.[275] Solution orientations are common in business contexts for understanding how change can be brought about.[276]

Guidance on how monitoring bodies should draft their recommendations can be increasingly found both in NPM practice as well as practical guidance papers that organisations specialised in this area have produced. The double SMART model proposed by APT has been of particular relevance in this field (see Part I, Chapter 4.2.1) Several of these criteria have great importance from a change perspective, in particular: Recommendations should state the underlying causes of a problem (Root cause awareness); they should identify the levels as well as the actors relevant to achieving the change sought (right targeting); they should take into account the relative hierarchy of importance of problems according to human rights criteria in conjunction with limited resources and the complexity of change processes (prioritisation). Concrete examples of NPMs using the double SMART model can be found in Part I, Chapter 4.2.1.

Building Block 3: Reflecting about how change happens and clarifying assumptions

Relevant questions

- What are the assumptions underlying our work? What do we think about how change in the places we visit happens?
- Do we have a forum where we discuss such issues?
- How do we use the multidisciplinary composition and/or expertise of an NPM effectively? Also in the follow-up process?
- Does the lawyer's view dominate the approach to work? How can we ensure that views from other disciplines are stronger represented?
- How are the insights from social sciences used for developing a change perspective? For example: Are we aware of possible 'windows of opportunity' opening up to achieve an improvement the NPM had been working for? Do we pay adequate attention to presenting and framing our messages so as to achieve a better acceptance by the authorities, as well as the general public?

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[275] See APT, *Making effective recommendations* (2008).

[276] See e.g. P Jackson and M McKergow, *Solutions Focus, The simple way to positive change* (Nicholas Brealey Publishing 2002).

The need to clarify underlying assumptions

Members of NPMs (but also other actors) approach the monitoring work with a set of beliefs and assumptions about how change will happen. These beliefs shape their thinking about what conditions are necessary for success, which tactics to undertake in which situations, and what changes need to be achieved along the way.[277] However, these assumptions are seldom made explicit and/or put to critical reflection, although this is what any thorough strategic approach with a view to maximising change requires. It is safe to say that not clarifying assumptions has detrimental consequences on the rigor of planning and performing of action. In the NPM context, it has a further problematic aspect: Given the legally required multidisciplinary composition of NPMs, it complicates proper communication among persons trained in different disciplines and thus having very different outlooks and probably basic assumptions about the social world. The recurrent theme of the legal outlook dominating the approach of NHRIs[278] and human rights studies in general[279] is best to be dealt with in this light. While research about and practice of introducing change perspectives stress this element of constant reflection on one's basic assumptions as essential, it constitutes - at the same time - a fundamental challenge to implementation in practice.[280] It requires an open mind which is able to think out of the box as well as adequate structures and time dedicated to it.

Use of multidisciplinary composition of NPMs for follow-up action

The need for interdisciplinary approaches is clearly recognised in the field of preventive monitoring. According to article 18 OPCAT, NPMs must be composed of persons with the required capabilities and professional knowledge. Such a multidisciplinary composition is necessary in order to achieve a comprehensive understanding of the situation in places of detention. The Regional Forum on the OPCAT implementation in the Latin American region stated in this regard:

> There is a need to integrate the respective knowledge of the different disciplines represented in the NPM into a fully transdisciplinary approach of the mechanism. Such an approach would allow the merging of the knowledge of the different disciplines, resulting, in particular, in a more complete understanding of the reality and the causes of torture and ill-treatment and of effective solutions to tackle them.[281]

It is quite clear that interdisciplinary perspectives should be present throughout the whole monitoring process, including follow-up.[282] For example, with regard to the role of physicians and other health professionals, the APT says the following:

> A physician, or other health professional, can provide an invaluable contribution to the drafting of the report and recommendations, to the dialogue with the authorities, as well as to the follow-up of the implementation of recommendations. A medical perspective is vital in all reflections on preventing torture and improving the system and conditions of detention, including observations on legislative aspects.[283]

Most NPMs seem to use the multidisciplinary composition and/or expertise for their visiting work and less for follow-up measures, and engagement of experts from disciplines other than the legal is still mostly *ad hoc* and not systematic. An example of the use of multidisciplinarity in follow-up is the practice of the **Bulgarian** NPM which included its medical expert in discussions with the authorities regarding a new

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[277] S Stachowiak, *Pathways to Change: 10 Theories to Inform Advocacy and Policy Change Efforts* (Organizational Research Services 2013) 1 [hereinafter: Stachowiak (2013)].

[278] International Council on Human Rights Policy (ICHRP), *Performance and Legitimacy: National human rights institutions* (2nd edn, 2004) 77.

[279] M Freeman, *Human Rights, An Interdisciplinary Approach* (2nd edn, Polity Press 2011) 8.

[280] Consultation with Amnesty International on 9 March 2015.

[281] APT, *Regional Forum in Latin America* (2014) 29.

[282] APT, *Visiting Places of Detention: What role for physicians and other health professionals?* (2008) 7.

[283] Ibid 7.

draft law on psychiatry. While the **Austrian** NPM systematically separates visiting work (which is done by multidisciplinary commissions) from its follow-up work (which is done by the lawyers at the Ombuds institution), it says to include experts from other disciplines occasionally in its follow-up work.

The recourse to social sciences for understanding the social world

Change processes in different areas can only be understood in a comprehensive inter/transdisciplinary manner. They require an appropriate understanding of the social world in which actions take place, and this can be greatly helped by the insights of different social sciences. 'Knowing about existing [social] theories may sharpen your own thinking, provide new ways of looking at the policy world and give you a leg up on developing your own 'theory of change'.[284] Fortunately, this aspect is increasingly taken up in human rights research, where attempts have been made to systematically engage in a process of communication with different social sciences in order to understand which social action can help to promote human rights.[285]

It is obvious that the limit of this Study only allows pointing to the existence of some relevant insights from social sciences and their possible use for strategic follow-up action. The following two examples of social science knowledge seem particularly relevant.[286]

Example 1: Knowledge about social and political dynamics - Detecting and using opportunities for change

Political science research regarding policy processes has helped to understand developments in the political and social sphere which might have a bearing on the question whether recommendations might lead to effective change. There are several approaches which tend to show that under certain circumstances the probability that a reform proposal might be accepted is higher. The prospects of an issue receiving attention in the policy process depend on whether some of the following three streams converge at a critical moment, opening up a 'policy window' for change.[287] These three streams are:

- Problems: the extent to which a social situation/event is defined as a problem, which is grave enough to warrant action and which is considered to be solvable. Dramatic events might be particularly relevant for highlighting such a problem.
- Policies: the extent to which proposals to solve this problem exist and are brought to discussion
- Politics: the extent to which a favourable political constellation or 'mood' exists or can be created for tackling the issue concerned.

Policy windows might appear suddenly, e.g. through dramatic events, or they might be predictable, e.g. elections. Equally, this research suggests that policy windows can be created in a deliberate way.

The implications for NPMs using these insights are the following:

- NPM could be strategically aware of such developments or try to create them, in particular by impacting problem definition through its reporting on the problems found.
- NPM could develop concrete policy options for tackling the problems identified.
- NPMs could systematically try to influence the political climate through networking and media work.
- NPMs would need the appropriate knowledge and skills as well as the necessary reputation for doing so.

In the consultations with NPMs, several examples of NPM practice surfaced which could be seen in this

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[284] Stachowiak (2013) 3.

[285] R Goodman, D Jinks, A Woods (eds.), *Understanding Social Action, Promoting Human Rights* (Oxford University Press 2012).

[286] See Stachowiak (2013), where the author has identified 10 social science theories deemed helpful to inform advocacy and policy change efforts in a 'theory of change' approach. Stachowiak distinguishes between 'global theories', representing more comprehensive worldviews of how change happens, and "tactical theories", which are more geared to specific tactics to be employed throughout the process of making change happen.

[287] See N Zahariadis, 'Ambiguity and Multiple Streams' in Sabatier P and Weible Ch, *Theories of the policy process* (3rd edn, Boulder/Westview 2014) 25; and Stachowiak (2013) 7.

light, in particular where dramatic events produced a heightened awareness of an existing problem. In **Bulgaria**, a crisis involving refugees from Syria prompted a reorientation of the priorities of the NPM, dealing with these aspects in a thematic report. In **Austria,** a media scandal regarding a person neglected in a prison created the conditions for the Austrian NPM putting its proposals regarding the treatment of persons detained under measures for mentally ill persons on the agenda. Another example comes from **Sweden**, where the NPM is currently looking into how CPT's announcement of a visit in 2015 can be used to raise its profile and in that way ensure that its proposals are considered. On the other hand, most NPMs stated that they would be rather weary of using political events for agenda-setting purposes.

➡ Example 2: Knowledge about communication - Messaging and Framing

Research, challenging the conventional school of thought that suggested people make rational decisions by weighing the costs and benefits of different options, has shown individuals develop different preferences according to the way that options are presented or framed.[288] In particular, options presented in a positive light lead to different decisions in dilemma situations from the ones presented in a negative light. But framing of the issue is not the only relevant factor for taking decisions. The values, norms and habits of the decision maker, are also of importance.

The basic insights of the relevance of framing might be used by NPMs in different ways:

- NPMs should think carefully about how they develop the messages geared towards the target audience, including in the dialogue with the authorities, but also towards the general public. In particular, they can reframe problems and policy proposals in a way that might enhance acceptability.
- NPMs might develop relevant knowledge and skills within their structure or cooperate with other stakeholders in order to make sure this knowledge can be used.
- Messaging and framing would obviously be part of a broader strategy of follow-up.

In the consultation process, only the **Czech** NPM said it uses these insights in a deliberate way by getting the advice of an external argumentation and negotiation specialist for writing reports and recommendations. Several other examples surfaced which showed a more intuitive understanding of the relevance of messaging and framing. For example, several NPMs (e.g. the **Estonian** NPM) highlighted that in their dialogue with staff at places of detention they systematically highlight the positive role that the NPM´s work could bring to them, effectively introducing a different frame for viewing the NPM.

Another example, not from the NPM world, but still from the human rights monitoring field, was the initiative of the former **Austrian** Human Rights Advisory Board (predecessor to the HRAC to the NPM), which successfully induced the Austrian Ministry of Interior to (re)conceive police work more in terms of human rights protection: While police obviously will interfere with human rights, its main purpose is to undertake action in order to protect human rights. This led to an organisational development project in the Austrian police, which is based on a comprehensive understanding of human rights.[289]

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[288] A Tversky and D Kahneman, 'The Framing of Decisions and the Psychology of Choice' (1981) 211 (4481) Science, New Series, 453; Stachowiak (2013) 16.

[289] On the background and content see Austria, Federal Ministry of Interior, *Polizei als Menschenrechtsorganisation* (2009).

Building Block 4: Understanding who and what really counts: stakeholder analysis

Relevant questions

- Who are the stakeholders (groups, organisations, individuals) affected by or affecting implementation of NPM recommendations?
- What is the interest of the stakeholder in having/not having the change desired by the NPM?
- What is the power of the particular stakeholder to promote or block the change desired?
- What is the relative power of the NPM to achieve results?
- In which areas and in which way can we strengthen our capacities so as to achieve more impact?

Carrying out of a stakeholder analysis is nowadays a standard part of any strategy development. As is the case with many other tools for strategising, the stakeholder analysis has been developed in the business (ethics) area, from which it has moved to other fields.[290] There is no accepted definition of the concept of stakeholders.[290] For the purposes of this Study, the term stakeholder is used to signify 'any group or individual who can affect or is affected by the achievement of the organization's objectives'.[292]

There are different ways of mapping and analysing stakeholders. An approach that appears particularly useful for the NPM's work and, more generally, for human rights work[293] is a power-interest grid:

Stakeholders are assessed according to two variables: 1. what is the interest of the stakeholder in the change desired by the NPM happening/not happening? 2. What is the power of the particular stakeholder to promote or block the change desired?

In taking interest as a criterion, stakeholders can be preliminarily categorized in one of the following groups:[294]

- movers/promoters – those who want change to happen and contribute to it;
- blockers – those who might hamper change;
- floaters – those who do not have a clear position.

A stakeholder analysis can be undertaken in relation to specific issues or change proposals which have been identified in the situational analysis. How does this work in concrete terms? The stakeholders that are capable to impact solutions to a concrete problem are first identified and can then be located in a diagram, structured along the two axes of interest and power.

The following diagram, which is based on the model of Amnesty International, shows a tentative stakeholder analysis. A situation analysis has surfaced a problem of prevalence of racial discrimination in the police and judiciary in a European country. In a brainstorming session, persons participating in the strategy process would 1. identify the relevant actors that might affect or be affected by any action to address this problem and 2. map them on the basis of this simple power-interest grid:

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[290] The landmark text on the stakeholder approach is E Freeman, *Strategic Management: The Stakeholder Approach* (Pitman 1984) [hereinafter: E Freeman (1984)].

[291] S Miles, 'Stakeholder: Essentially Contested or Just Confused?' (2012) 108 Journal of Business Ethics 285.

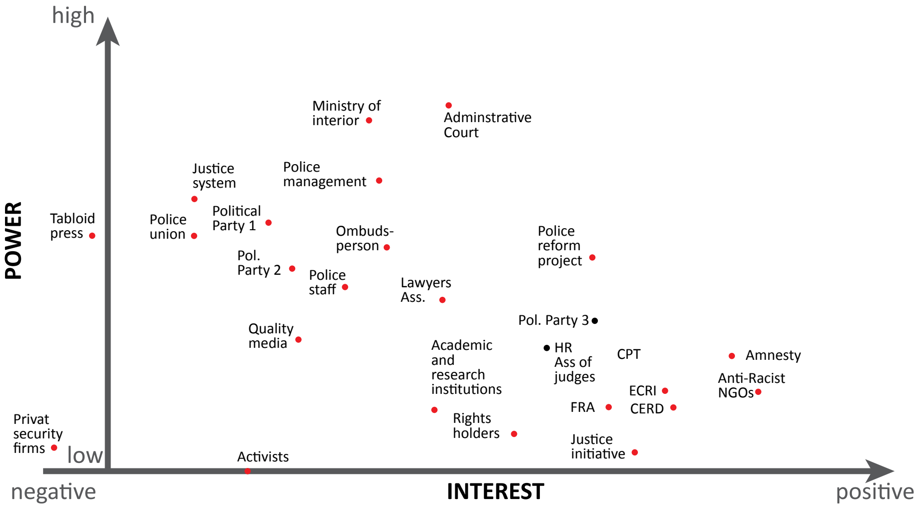
[292] E Freeman (1984) 46.

[293] See Amnesty International, *Tools, Techniques and Guidelines* (*Appendix to Impact Toolkit*) (2011), 7 [hereinafter: Amnesty International, *Appendix to Impact Toolkit* (2011)].

[294] I Retolaza, *Theory of Change, A thinking and action approach to navigate in the complexity of social change processes* (UNDP and Hivos 2011).

Situation analysis – Racial discrimination in the police and judiciary in European Country X

STAKEHOLDER ANALYSIS



The result is a tentative picture of the particular forces at play. It allows a first grasp of the prospects/difficulties in achieving the change and, very importantly, an indication regarding which stakeholders would have to be worked on in order to get the change realised. Naturally, the outcome will be that the interest of the most powerful actors would have to change and/or the power of those with a strong interest would have to increase.

Summing up: On the basis of the identification of a concrete problem and the desired change, the following steps need to be undertaken in a stakeholder analysis:

- Step 1: Identification of relevant stakeholders in a systematic way
- Step 2: Locating of stakeholders in the power-interest grid
- Step 3: Assessing each stakeholder with regard to its relative power and interest as well as susceptibility to influence or its power potential
- Step 4: Drawing conclusions for concrete change strategies

Several NPMs have indicated that they do a basic form of stakeholder analysis, but no NPM seems to use this tool in any systematic manner. Several NPMs stated that they knew their stakeholders in terms of the authorities to be targeted or they had good cooperation with relevant NGOs.

NPMs as a stakeholder – the relative power of NPMs

The concept of power emerges as fundamental in this approach to stakeholder analysis, and, more generally, occupies a prominent place in the context of thinking about how change in society can be brought about.

In the context of the NPM's work, it is worth remembering that a fundamental function of human rights monitoring is the protection against abuse of power. In situations of a radical imbalance of power in places of deprivation of liberty, with its specific characteristics of being opaque to the outside world, distant from society and dehumanising, human rights purport upholding human dignity and the concrete human rights of persons deprived of their liberty.

In trying to uphold human rights within their mandate, NPMs do not normally have explicit enforcement powers and cannot order specific changes.[295] Their power only encompasses making recommendationsand

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[295] For the examples of the few NPMs with enforcement powers see Part II, Chapter 1.7.

taking persuasive action within a process of dialogue with the authorities in order to have their recommendations implemented. This obviously raises questions regarding the relevant social and political forces which determine the impact NPMs can have and the relative power of NPMs to achieve results. The following issues appear to be relevant:

- It is essential to thoroughly analyse the relative power of the NPM, in particular its cultural capital (technical knowledge, argumentative and communication skills, strategising skills) and its symbolic capital (credibility, reputation, institutional basis within state structure).[296] A useful tool for doing this could be a SWOT/C (Strengths, Weaknesses, Opportunities, Threats/Challenges) analysis of the NPM.
- Tailor-made measures to enhance the capital of NPM should be undertaken, both at the organisational level (e.g. strategy development, communications planning) and at the level of individual members (training).

Several NPMs have indicated that are well aware of these considerations, if not explicitly, at least intuitively. In particular, there was a keen awareness of the fact that the relative power of NPMs depended on the professionalism in their analysis, the strength of their institutional basis and their reputation as credible and impartial actors. These factors were for example strongly stressed by the French and UK NPMs.

Building Block 5: Reflecting on availability and suitability of tools for follow-up action

Relevant questions

- What are the tools and instruments available to the NPM for achieving the desired change?
- What are the strengths and shortcomings of these tools?
- Which tools are suitable in the given circumstances for achieving the desired change?

In a systematic change perspective, a reflection on the tools and instruments that are available and suitable for achieving the desired change is fundamental.

What are the tools at the disposal of NPMs? According to the OPCAT, the main tools are the visits, the reports about the findings and pertinent recommendations as well as the dialogue with the competent authorities. Furthermore, NPMs can submit proposals and observations regarding legislation. The SPT further specifies the tools in its ‘Analytical self-assessment tool’: the dialogue with the competent authorities might be written or oral,[297] NPMs shall ‘maintain a dialogue with other relevant national and international actors, including civil society’,[298] ‘sustainable lines of communication’[299] with all relevant interlocutors shall be established. In addition, the NPMs should establish: a mechanism for communicating and cooperating with the competent authorities, a policy for publicising its reports or parts of it, and a policy regarding thematic reports.[300] Also, NPMs should develop a strategy for making its mandate and work known to the general public.

While this enumeration covers the main tools, the list is certainly not exhaustive in view of the dynamic nature of the concept of prevention of torture and the resulting need of taking suitable measures to this effect.[301] NPMs should develop whatever means they deem adequate for achieving their purpose, in the words of SPT, ‘to maximize [the] preventive potential and impact.’[302]

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[296] For proposals to strengthen the effectiveness of NHRIs see ICHRP, *Assessing the Effectiveness of National Human Rights Institutions (*ICHRP and OHCHR 2005) [hereinafter: ICHRP, *Assessing the Effectiveness* (2005)].

[297] SPT, UN Doc CAT/OP/1, para 22.

[298] Ibid para 23.

[299] Ibid para 30.

[300] Ibid para 31.

[301] SPT, UN Doc CAT/OP/12/6, paras 2 and 3.

[302] Ibid para 5(e).

PART III: A SYSTEMATIC CHANGE PERSPECTIVE

Any strategically oriented approach to follow-up needs to thoroughly address the choice of tools and their suitability for achieving the desired change. While a range of follow-up tools are already used by NPMs (as described in Chapter II), systematic reflection on their suitability to achieve change appears to be largely missing. The following general thoughts on the types of tools are meant to constitute food for thought for strategising.

Follow-up visits

Strengths

- They enable direct checking of implementation of recommendations on the spot
- They create an opportunity to explain the rationales behind recommendations, if needed, and directly addressing the concerns, fear related to and difficulties of implementation
- They allow concrete advice at the place of detention to be given, if this is compatible with the self-understanding of NPMs

Shortcomings

- They require a lot of resources
- They cannot easily address the broader change dimensions (e.g. the institutional arrangements and the policy level)

Written communication

Written communication is a fundamental part of any bureaucratic procedure, and in particular Ombuds institutions tend to have a strongly developed written communication culture.

Strengths

- It provides records of the communication and thus constitutes a ‘permanent’ means of communication
- It allows for detail and precision

Shortcomings

- It creates/maintains a clear distance between interlocutors and offers no possibility to clarify possible doubts and/or misunderstandings
- It potentially creates a defensive attitude of the counterparts as possible fears cannot be dealt with directly

Oral/personal communication

Strengths

- It constitutes a more comprehensive channel of communication, involving non-verbal aspects
- It is better suited to reaching the change dimensions of awareness and attitude
- It allows for a direct way of dealing with underlying fears and misunderstandings
- It can serve well for building trust

Shortcomings

- It entails the danger of losing the necessary distance to the interlocutors, in particular to authorities
- It is an unsteady form of communication and does not provide for written records.

Mixed working groups with state authorities

Strengths

- They allow for a regular and institutionalised dialogue between NPMs and authorities
- They help to build a better understanding of the mandate and approach of the NPM on the side of the authorities
- They help to better understand the concrete conditions and circumstances of implementation

- They help to achieve change at the systemic/structural level by involving the higher responsible authorities

Shortcomings

- They entail the danger of losing the necessary distance to the authorities
- When elaborating concrete proposals for change, NPMs might feel they are acting on the verge of their mandate.

Training/Awareness raising/capacity building measures

Strengths

- Well-conceived and well targeted training for relevant stakeholders can create a greater awareness of the work of NPMs and can contribute to enhanced reputation among key stakeholders
- Well-conceived and targeted training can promote knowledge about and attitudes favouring upholding of human rights in places of detention

Shortcomings

- Carrying out of trainings for duty-bearers is located at the edge of NPM's mandate
- Professional awareness raising and training measures require resources as well as specific skills which might not be easily available.

Commenting on/Developing legislative and policy proposal

Strengths

- Commenting on existing or proposed legislation as well as proposing legislative changes allow contributing to change at the system level of the normative framework, which is of fundamental importance.
- As Ombuds institutions have a long experience in legislative work, there is adequate technical knowledge and skills available for this task.

Shortcomings

- Engaging in the drafting of legal and policy proposals is time-consuming, requiring a lot of resources.

Building Block 6: Strategic networking, including relations with the media

Relevant questions

- Who are the individuals and organisations with the same core beliefs regarding the problems the NPM identifies and the desired changes the NPM proposes?
- How can we coordinate and cooperate most effectively to effectuate change?
- What is the division of roles and responsibilities among these partners?
- How can the NPM use the media to strengthen its follow-up action, coupling advocacy and communications/media work?
- What is the media's potential of influencing relevant public policies?
- What would be the adequate media strategy and communications plan in this regard?
- What resources, knowledge and skills are needed within the NPM to implement the media strategy and communications plan?

Planning of concrete actions to achieve the desired change is necessarily located in a broader relational context. The SPT is very clear that NPMs need to establish 'sustainable lines of communication […] with other relevant national and international actors in the field of prevention of torture […] and with civil society actors'.[303]

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[303] SPT, UN Doc CAT/OP/1, para 30.

Research has found that policy change can be effected through coordinated activity among individuals and organisations with the same core policy beliefs.[304] These core beliefs refer to the seriousness of the problem, its causes, society's ability to solve it and the ways of addressing it. Agreement over the core beliefs is relevant for building sustainable networks and coalitions among relevant actors, including from civil society. Such a focus on shared core beliefs can help establish working relationships with organisations that otherwise might be very different from NPMs.

Application of these insights to NPM strategic networking might include:

- systematically reaching out to groups with shared belief on problems identified in the monitoring process;
- working with civil society actors on the basis of a division of labour according to the specific mandate and roles (e.g. regarding advocacy as well as strategic legal action by lawyers' networks);
- working with other actors who could give technical advice to implement recommendations
- working together on influencing public opinion and awareness (dissemination of OPCAT relevant topics, mass media, etc.)
- building partnerships regarding OPCAT related research and information exchange.

Any successful networking among actors with different characteristics, mandates and outlooks requires clear attention to two interrelated aspects: Firstly, a proper clarification of the respective roles and responsibilities with a view to using the respective strengths of actors involved in the change process in the best way. Secondly, proper attention to establishing transparent and respectful professional communication among the different actors. Furthermore, it is also essential – as a reminder of a basic characteristic of a systematic change perspective - to clarify assumptions about how change might be effected. Finally, NPMs would have to decide what the appropriate level of participation of others in the shaping of their change strategies should be.

Several NPMs have developed networking activities with a range of actors (see Part II, Chapter 2). However, they are not yet used strategically - in particular for follow-up.

Communications and media relations

It is stating the obvious to say that media, including social media, play an essential role in modern societies. More precisely, empirical research has consistently demonstrated that the mass media significantly influence the public agenda: Issues that are salient or present in the media are also those that are in the public awareness.[305] In doing so, the media shape reality rather than merely reflecting it. This is also valid for the social media. Media constitute the primary source of information of most people. But the media is not only 'successful in telling us what to think about, but they also can be successful in telling us how we think about it'.[306]

In view of this strong importance of the media in agenda-setting and in framing of objects of public discussion, NPM change strategies need to pay careful attention to the media and develop an effective approach to communications planning.

The following points appear to be relevant:

- Media's potential of influencing relevant public policies with regard to issues of concern to NPM should be thoroughly analysed.

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[304] See H Jenkins-Smith and others, 'The Advocacy Coalition Framework – Foundations, Evolution and Ongoing Research' in Sabatier P and Weible Ch, T*heories of the policy process* (3rd edn, Boulder/Westview 2014) 183; regarding the "Advocacy Coalition Framework" see Stachowiak (2013) 9.

[305] For an overview of research on agenda setting by the media see M McCombs, 'A Look at Agenda-setting: past, present and future' (2005) 6 (4) Journalism Studies 543.

[306] Ibid 546.

- Thoughts should be developed with regard to a systematic coupling of advocacy and communications/media work.
- In the light of the overall change perspective an appropriate approach to communications planning should be developed.
- Communications planning would typically be based on/involve the following:[307]
    - a realistic analysis of the NPM's strengths and weaknesses (see above discussion under building block 4)
    - a careful definition of the NPM's key messages (both in terms of content and form, see above discussion about messaging and framing under building block 3)
    - a thoughtful definition of the respective audiences (depending on the desired change dimension that is being pursued through communication, e.g. police and penitentiary staff and/or management, officials in the respective authorities/ministries, members of Parliament, general population)
    - development of a media strategy and choice of appropriate techniques of media relations
- Communications and media relations require special knowledge and skills as well as an adequate structural setting.

As described in Part II, Chapter 3 of the Study there are a range of NPM practices with regard to media relations, and the French NPM even has employed a person to specifically deal with the media. However, none of the NPMs consulted have a specific media strategy relating to the follow-up of the NPM recommendations.

Building Block 7: Developing pathways of change

Relevant questions

- What change do we want to see happen? short-term, mid-term, long-term?
- What needs to be done in order for this to happen?
- What is the contribution of the NPM to achieving this change?
- Who would have to do what?
- Which resources are needed? Which resources are at the disposal of the NPM?
- Which capacity (knowledge, skills and attitudes) do the persons need who carry out the planned action?

Bringing the previous steps together, a practical change approach depicts the concrete change process in a visually simple form: this may take the form of a flowchart or a table, and may be called pathways of change.[308]

At this stage of strategising, a concrete problem area identified in the situation analysis is being dealt with, and answers to the following questions need to be developed:

- What change do we want to see happening? short-term mid-term, long-term?
- What needs to be done in order for this to happen?
- What is the contribution of the NPM to achieving this change?

The following example of a pathway of change, based on the model of Amnesty International, takes up the topic found in the sample stakeholder analysis under building block 5 and proposes a way to tackle discriminatory racial profiling in the police in a European country.

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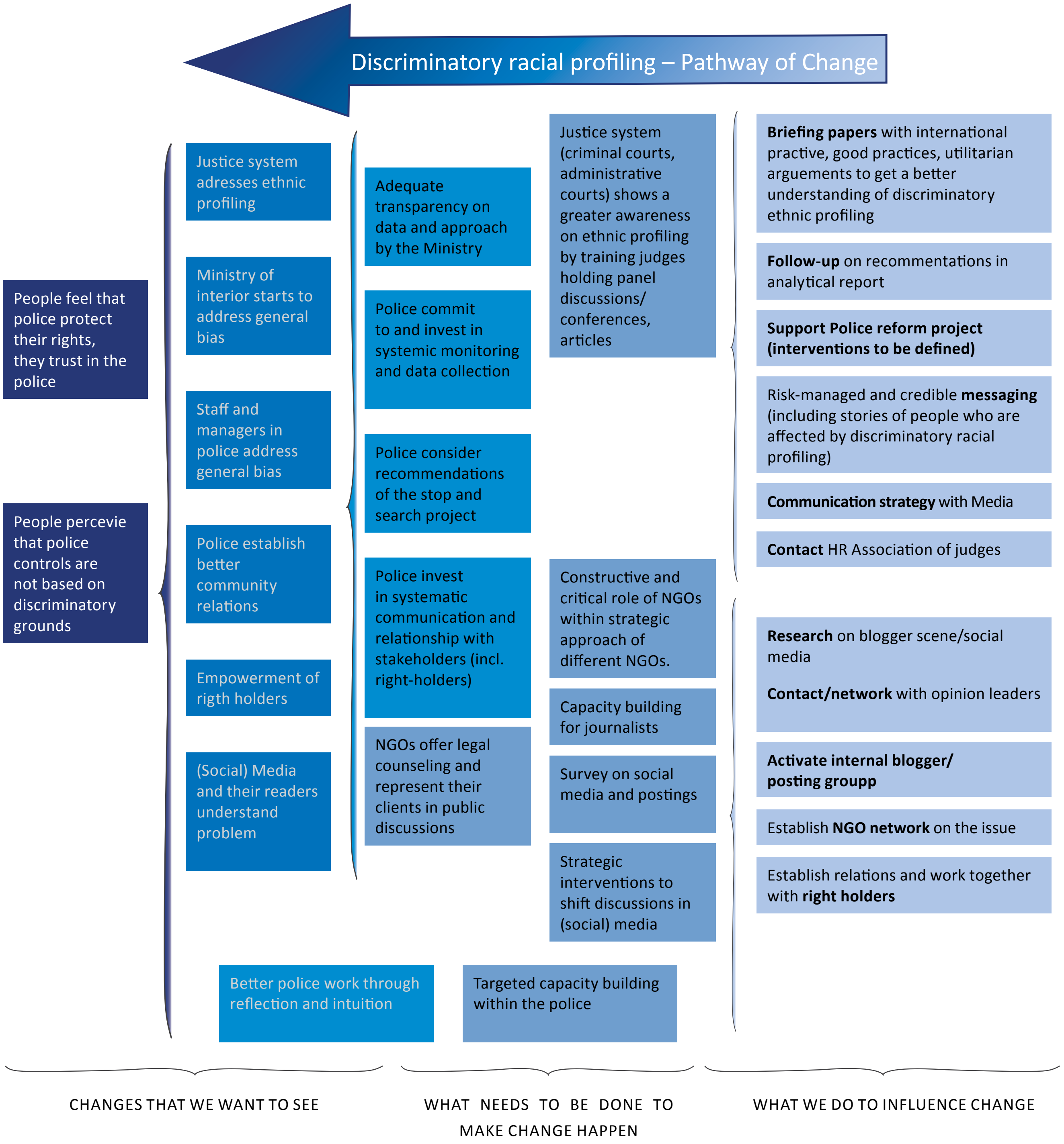
[307] For a good overview of steps communications planning and practical questions to ask see <http://aceproject.org/ero-en/topics/media-and-elections/IMPACS%20communications_planning.pdf> accessed 16 June 2015.

[308] In 'theory of change'-approaches, this flowchart or table is often called a 'theory of change'. If the term is used in this way, it refers rather to a concrete product than to the process or a way of thinking.



Discriminatory racial profiling – Pathway of Change

CHANGES THAT WE WANT TO SEE

People feel that police protect their rights, they trust in the police

People percevie that police controls are not based on discriminatory grounds

Justice system adresses ethnic profiling

Ministry of interior starts to address general bias

Staff and managers in police address general bias

Police establish better community relations

Empowerment of rigth holders

(Social) Media and their readers understand problem

Better police work through reflection and intuition

WHAT NEEDS TO BE DONE TO MAKE CHANGE HAPPEN

Adequate transparency on data and approach by the Ministry

Police commit to and invest in systemic monitoring and data collection

Police consider recommendations of the stop and search project

Police invest in systematic communication and relationship with stakeholders (incl. right-holders)

NGOs offer legal counseling and represent their clients in public discussions

Justice system (criminal courts, administrative courts) shows a greater awareness on ethnic profiling by training judges holding panel discussions/ conferences, articles

Constructive and critical role of NGOs within strategic approach of different NGOs.

Capacity building for journalists

Survey on social media and postings

Strategic interventions to shift discussions in (social) media

Targeted capacity building within the police

WHAT WE DO TO INFLUENCE CHANGE

Briefing papers with international practive, good practices, utilitarian arguements to get a better understanding of discriminatory ethnic profiling

Follow-up on recommentations in analytical report

Support Police reform project (interventions to be defined)

Risk-managed and credible **messaging** (including stories of people who are affected by discriminatory racial profiling)

Communication strategy with Media

Contact HR Association of judges

Research on blogger scene/social media

Contact/network with opinion leaders

Activate internal blogger/ posting groupp

Establish **NGO network** on the issue

Establish relations and work together with **right holders**

In order to devise concrete actions within an action plan (usually in the form of a table), responsibilities have to be defined and resources calculated:

- Who would have to do what?
- Which resources are needed?
- Which resources are at the disposal of the NPM?
- Which capacity (knowledge, skills, attitudes) do persons need who carry out the planned action?

Building Block 8: Monitoring of implementation

Relevant questions

- Do we know whether we are making progress? How do we know?
- Which information would we need in order to assess progress? What are adequate indicators?
- How do you get this information? By which methods and techniques? Who collects this information?
- What process is needed to answer systemic questions such as: Why is something happening? How did it happen? What are the implications? What needs to happen next?

Preliminary remarks on monitoring of implementation and evaluation

Monitoring and evaluation are nowadays a standard component of managing programmes and projects in public and private institutions, and have strongly entered the field of human rights in recent years. In its 'Analytical self-assessment tool', The SPT explicitly mentions that an NPM strategy should include an 'analysis of how and why both success and failures in effectiving (sic) change have occurred' as well as a 'consideration for the need to develop alternative strategies or approaches'.[309] This encapsulates well the basic idea behind monitoring and evaluation: to see what works and to adjust strategies if there is a need.

Monitoring and evaluation share some common characteristics that are briefly dealt with here. Relevant information must be generated in order to see whether there is progress towards achieving results (monitoring as an on-going function) or whether one's objectives have been achieved (evaluation as a selective exercise at specific intervals or the end of a project). In the broad field of policy influencing, including human rights, monitoring and evaluation face specific challenges, in particular with regard to finding adequate ways of measuring what is - per se – very difficult to measure. As indicated above, 'theory of change'-approaches have been developed partly as a response to these challenges, and such a change perspective could also be successfully used to inform the monitoring and evaluation of the NPM's work.

Furthermore, the following conceptual and terminological distinctions are necessary here:

- 'Monitoring of implementation' as used in the area of project and programme management refers to checking whether an organisation is advancing towards its self-defined objectives. It is obviously different from monitoring of state institutions.
- Monitoring and evaluation, as used here, is therefore also different from measuring of implementation of NPM recommendations. Monitoring and evaluation look at ways to understand one's own performance and impact on human rights. Measuring of implementation of its recommendations rather looks at understanding state action in implementing. However, some of the challenges regarding methodology, in particular the definition and use of indicators, remain essentially the same.

It would be far beyond the scope of this section to specify more in detail how monitoring of implementation works or describe the tools for doing this. Rather, only some main elements should be mentioned and reference to interesting tools made.

Concept and rationale of monitoring

Monitoring can be seen as the ongoing process by which stakeholders obtain regular feedback on the progress being made towards achieving their goals.[310] Its main objective is to reposition oneself and adjust the strategy in case of not progressing towards achieving desired results.

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[309] SPT, UN Doc CAT/OP/1, para 5.

[310] UN Development Programme 'Handbook on Planning, Monitoring and Evaluation of Results' (2009) <http://web.undp.org/evaluation/handbook/ch1-1.html> accessed 12 June 2015.

The monitoring framework.

An adequate framework for monitoring has to be developed which addresses, in particular the following two main questions:

1. Which information do we need in order to assess progress? This requires the definition of adequate indicators in relation to the dimensions of change as outlined above. This is a crucial element and the single most important challenge.[311] It is important to stress that the development of indicators needs to take place already at the beginning of any project.
2. How do we get this information? By which monitoring techniques? Who collects this information?

The monitoring process

The monitoring process encompasses the collection of relevant data, the interpretation of the data collected and their use in the ongoing process. On the basis of the data generated, a thorough reflection on the adequacy of the tools employed for achieving the desired changed and, if necessary, the adjustment of the (choice of) tools is needed. This adjustment will be called for in particular when external circumstances are changing. Furthermore, in a systematic change perspective, such a reflection necessarily involves the adequacy of the underlying assumptions.

Principles of monitoring

The monitoring process is guided by a number of principles that are described in monitoring literature and monitoring manuals.[312] Monitoring should:

- systematically look at results,
- focus on the different levels of a project (assumptions, objectives, activities),
- be systematically reflective (Why is something happening? How did it happen? What are the implications? What needs to happen next?)

Building Block 9: Evaluation

Relevant questions

- What is the relevance, effectiveness, efficiency, impact, sustainability of the NPM's actions?
- How can actions be readjusted and corrective action taken?
- Who will carry out the evaluation, what is the methodology used (e.g. internal/external; expert or participatory)?
- What is its scope and purpose?

Evaluation is a selective exercise at certain intervals or at the end of a project. It can be seen as a more rigorous and comprehensive approach to understanding impact of one's work in general or of particular strategies/activities/programmes undertaken. In the NPM context, it seems that, in particular, interventions for dealing with more structural problems underlying the occurrence of torture could benefit from evaluations. Obviously, the overall impact of the NPM would be a suitable object of evaluation.

Evaluation is a comprehensive undertaking whose importance for developing systematic strategies for follow-up needs to be stressed. What has been said above about monitoring is relevant here as well: existing models and tools need to be adapted to the world of NPMs.

Rationale of evaluation

The main objectives of evaluation are to readjust and take corrective action in case of not achieving results, to enhance accountability towards stakeholders, and, in particular, to learn from experience, both for organisational development and strengthening of capacities of staff.

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[311] ICHRP, *Assessing the Effectiveness* (2005).

[312] Amnesty International, *Impact Assessment Toolkit* (2011) 31.

The evaluation framework

Types and focus of evaluation:

- It might be carried out by persons external to the organisation or internally by staff.
- It might be expert-driven or rather participatory with strong involvement of relevant stakeholders.
- It might be on impact and/or on the process.

Standard criteria for evaluations are:[313]

- Relevance: Are we doing the right thing?
- Effectiveness: Are we doing what we said we would do?
- Efficiency: Are we making the best possible use of our resources?
- Impact: Are we making a difference?
- Sustainability: Are we generating lasting results?

The evaluation process

The following are standard steps of processes of evaluation:

1. Defining scope and purpose of evaluation
2. Develop methodology, including definition of indicators
3. Carry out the evaluation
4. Analyse and interpret data
5. Prepare report
6. Management response

So far, there seems to be very little practice of evaluations of preventive monitoring bodies. In 2014/2015 the UK National Audit Office undertook an audit of several Inspectorates of the UK, including bodies of the UK NPM. The audit approach looked at the impact of inspection, whether the strategic framework for inspection supports the work of the inspectorates as well as the effectiveness of Inspectorates.[314]

Building Block 10: Learning

Relevant questions

- How does learning work in the NPM context? At the organisational level – at the individual level
- What can we learn from experience, both for organisational development and strengthening of capacities of staff?
- How are questions about what works and how it works discussed/reflected upon?

Learning is an essential building block of any systematic change perspective.

Learning processes can be said to take place constantly and at several levels. It is an explicit objective of the monitoring and, in particular, of the evaluation phase to draw lessons from experience and feed the lessons learned back into the organisation.

Learning takes place at the organisational level by helping to adjust and refine the strategy process as well as the tools employed. Learning also takes place at the level of the individual members of an organisation, in building their capacities in the dimensions of knowledge, skills and also attitude.

Of particular relevance for learning is the fact that this change perspective requires constant reflection about one's assumptions. It thus strengthens a self-reflective attitude as well as flexibility and open-

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[313] See e.g. Organization for Economic Cooperation and Development, DAC criteria for evaluating development assistance, <http://www.oecd.org/dac/evaluation/daccriteriaforevaluatingdevelopmentassistance.htm>.

[314] UK, NAO, *Inspection* (2015) 46.

mindedness, which are key characteristics of human rights learning dimensions.[315] This potential questioning of assumptions certainly also constitutes the single most relevant challenge[316] for introducing a systematic change perspective as 'the way we always did it' - mentality is impossible to maintain. The strong focus on a sound use of specific tools strengthens the necessary skills – at the individual and organisational level – for achieving change. And the systematic use of bringing in social science insights helps to broaden the knowledge basis of NPMs.

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[315] See e.g. European Union Agency for Fundamental Rights, *Fundamental Rights Based Police Training, A Manual for Trainers* (Publications Office of the European Union 2013) 15.

[316] Consultation with Amnesty International, 9 March 2015.

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ANNEX NO. 1 QUESTIONNAIRE FOR THE CONSULTATIONS

After the discussions during the workshop in Bristol/Vienna, did you in any way enhance/change/ further reflect on your institution’s follow-up and implementation procedures?

REPORT AND RECOMMENDATIONS-RELATED

- How do you use the SMART criteria in drafting recommendations?
- To which extent are the (structural/systemic) causes of the problems identified in the report and recommendations?
- Are issues/recommendations prioritized according to certain criteria? How is this process done?

MEASURING IMPACT

- What **type of databases** do you use? What **type of information** is collated?
- How is the information used in practice? In following-up on recommendations?
- What **type of indicators or benchmarks** do you use in your work?
- Did you develop your own or do they use existing indicators or benchmarks?
- How have indicators or benchmarks been used specifically to follow-up on recommendations or to promote implementation? If so in what way?

FOLLOW-UP STRATEGY

- Is there a **mission statement** of the NPM? If yes, how is this mission statement used operationally in the process of achieving results?
- What is the **process and procedure** for planning concrete follow-up action?
- Which unit/individuals within the NPMs are charged with follow-up work
- How is (the existing) multidisciplinary/interdisciplinary expertise used for shaping of follow-up strategies?
- Are there examples where the different disciplinary perspectives have concretely enriched the follow-up action?
- How much NPM **resources** are dedicated to follow-up work?
- Have there been (political/societal) developments, which were used as **“windows of opportunity”** for achieving an improvement the NPM had been working for?
- Are predictable political events (e.g. elections, budget cycles) used for developing strategic action?
- Are there examples where the NPM has achieved change by **framing an issue** in a different way? (e.g. stressing the positive role of police for the protection of human rights)
- Are there examples where the NPM has been able to put a topic of concern on the (political) agenda? If yes, what were the conditions for doing this successfully?
- Are there examples where the NPM has developed **concrete policy proposals**, which were then taken up?
- Are there **obstacles to implementation**, which are primarily related to opposition from powerful actors (e.g., staff unions, interest groups)? If yes, how does the NPM deal with it? Have there been positive examples of overcoming this kind of obstacles?
- How are **stakeholders identified** that might be relevant for implementing recommended action? Is there a process for doing this?
- What are the **criteria for deciding with whom to cooperate**? (e.g. same views regarding certain problems, social relations of persons within organizations)

DIALOGUE WITH THE STATE

- By what means do you **establish trust** with the authorities?
- Do you have the **right to address your recommendations to any authority** deemed relevant (institution visited, ministries, legislative, executive authority)? Do you have a **legal basis** obliging States to consider your recommendations and enter into a dialogue with you?

- What function does the **final meeting** with the director have in your follow up? (e.g. discuss findings, present recommendations, build trust etc.)
- What is the procedure conducting the **written dialogue** with the authorities after a visit? What are the procedure and the rationale behind?
- How do you use **periodic visits** in the follow-up and ensuring the implementation of recommendations? Do you differentiate between regular visit and follow-up visits? What is the difference?
- Do you have any **regular formal or informal dialogue** with the authorities? What is the rationale behind?
- How often do you **comment on draft legislation and policies**? What is the procedure?
- Has your institution been involved in the development of the **National Action Plan** on Human Rights/Torture and how do you use it?
- How do you **cooperate with the Parliament**? Are their examples of good cooperation?
- How do you **interact with the Judiciary**? What are the potential and challenges?
- Is there a specific example where you have been successful in the follow-up and promoting the implementation of a recommendation, and why?

COOPERATION WITH CIVIL SOCIETY

- What **ways do you use to coordinate and cooperate** with CSOs (e.g. regular meetings, working groups, written dialogue, focal points etc.)?
- What is the relationship with **relevant professional groups** (e.g. medical associations, bar associations)?
- Where does or where could CSOs play a **role to support the implementation** of your recommendations?
- Is there an **inter-institutional advisory body** in your country and what role does it play in the follow-up and implementation process? What are your experiences and lessons learned?

COOPERATION WITH MEDIA

- What is your institution's relation to the media? Do you have a **media strategy** and what does it look like?
- What **ways do you use to coordinate and cooperate** with the media? What are your experiences and lessons learned?
- Is **media work strategically used** to help implement recommendations?
- What you do you consider as **main challenges** of working with the media?

ANNEX NO. 2 OVERVIEW OF THE CONSULTATIONS HELD IN THE FRAMEWORK OF THE PROJECT

Consultations held with NPMs		Date
Organisation	Name	
Volksanwaltschaft	Günther Kräuter, Martina Cerny, Adelheid Pacher, Michael Mauerer, Viktoria Schmid, Karin Treichl, Reinhard Klaushofer, Angelika Vauti-Scheucher, Helfried Haas, Stephanie Krisper, Franjo Schruiff	23 May 2014
Ministerie van Veiligheid en Justitie/Inspectie VenJ (Netherlands)	Femke Hofstee van der Meulen	23 Oct. 2014
Nationale Stelle zur Verhütung von Folter (Germany)	Sarah Mohsen	20 Feb. 2015
Ured pučke pravobraniteljice/Office of the Ombudswoman (Croatia)	Ivana Buljan Ajelić	24 Feb.2015
Office of the Commissioner for Administration and Human Rights (Cyprus)	Kalliopi Kambanella	24 Feb.2015
Board of Visitors for Detained Persons and the Board of Visitors of the Prisons (Malta)	Mary Anne Agius	25 Feb. 2015
Ombudsman of the Republic of Bulgaria	Lubomir Krilchev	25 Feb. 2015
Contrôleur général des lieux de privation de liberté (France)	Yanne Pouliquen	25 Feb.2015
Õiguskantsler/Office of the Chancellor of Justice (Estonia)	Nele Parrest Marje Allikmets	26 Feb. 2015
Her Majesty's Inspectorate of Prisons (UK)	Louise Finer	27 Feb.2015
Provedor de Justiça (Portugal)	João Portugal	27 Feb.2015
Ministerie van Veiligheid en Justitie/Inspectie VenJ (Netherlands)	Femke Hofstee van der Meulen	2 March 2015
Volksanwaltschaft (Austria)	Adelheid Pacher, Peter Kastner, Viktoria Schmid	5 March 2015
Varuh Človekovih Prravic RS (Slovenia)	Miha Horvat	5 March 2015
Riksdagens ombudsman (Sweden)	Lars Olsson	10 March 2015
Division of Supervision over Places of Detention Office of the Public Defender of Rights (Czech Republic)	Adéla Hradilová	17 March 2015
Service du Contrôle externe des Lieux privatifs de Liberté (Luxemburg)	Serge Legil	25 March 2015
Office of the Commissioner for Fundamental Rights in Hungary	Gergely Fliegauf	20 May 2015

Consultations held with other organisations and individuals		Date
Organisation	Name	
European External Action Service (EEAS), Working Party on Human Rights (COHOM)	Engelbert Theuermann	7 April 2014
EEAS	Wojciech Wysocki	7 April 2014
Office of the High Commissioner for Human Rights – Regional Office for Europe	Paul d'Auchamp, Dima Yared	7 April 2014
European Committee for the Prevention of Torture (CPT)	Julia Kozma	1 Sept. 2014
Organisation Mondiale contre la torture (OMCT)	Gerald Staberock	9 Sept. 2014
Amnesty International, European Institutions Office	Natacha Kazatchkine, Sebastian Rietz, Katharine Derderian	9 Sept. 2014
EU Fundamental Rights Agency	Jonas Grimheden, Gabriel Toggenburg	11 Sept. 2014
Amnesty International, International Secretariat	Maneesh Pradhan, Alexandra.Hernandez-Moreno	9 March 2015
European Committee for the Prevention of Torture	Hugh Chetwynd	10 April 2015
UN Subcommittee for the Prevention of Torture (SPT)	Mari Amos	30 April 2015
OMCT Brussels	Miguel Martín Zumalacárregui	6 May 2015
Open Society Justice Initiative (OSJI	Kersty McCourt	6 May 2015
EEAS, COHOM	Engelbert Theuermann, Elisabeth Edland	7 May 2015
Member of European Parliamen	Judith Sargentin	7 May 2015
Member of European Parliament	Marju Lauristin	7 May 2015
EU Commission, DG Justi	Jesca Beneder	7 May 2015
Amnesty International, European Institutions Office	Katharine Derderian, Ioulietta Bisiouli	13 May 2015

ANNEX NO. 3 LIST OF PARTICIPANTS VIENNA, BRISTOL WORKSHOPS AND VIENNA CONFERENCE

List of Participants at the Workshop held in Vienna on 6-7 October 2014		
1.	Buljan Ajelić Ivana	Office of the Ombudswoman of Croatia (Croatia)
2.	Beneder Jesca	European Commission, DG Justice
3.	Birk Moritz	Ludwig Boltzmann Institute of Human Rights
4.	Brinek Gertrude	Austrian Ombudsman Board (Austria)
5.	Csergö Eva	Association for the Prevention of Torture (APT)
6.	Delbos Vincent	Contrôleur Général des Lieux de Privation de Liberté (France)
7.	Eteme Johanna	Human Rights Department, Austrian Ministry of Interior (Austria)
8.	Grimheden Jonas	EU Agency for Fundamental Rights (FRA)
9.	Horvat Miha	Human Rights Ombudsman of the Republic of Slovenia (Slovenia)
10.	Kambanella Kalia	Office of the Commissioner for Administration and Human Rights (Cyprus)
11.	Kjaerum Morten	EU Agency for Fundamental Rights (FRA)
12.	Kozma Julia	European Committee for the Prevention of Torture (CPT)
13.	Krilchev Lubomir	Ombudsman of the Republic of Bulgaria (Bulgaria)
14.	Langfelder Edeltraud	Austrian Ombudsman Board (Austria)
15.	Long Debra	Human Rights Implementation Centre, University of Bristol Law School
16.	Mohsen Sarah	National Agency for the Prevention of Torture (Germany)
17.	Möstl Markus	European Training and Research Centre for Human Rights and Democracy
18.	Murray Rachel	Human Rights Implementation Centre, University of Bristol Law School
19.	Nowak Manfred	Ludwig Boltzmann Institute of Human Rights
20.	Sperlich Thomas	Austrian Ombudsman Board (Austria)
21.	Suntinger Walter	Commission of the Austrian NPM (Austria)
22.	Zach Gerrit	Ludwig Boltzmann Institute of Human Rights
23.	Zaharia Victor	UN Subcommittee on the Prevention of Torture (SPT)

List of Participants at the Workshop held in Bristol on 10-11 November 2014		
1.	Allikmets Marje	Office of the Chancellor of Justice (Estonia)
2.	Amos Mari	UN Subcommittee on the Prevention of Torture (SPT)
3.	Birk Moritz	Ludwig Boltzmann Institute of Human Rights
4.	Colgan Elizabeth	Regulation and Quality Improvement Authority (United Kingdom)
5.	Csergö Eva	Association for the Prevention of Torture (APT)
6.	Evans Malcolm	UN Subcommittee on the Prevention of Torture (SPT)
7.	Finer Louise	Her Majesty’s Inspectorate of Prisons (United Kingdom)
8.	Haile Dadimos	Human Rights Implementation Centre, University of Bristol Law School
9.	Holmlund Anna-Karin	Amnesty International
10.	Karužienė Deimantė	The Seimas Ombudsmen’s Office (Lithuania)
11.	Kozma Julia	European Committee for the Prevention of Torture (CPT)
12.	Lewandowska Justyna	The Human Rights Defender – NPM (Poland)

13.	Long Debra	Human Rights Implementation Centre, University of Bristol Law School
14.	McCourt Kersty	Open Society Justice Initiative (OSJI)
15.	Murray Rachel	Human Rights Implementation Centre, University of Bristol Law School
16.	Portugal João	Provedor de Justiça
17.	Riks Ewald	Inspectorate of Security and Justice (Netherlands)
18.	Sacco Susanna	Board of Visitors for Detained Persons (Malta)
19.	Gerrit Zach	Ludwig Boltzmann Institute of Human Rights

List of Participants at the Conference held in Vienna on 29 April 2015		
1	Allikmets Marje	Office of the Chancellor of Justice, Estonia
2	Amanbaev Zakirzhan	National Centre on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kyrgyz Republic
3	Amos Mari	SPT
4	Apostolovski Veronika	European Training and Research Centre for Human Rights and Democracy
5	Armada De Menezes Coelho Miguel	Provedor De Justiça – Mecanismo Nacional De Prevenção, Portugal
6	Bergeren Gunilla	Parliamentary Ombudsmen, Sweden
7	Bernath Barbara	Association for the Prevention of Torture
8	Birk Moritz	Ludwig Boltzmann Institute of Human Rights
9	Bonnet Anne-Sophie	Contrôleur Général des Lieux de Privation de Liberté, France
10	Buljan Ajelic Ivana	Ombudsman Office, Croatia
11	Carver Richard	Expert
12	Casale Silvia	Expert
13	Crittin Tiphanie	Ludwig Boltzmann Institute of Human Rights
14	Csergö Eva	Association for the Prevention of Torture
15	Eteme Johanna	Federal Ministry of Interior, Austria
16	Fliegauf Gergely	Office of the Commissioner for Fundamental Rights, Hungary
17	Gordon Francesca	Expert
18	Grimheden Jonas	European Union Agency for Fundamental Rights
19	Hofstee-Van Der Meulen Femke	Inspectorate of Security and Justice, Netherlands
20	Holmlund Anne-Karin	Amnesty International
21	Horvat Miha	Human Rights Ombudsman, Slovenia
22	Kádár András Kristóf	Hungarian Helsinki Committee
23	Kambanella Kalliopi	Commissioner for Administration & Human Rights, Cyprus
24	Karuziene Deimante	Ombudsman Office, Lithuania
25	Khripchenko Natalia	National Centre on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kyrgyz Republic
26	Kozma Julia	CPT
27	Krilchev Lubomir	Ombudsman, Bulgaria
28	Krisper Stephanie	Ludwig Boltzmann Institute of Human Rights
29	Kruts Oksana	Interpreter

30	Ladislav Tomeček	Office of the Public Defender of Rights, Czech Republic
31	Langfelder Edeltraud	Volksanwaltschaft, Austria
32	Lober Johanna	Independent Human Rights Expert
33	Sadowik Wojciech	Human Rights Defender, Poland
34	Majnek Tamara	Ludwig Boltzmann Institute of Human Rights
35	Mohsen Sarah	National Agency for the Prevention of Torture, Germany
36	Monina Giuliana	Ludwig Boltzmann Institute of Human Rights
37	Murray Rachel	University of Bristol, Human Rights Implementation Centre
38	Nowak Manfred	Ludwig Boltzmann Institute of Human Rights
39	Olsson Lars	Parliamentary Ombudsman, Sweden
40	Paikacheva Irina	Public Monitoring Commission of Murmansk, Russia
41	Pirjola Jari	Parliamentary Ombudsman, Finland
42	Popkova Svetlana	Public Monitoring Commission of Arkhangelsk Region, Russia
43	Portugal João	Provedor De Justiça – Mecanismo Nacional De Prevenção, Portugal
44	Puce Ilvija	Dignity - Danish Institute against Torture
45	Sacco Susanna	Board of Visitors for Detained Persons, Malta
46	Sadowik Wojciech	Human Rights Defender, Poland
47	Schmid Victoria	Volksanwaltschaft, Austria
48	Schmidt Roland	Central European University
49	Schuechner Andrea	Ludwig Boltzmann Institute of Human Rights
50	Shepherd Kim	Care Quality Commission, United Kingdom
51	Sperlich Thomas	Volksanwaltschaft, Austria
52	Stefanescu Magda Constanta	People’s Advocate Institution, Romania
53	Suntinger Walter	Independent Expert
54	Tumanyan Nina	Interpreter
54	Van Der Leede Jitske	Inspectorate of Security and Justice, Netherlands
55	Vivona Maddalena	European Training and Research Centre for Human Rights and Democracy
56	Zach Gerrit	Ludwig Boltzmann Institute of Human Rights
57	Zauner Alfred	Human Rights Consultant
58	Zhamanyeva Amina	Student at the Vienna Master of Arts in Human Rights
59	Zviagina Natalia	Public Monitoring Commission of Voronezh, Russia

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