



2016 Annual Meeting of National Preventive Mechanisms from the OSCE region

Outcome report

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This meeting was jointly organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Association for the Prevention of Torture (APT) with the support of the Foreign Ministry of Switzerland, the Foreign & Commonwealth Office of the United Kingdom, the Permanent Delegation of Germany to the OSCE and the Permanent Delegation of Norway to the OSCE.

The main objectives of the meeting were:

- Taking stock of the achievements of National Preventive Mechanisms (NPMs) and challenges in the OSCE region, 10 years after the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT);
- Empowering NPMs in the OSCE region to strategically and effectively implement their mandate, through an exchange of experiences and best practices with their peers and with other experts on preventive monitoring;
- Facilitating interactions between the OSCE, including its field operations, and NPMs and
- Enhancing joint understanding on how the OSCE, and in particular the ODIHR can strategically support effective OPCAT implementation.

This report should neither be interpreted as official position of the OSCE/ODIHR and APT or of any particular NPM from the OSCE region.

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Executive Overview

Ten years have passed since the Optional Protocol to the UN Convention against Torture (OPCAT) has entered into force. Today,¹ 83 States from all over the world have joined the global system to prevent torture and ill-treatment, by ratifying or acceding to the OPCAT. Another 16 States have signed the treaty and more are in the process of doing so. Of the 83 States parties, 65 have created their National Preventive Mechanisms (NPMs). In only a decade, the OPCAT system, with its proactive, cooperative and solution oriented approach, has led to remarkable achievements in the prevention of torture worldwide. NPMs have been instrumental to achieve this progress. They are now considered at the heart of this global system of preventing torture. However, despite their important contributions, NPMs continue to face a number of challenges which can undermine their capacity to effectively prevent torture and other ill-treatment.

The OSCE area bears a remarkably high number of OPCAT State parties and NPMs. Forty-one OSCE participating States are parties to the OPCAT and others are considering its ratification. Thirty-nine of them have put in place their NPMs and discussions are on-going in other countries regarding the designation of an NPM. The 2016 first *"Annual Meeting of NPMs from the OSCE region"* brought together representatives from thirty-two NPMs, members of the United Nations Subcommittee on Prevention of Torture (SPT), the Council of Europe's European Committee for the Prevention of Torture (CPT), and other experts.

During the two-day event, which was designed as a peer-to-peer exchange meeting for NPMs from the OSCE area, key achievements of and challenges for NPMs, ten years after the OPCAT's entry into force, have been discussed. A specific focus was put on good practices and remaining challenges in the preventive monitoring of detention in the criminal justice system and on how NPMs may bridge the gaps arising from remaining challenges in monitoring psychiatric institutions and social care homes. The second part of the event was dedicated to effective follow-up and cooperation strategies, including strategic follow-up on NPM recommendations with a focus on authorities and cooperation between NPMs and other actors, with a focus on civil society and international organisations, including the OSCE. The last panel of the event was dedicated to cooperation between NPMs and torture prevention partners, which included four experts representing the civil society sector and a specialised academic institution.

This report is an analytical summary of the main issues discussed during the different sessions and working groups over the two days of the meeting. It does not provide a detailed account of the fruitful discussions among participants, but it aims to emphasise the main issues, practices and challenges shared during the meeting. The ODIHR and APT wish to express their gratitude to all the participants for their active participation and valuable contributions.

¹ As of 18 April 2017.

1. Taking stock after 10 years of OPCAT

Background: The OPCAT in the OSCE region: figures and developments

The OSCE area bears the highest number of OPCAT States parties and NPMs worldwide. 41 OSCE participating States are parties to the OPCAT and others are considering its ratification. 39 of them have put in place their NPMs and discussions are on-going in other countries regarding the designation of the NPM.

The large majority of NPMs in the region are existing Ombuds Institutions² and almost all of them have created a specific unit with dedicated staff to perform the NPM tasks. The OSCE is also the only region in the world where some States have chosen the so-called Ombudsman Plus model³ for their NPM, namely an Ombuds Institution with formal agreement with civil society organisations to carry out visits to places of detention together. Several States have created a completely new institution⁴ composed of one or several members to perform the NPM mandate. Others, due to their decentralised structure and/or existing monitoring bodies, have decided to designate several existing or new institutions⁵ to assume the NPM role, each with a geographic and/or thematic mandate. Many NPMs cooperate with external experts and some of them are also assisted by an advisory body, whose composition and specific functions vary from country to country and may include representatives of civil society⁶ and representatives of state institutions.

Over the past years, NPMs from the OSCE region have increasingly exchanged experiences through a number of formal or informal networks established at the sub-regional level, namely the South-East European Network, the "Scandinavian" network and the network of German-speaking NPMs. 37 out of the 39 OSCE participating States that have set-up their NPMs are also members of the Council of Europe and have been visited several times by the European Committee for the Prevention of Torture (CPT). The CPT has developed substantive standards related to detention which are widely used as reference by NPMs, together with the CPT's country-specific recommendations. Over the years, the CPT has also increased contacts with NPMs during its country visits and beyond.

Since its establishment in 2007, the UN Subcommittee on Prevention of Torture (SPT) has carried out country visits to 16 OSCE participating States,⁷ with increasing focus on NPMs, by both assisting States in their establishment and advising NPMs on their work in practice.

The progress so far

Ten years after the entry into force of the OPCAT, almost all NPMs in the OSCE region are operational and the majority of them have been functioning for 5 or more years already. It is therefore possible to highlight some of their contributions to the reduction of risks of

² Albania, Armenia, Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Cyprus, Estonia, Finland, Georgia, Greece, Hungary, Lithuania, Luxembourg, Former Yugoslav Republic of Macedonia, Montenegro, Norway, Poland, Portugal, Romania, Spain and Sweden.

³ E.g. Denmark, Kazakhstan, Serbia, Slovenia and Ukraine.

⁴ France, Germany, Italy, Kyrgyzstan, Liechtenstein and Switzerland.

⁵ Malta, Netherlands and United Kingdom.

⁶ They may include NGOs, professional associations, the academia, etc.

⁷ As of April 2017.

torture and other ill-treatment and improved protection of the rights of persons deprived of liberty, bearing in mind that torture prevention implies structural changes and therefore requires long-term efforts by a number of actors.

In many OSCE participating States, the mere fact that the NPM has the power to access, at any time, any place where persons are or may be deprived of liberty has been an important advancement in itself, having a deterrent effect to abusive practices and contributing to increased transparency in places of detention. In some contexts, before the NPM started its work, there was no external monitoring of "non-traditional" or "de facto" places of detention, including those run by private actors, often the case for social care homes and immigration detention, including facilities for removal and deportations procedures. In other contexts where places of detention were already monitored by a number of existing institutions or mechanisms, the set-up of the NPM contributed to filling of some gaps and to having a more comprehensive and thorough monitoring system across the country.

Thanks to the documentation of poor conditions by NPMs, some places of detention have been closed and, in many countries, conditions of detention have improved, particularly in relation to adequate standards of health, food and housing. In several countries, NPMs contributed to the change in domestic legislation, policies, procedures and regulations in several areas, for example by introducing better detention safeguards on access to legal assistance, medical examination, records and information on rights. In some contexts, NPMs have gone beyond the recommendations to improve the conditions and treatment of persons deprived of liberty. They have used their findings from visits to places of detention to advocate for the de-institutionalisation of children and persons with disabilities. In some instances, the findings of NPMs have also been used for proceedings before national and regional courts.

In some participating States, abusive detention practices, such as the use of means of restraint, invasive body searches, or solitary confinement, have been reduced. Furthermore, the work of many NPMs in the region has helped to give visibility to the particular risks faced by groups in situations of vulnerability in detention, such as children, women, elderly people, lesbian, gay, bisexual, trans, or intersex (LGBTI) persons, migrants and persons with disabilities. As a result, in certain cases specific measures have been taken by the relevant authorities to address these risks. There are examples in the OSCE region where NPMs also actively participate in the public debate, thus contributing to bringing the realities of detention to the attention not only of the authorities but also of the media and the society.

Remaining challenges: preconditions for NPM effectiveness

Despite this clear progress, most NPMs from the OSCE region still face a number of challenges. The OPCAT sets the preconditions that all NPMs, regardless of their specific structure, need to meet in order to be effective. These are crucial as they have a direct impact on the NPMs' work and, ultimately, on their capacity to effectively prevent torture. However, NPMs themselves have little or no leverage on most of these preconditions, as they are often a primary responsibility of States. In reality, most NPMs from the OSCE region, to a different extent, face some challenges in complying with these preconditions.

The independence of NPMs, both functional and perceived, from the institutions which establish and fund them, as well as from the institutions that they are meant to monitor, is crucial. Ensuring independence is undoubtedly a primary responsibility for States, but NPMs'

members and personnel are also responsible to act independently and retain sufficient distance from the state authorities, while maintaining a cooperative approach. In some countries of the OSCE region, the lack of an OPCAT compliant legislative basis for the NPM may also hinder the capacity of the NPM to operate fully independently.

The preventive mandate of NPMs is a demanding and specialised task which requires regular presence in places of deprivation of liberty, multidisciplinary expertise and dedicated personnel, in order to be effective. Although adequate funding for the NPM is a State obligation arising under the OPCAT, in reality the majority of NPMs in the region are not granted with all the necessary financial and human resources, not only at the moment of establishment, but also over the years. The lack of resources limits NPMs' capacity to visit all places of detention and the possibility to properly follow up on recommendations, and to perform all range of other activities that their preventive mandate would entail.

In many instances, despite a clear prohibition in the OPCAT, the risk of reprisals against persons deprived of their liberty who have been in contact with the NPMs is a serious challenge. In some OSCE participating States, NPMs themselves face pressure as a result of their activities. Furthermore, there is a potential issue in those countries where NPMs' obligation to preserve confidentiality and ensure the implementation of the "do no harm" principle under the OPCAT may be in conflict with the obligation to disclose information about any potential crime that they obtain in the course of their activities.

Despite the OPCAT requirement of providing NPMs with unrestricted access to all places of detention, all information and the right to have private interviews with persons deprived of liberty of their choice, in some cases NPMs have experienced problems in accessing certain places or information.

1.1. The UN Subcommittee on Prevention of Torture, 10 years on

During the "Annual Meeting of NPMs from the OSCE region", the UN Subcommittee on Prevention of Torture (SPT) explained the evolving practice of the Committee to include the NPMs during its country visits and its shift from exclusively advising governments to also providing advice to the NPMs. A particular focus is put on the independence of the NPM, in terms of financial support but also in terms of the overall functioning of the institution.

The SPT also mentioned the need for NPMs to move beyond the traditional focus on the criminal justice system in order to include modern day issues of concerns such as migration and the current refugee crisis or unauthorised detention. It was underlined that the NPMs mandate covers all places of potential ill-treatment or torture, such as social care homes and *de facto* detention, including privately-run places that are regulated by the States. Thus, a more innovative and flexible approach of NPMs towards their mandated is needed in addition to questions related to the independence and financial support of NPMs. In order to address those new challenges, the SPT suggested that NPMs may improve their networking efforts by inter alia participating in peer-meetings as organised by the ODIHR and APT or the South-East Europe (SEE) NPM Network.

- ***SPT achievements over the past 10 years, relevant to the work of NPMs***

Ten years after the OPCAT entered into force, the fact that the SPT can undertake visits to any place at any time is an achievement in itself. The SPT has also been able to advance its visiting programme. It has increased its own number of visits from around three to an average of ten country visits per year. The Subcommittee has also moved away from categorised visits such as regular visits, NPM advisory visits and OPCAT advisory visits. Instead, during its current visits, the SPT looks at all aspects of prevention of torture that it deems appropriate, while still identifying specific objectives for each visit.

Another important development in the SPT's work over these ten years constitutes its advisory function in relation to NPM establishment and functioning. Today, the exchange and support to NPMs is considered by the SPT to be at the forefront of its work. In practice, it has resulted in an increased engagement of the SPT with NPMs during all visits. The SPT has developed specific tools and guidelines on NPMs and NPMs increasingly refer to the SPT with specific questions regarding the interpretation of the OPCAT. As a result, the SPT has published a compilation of guidelines and tools aiming to support the well-functioning of NPMs and implementation of their mandate.

- ***Remaining challenges for NPMs as observed by the SPT***

One of the main remaining challenges for NPMs highlighted by the SPT during the meeting relates to their compliance with the OPCAT requirements. Many NPMs lack proper financing and resourcing and some of them face challenges in ensuring their full independence from the authorities. Furthermore, many NPMs face challenges in following-up on their recommendations and ensuring their effective implementation.

In view of addressing these challenges, the SPT suggested to strengthen existing NPM networks or create new opportunities for peer-exchanges among NPMs. The need to strengthen the dialogue with State authorities and to raise the profile and role of NPMs, especially when they are part of other institutions, was also highlighted.

1.2. Key achievements and challenges of NPMs, 10 years after the OPCAT's entry into force

1.2.1. NPMs' main achievements

In the course of the discussion, NPMs stressed the constant improvement of cooperation with NGOs, other specialised Institutions such as the Ombuds Institution for children, and external experts. NPMs also highlighted as an achievement the fact of working in teams composed of professionals from different areas, such as lawyers, psychologists and psychiatrists. This cooperation and multi-disciplinary approach has improved the work of NPMs and its results.

It was also underlined that the establishment of the NPM has had a great impact on the institutional culture in places of detention and understanding of the situation of torture and other ill-treatment in some countries. Furthermore, the shift from announced to unannounced visits to detention facilities was pointed out as achievement. Achievements in thematic areas such as the use of solitary confinement or reprisals, as well as the decrease of prison population and the addressing of overcrowding by authorities due to the NPM recommendations were also mentioned as major achievements.

The use of the SPT self-assessment tool for NPMs and the increased visibility of the NPMs and their work in the national context as well as the improved dialogue with the authorities were pointed out. The access and possibility to provide training to law enforcement and penitentiary staff has also been mentioned as positive result of the NPM work in the past years.

Moreover, the fact that the concept of torture and other ill-treatment has been introduced in the health-care context as well as the increased acceptance and understanding of the NPM work by the public was positively underlined. NPMs are strengthening their thematic approach, that leads to an increased visibility of issues, which were not visible before, such as the situation of trans or intersex persons in detention. The inclusion of former users (or experts by experience) by NPMs was also pointed out as having a positive impact on their work.

New approaches as a key to achieve changes

During the meeting, some NPMs explained their development, with one NPM telling for instance of its transformation from a small team of lawyers to a multidisciplinary team over the course of time. Achieving effective independence had to be gained day after day through professionalism and cooperative approach. Some NPMs explained how they could strengthen their focus on prevention, as related to reactive work on individual complaints. Through their work, several NPMs contributed to a change of culture with regard to the prevention of torture and other ill-treatment. An important success factor for many NPMs was the establishment of excellent working relations with NGOs but also strong cooperation with other NPMs in the region and abroad, which supported the development of a solid methodology.

1.2.2. NPMs' remaining challenges

One of the most profound challenges faced by NPMs across the OSCE region remains the lack of adequate funding as well as in some cases the lack of functional independence. Furthermore, the lack of effective implementation of recommendations issued by the NPM has been pointed out by some of NPMs as one of the main remaining challenges.

Many NPMs also face pressure because of the number of visits and struggle to adequately balance preventive monitoring visits and other activities (qualitative versus quantitative approach). During the discussions, participants pointed out that instead of focusing on the number of visits, more in-depth visits, including follow-up visits, would be necessary in order to ensure effective implementation of NPM recommendations. However, it was also mentioned that, in most countries, the mere number of facilities that have to be monitored, coupled with the limited resources for NPMs, does not allow for such approach.

Structural reforms within the Ombuds Institutions that negatively affect the NPMs were also mentioned as challenges faced by some NPMs. An example was provided related to the fact that the department for persons deprived of their liberty dealing with individual complaints is not separated from the NPM. This considerably limits the resources and time needed for preventive work since the same experts fulfill the two roles at the same time. Similarly, some NPMs do not have a separate budget, which negatively impacts the NPM's ability to fully implement its mandate.

Whereas the majority of NPMs from the OSCE region do enjoy full access to closed facilities or facilities such as social care institutions and to documents and related files, there are still some cases where NPMs face restrictions and limitations in accessing places of detention or documentation. NPM representatives also mentioned the lack of effective investigations and prosecution of perpetrators related to individual cases and the subsequent culture of impunity as a major challenge. In this context, some participants also mentioned the lack of effective tools to prevent reprisals related to NPM visits as a challenge for their preventive work.

Overall, participants stressed the importance of increasing political support for the NPM work, including on sensitive issues such as vulnerable groups or immigration detention.

2. Preventive monitoring: good practices and challenges

2.1. Detention in the criminal justice system: Bridging the gap between detention standards and practice – the role of monitors

Background

According to Articles 4 and 29 of the OPCAT, the NPMs are entitled to visit all, and any suspected places of deprivation of liberty. The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol. Within the criminal justice system, this includes prisons of all security levels, pre-trial detention facilities, police stations, women detention and juvenile correction facilities. In the OSCE region, most NPMs do visit all those places of detention.

There are a number of relevant international and regional standards that apply to the prevention of torture and other ill-treatment in places of deprivation of liberty in the criminal justice system. Most recently, the United Nations Minimum Standard Rules for the Treatment of Prisoners (SMR) have been revised and updated according to current human rights standards.⁸ Other relevant rules and regulations address standards to be applied to specific groups of detainees such as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), or the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). Other existing standards address general principles or the conduct of law enforcement officials such as the United Nations Body of Principles for Protection of all Persons under any form of Detention or Imprisonment and the United Nations Basic Principles of the Use of Force and Firearms by Law Enforcement Officials. On the regional level, the CPT standards have been proven an important tool for the work of NPMs in the Council of Europe region.⁹

In terms of challenges, many NPMs in the region¹⁰ have found that the main challenges regarding police custody lies with the implementation of procedural safeguards against torture and the conditions of detention at police stations. They found that arrest and police custody is not always fully and verifiably documented. Some have documented that police stations and the respective holding cells are often not equipped for lengthy stays, that there was no outdoor recreation areas, that there was a lack of natural light in the cells and that access to medical attention was not always granted. In some instances, it was documented that detainees were not given the opportunity to inform family members or have not been informed about procedural rights such as the reasons for arrest and the right to access a lawyer. In the context of pre-trial detention and prison visits, some of the main challenges identified by NPMs in the OSCE region relate to instances of physical and psychological

⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) at https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

⁹ European Committee for the Prevention of torture and Inhuman or Degrading Treatment of Punishment (CPT), CPT standards at <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

¹⁰ According to their annual reports, 23 NPMs in the OSCE region have explicitly made reference to the monitoring of police stations.

violence, overcrowding, poor sanitary conditions and lack or insufficiency of medical and dental care. Other challenges arose regarding the access to legal aid and the lack of appropriate training provided to penitentiary staff. In some instances conditions of detention were considered to be inhuman and degrading.

2.1.1. Police custody

During the discussion, NPMs emphasised the importance to monitor the situation during the early stages of police custody and explained their working methodologies, achievements and challenges.

It became clear that, whereas for the monitoring of the early stages of police custody and pre-trial detention NPMs can rely on police records and data received from lawyers present during the early stage of detention, however, the monitoring of the actual *arrest/apprehension and transport* to the police station remains a challenge. Several NPMs explained that monitoring the duration/time period a person has been held by the police through the official register and information received from lawyers may be an indicator and that recommendations should aim to decreasing this time period in order to reduce the risk of torture and other ill-treatment. Another practice mentioned related to the establishment of a hotline within the Ombuds Institution during big demonstrations that allowed responding to problems during mass arrests.

With regard to the *transportation* of detainees, many different practices were shared, including asking police officers about the procedures to place detainees in cars, monitoring transports from police stations to the courts, and conducting inspections of transports. As a way to better monitor apprehension and transport to police stations, it was also suggested that NPMs could be present during large assemblies and demonstrations, where a high number of arrests and transports are likely to be conducted.

Regarding the *early stages of police custody* more generally, one of the major challenges faced by NPMs is the lack of detainees present at the police facilities at the moment of an NPM visit, which often results in the NPM to be able only to look at the facilities and check registers. NPMs agreed that visits to police stations should include both, day and night visits in order to get as much insight as possible. In terms of prompt access to police stations, the issue of reducing the time between arriving at the facility and starting the actual visit was mentioned, which may leave time to the police to intimidate and instruct detainees. In this context, it was suggested to divide the visiting group with one group starting the visit immediately upon arrival and the other group participating in the meeting with the commander in charge.

Several NPMs pointed out that most of the relevant information regarding the early stages of police custody is received in the framework of prison visits. In this regard, the routine to ask prisoners about the conditions during police custody in the course of NPM regular prison visits was underlined as a good practice and way to gather additional information. The

information received may lead to a follow-up visit to the police station in question. It was also agreed that NPMs should put more emphasis on prison health care personnel regarding the obligation to check for signs of torture or other ill-treatment upon arrival of a new prisoner. In some cases, prison administration was asked to notify the NPM in cases where physical marks of ill-treatment have been identified upon arrival at the prison in order to follow-up on the circumstances of police custody and to identify the interrogating officers.

Generally, it was found that the safeguards regarding the early stages of police custody, including *inter alia* the right to a lawyer and the recording of interrogation, where implemented have had a strong impact on the prevention of torture. However, it was also found that they are often provided by law but not always implemented fully in practice and that NPMs have an important role to play in further advocating for the effective implementation of those safeguards.

Addressing the use of restraints and the fact that there is often no requirement to record the use of force, including the use of hoods in the early stages of police custody, has been identified as another challenge.

Several achievements were also shared by NPMs, including one example where the NPM's work and public pressure led to a parliamentary decision which now provides for identification numbers for all police officers, including those involved in arrest and detention, the closure of temporary places of detention and the mapping of specific risk factors related to self-harm in police custody.

Regarding the monitoring of the *interrogation/interviewing* of detainees, it was mentioned that although NPMs are never present during interrogations, the inspection of interrogation rooms may give some indications useful for the NPM's analysis. The accurate recording of interrogations, including the duration, was mentioned as an important safeguard and source of information for NPMs.

Finally, the follow-up on individual cases of torture identified by NPMs during visits to police stations was discussed. In this context, it was pointed out that the role and mandate of NPMs is not to investigate individual cases of torture or other ill-treatment but to suggest systemic changes in order to reduce the risk and ultimately prevent torture and other ill-treatment. Most NPMs have developed procedures on how to refer individual cases either to the Ombuds Institutions or judicial investigating bodies.

Confession-based criminal investigation systems: what role for NPMs?

It was also mentioned that in many OSCE participating States, there is still a confession-based criminal investigation system in place, which in some cases is illustrated by the fact that official statistics are based on the number of confessions obtained by the police. In some OSCE participating States, the performance evaluation of the police is still based on results/convictions obtained and not on the methods used. This has been identified as one of the strongest incentives for torture and other ill-treatment throughout the discussion. Thus, a much wider and fundamental change of the criminal justice system is needed in order to reduce torture and other ill-treatment during interrogations. In addition to changing the culture within the police, NPMs may play a key role in advocating for such change of culture through their recommendations and dialogue with authorities.

2.1.2. Prisons

All NPMs have adopted a methodology that includes various types of detention facilities, including women detention facilities, pre-trial detention, youth correctional facilities/centres and others. During the discussions, several specific issues were taken into consideration: with regard to the general medical services in prisons, it was mentioned that health care services should be independent from the prison administrations and that NPMs should continue to advocate for the transfer of the prison health care system to the Ministry of Health. Also, the use of sedatives in juvenile facilities should be monitored closely and more generally, rules and procedures on how to register and provide drugs/medication should be recommended.

NPMs mentioned the challenges related to the increasing number of elderly prisoners/aging of the prison population with significant social care needs. The issue of an increasing number of suicides and self-harm among the prison population was mentioned as a common concern by NPMs.

In terms of useful additional tools for NPMs, specific trainings for NPM staff on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) by external experts was mentioned. Furthermore, trainings on medication and on how to identify over-medication of persons deprived of liberty were also highlighted as useful for NPMs' work.

With regard to OSCE field operations, it was mentioned that some offices have done significant work on the legislative and policy level, working closely with the Ministry of Justice on *inter alia* the issue of overcrowding of prisons and related national action plans. Some offices also conduct prison visits and coordinate activities closely with the respective NPMs. In one case, an OSCE field operation has supported medical mobile units visiting police stations and providing medical care to detainees.

2.2. Other places of detention: Challenges and good practices in monitoring psychiatric institutions and social care homes

Background

The OPCAT provides a broad definition of places of detention, including private or public "non-traditional" places of deprivation of liberty, such as psychiatric institutions or social care homes. The SPT has integrated visits to psychiatric institutions in its missions to OPCAT States parties since 2011. With regard to NPMs, most mechanisms in the OSCE region consider non-traditional places of deprivation of liberty as an integral part of their mandate and have conducted visits to psychiatric institutions and social care homes. At the regional level, the CPT has fully integrated the monitoring of "civil" psychiatric institutions in its work over the last 15 years and regularly conducts visits to both psychiatric hospitals and social care homes.¹¹

In several countries of the OSCE region, persons with mental and/or intellectual disabilities are placed in social care homes - often de facto psychiatric institutions where they can be institutionalised for years.

The UN Convention on the rights of persons with disabilities (CRPD) clearly states that "the existence of a disability shall in no case justify a deprivation of liberty" and stresses a "right to live independently and being included in the community" for persons with disabilities. The CRPD Committee has adopted guidelines in 2015, confirming the absolute ban on deprivation of liberty.¹² International bodies such as the CPT and the SPT accept deprivation of liberty in certain circumstances, in particular to prevent harm to the person or to others.¹³ Globally, almost all national laws regulate the possibility of depriving persons with mental disabilities of their liberty. These conflicting standards represent a challenge for NPMs and other monitoring bodies when it comes to their practical implementation.

In addition to the central issue of deprivation of liberty itself - often linked to the deprivation of legal capacity of the person placed - and the role of NPMs in addressing possible cases of arbitrary detention, there are unique challenges to eradicating torture or ill-treatment in psychiatric institutions also due to the perception that certain practices may be defended by the authorities on grounds of administrative efficiency, behavior modification or medical necessity. The following risk factors that can lead to abuse, have been already addressed at two other NPM gatherings this year:¹⁴

¹¹ In 2015, for example, the CPT carried out 17 visits to different European countries. In 12 of these visits, civil psychiatric hospitals constituted a substantial part of the visit.

¹² See UN CRPD, *Guidelines on the right to liberty and security (Art. 14)*:

www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc (only available in English)

¹³ See CPT standards on psychiatry (<http://www.cpt.coe.int/en/documents/eng-standards.pdf>, pp. 48-63). See also SPT's approach regarding the rights of persons institutionalised and treated medically without informed consent, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/011/96/PDF/G1601196.pdf?OpenElement>

¹⁴ See Workshop organised by the International Ombudsman Institute and the APT in June 2016 in Vilnius: http://www.apr.ch/en/news_on_prevention/workshop-with-ombuds-institutions-on-monitoring-psychiatric-facilities/#.V-JgAeTm66Q; and APT Jean-Jacques Gautier NPM Symposium, held in Geneva in September 2016: http://www.apr.ch/en/news_on_prevention/third-jig-symposium-focused-on-monitoring-psychiatric-institutions/#.V-Jf3OTm66Q; see also report of the UN Special Rapporteur on Torture, A/HRC/22/53, §§ 27-30 (legal capacity and informed consent), §§ 31-35 ("medical necessity"), §§ 58-60 and 64 (forced psychiatric

- Involuntary/non-consensual treatment or forced treatment (i.e. treatment without the free and informed consent of the person), the right to legal capacity and the doctrine of "medical necessity";
- Seclusion and means of physical and chemical restraints;
- Information on rights and involvement of the patient in care;
- Overmedication;
- Respect for the right to privacy and dignity.

Social care homes are far less regulated than formal psychiatric institutions and usually offer no review procedures to challenge the placement and treatment. In many instances, the placement in those institutions is actually considered "voluntary" because the guardian of the person placed consented to such placement and this decision can therefore not be challenged. Also, certain marginalised groups in society (e.g. Roma children or street children) are particularly vulnerable to being deprived of liberty in such places, as part of the state authorities' strong social control over these groups. The care provided in such homes is often very poor due to the lack or inadequate medical training of the personnel.

Finally, it is important for NPMs and other monitoring bodies to consider alternatives to institutionalisation as part of their role in advising and shaping state policies on mental health, including the development of adequate services within the community.

The existence of different and sometimes *conflicting standards* regarding the deprivation of liberty in non-traditional places of detention has been identified as a challenge for NPMs. However, in the discussion it became clear that most NPMs apply a pragmatic approach with a view to recommending the best possible standards for persons deprived of liberty in psychiatric hospitals or other institutional settings. Some NPMs use the UN Convention on the rights of persons with disabilities (CRPD) provisions as a secondary source for interpretation of the Convention against Torture (CAT) legal framework and other torture prevention standards. Others apply both conventions equally.

Many NPMs stated that the CPT reports and guidelines are used as a primary reference point. In this context it was also stressed that NPMs have a bridging function in translating international human rights treaties to the reality of places of detention. It was also found that in most national legislations there is a lack of standards regulating *social care homes* (which are often run by the private sector).

The role of NPMs to engage in on-going discussions and dialogue with authorities about standard setting from an expert position was also pointed out. In this context it was noted that NPMs should not contradict international human rights treaties, as these treaties provide in most cases sufficient room for interpretation. It was underlined that, even if social care is

interventions), § 63 (restraints and seclusion):

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

privatised, regulation setting should always be the responsibility of the government, and that NPM findings and recommendations should therefore be taken into consideration. It was suggested that in those cases where there is no regulation of private institutions, the NPM should take a pro-active approach, recommending draft regulations or providing expert advice to the respective authorities.

Most NPMs include psychiatric institutions in their monitoring work. The *access* to such institutions is guaranteed and generally does not cause any problems, although in some countries the regulation of access took some time. Access to institutions, especially where persons are voluntary placed, is gained by NPMs in different manners.

In some cases, NPMs experienced difficulties in gaining access to institutions where persons were placed on a voluntary basis (social care homes) but could gain access more easily as Ombuds Institutions due, for example, to amendments to their founding legislation, which now provide for access to private institutions in cases of serious violations. NPMs pointed out that dialogue with authorities is key in gaining access, by clarifying the reasons of the NPM visits, which includes not only the reporting on conditions but also the identification of improvement for persons placed in institutions, from which institutions themselves may benefit. A remaining challenge related to monitoring private institutions was mentioned related to the question on how to identify the exact number of such places.

During the discussion, it became also clear that one of the major challenges identified by NPMs in the context of psychiatric institutions and social care homes is the sensitivity of health care professionals towards the term "torture" in their work environment, as they see themselves essentially as care-givers. Participants explained that the preventive mandate of NPMs is not or only little known in health care settings and the reactions to the NPM recommendations are still rather defensive. The very fact that those who are voluntarily held in psychiatric institutions or social care homes fall under the mandate of the NPM is challenged. In some contexts, regular meetings with health care institutions and professionals at the local level are held in order to foster a cooperative dialogue using mainly the CPT standards as guiding principles.

Another challenge mentioned during the meeting was the lack of continuing education and training of doctors and other health care professionals, including on the prevention of torture. Another issue has been identified with regard to the arbitrary use of isolation/solitary confinement or so called "security rooms" and other coercive measures in the absence of clear standards and policies and how NPMs can assess the (medical) files and justifications for such measures.

Some examples of achievements by NPMs in this area include the issuance of national guidelines as a result of NPM intervention with the Ministry of Health and the drafting of a thematic report on the question of seclusion, coercive measures and staff of psychiatric institutions. In some cases, NPMs' advocacy succeeded to improve the system of psychiatric institutions as well as psychiatric services within prisons which led to a significant legislative

reform. A project on the monitoring of elderly homes which included NPMs from six countries and will help other NPMs with the identification of shortcomings and a monitoring tool accessible for all NPMs was mentioned as a positive development.

The monitoring and assessment of social care homes and psychiatric institutions requires medical knowledge and most NPMs work with *external experts*. With regards to the monitoring by NPMs, no consensus appeared among participants about the participation of psychiatrists in the monitoring team. Several NPMs noted that for the monitoring of psychiatric institutions and social care homes, the use of psychologists and psychiatrists as well as other medical or social care experts has had an added value for the NPM work. It was also underlined that the NPM team should always keep a critical distance (even if they sometime monitor their peers), not "medicalise" issues and always use common sense and a human rights perspective. That being said, some NPMs have opted to not use specialists in their monitoring of psychiatric institutions.

NPMs generally recognised the supportive role that could be played by health care professionals in monitoring places of detention. In particular, they agreed that the assessment of treatment and medication remains a challenge if no medical experts are part of the visit. Participants mentioned the lack of available qualified psychiatrists/psychologists specialised on questions of torture and other ill-treatment as a remaining challenge.

As good practice examples, specific trainings for NPM members on interviewing people with disabilities as well as the possibility to include interviews with families and relatives of the patients were mentioned. Cooperation with other organisations was also discussed by participants.

With regard to *alternative measures* to the deprivation of liberty such as community care programmes, participants mentioned challenges in terms of cooperation with all relevant state actors. The inter-ministerial cooperation needs considerable improvement in order to allow for such alternatives.

Some NPMs mentioned the establishment of a national mechanism for the monitoring of the rights of persons with disabilities by the Ombuds Institution. This mechanism monitors the implementation of the CRPD. It was found that monitoring of the CRPD may pose a challenge for NPMs when the Ombuds Institution designated as NPM has also the mandate of the CRPD monitoring body. There is a need to further clarify on how to reconcile the two different perspectives within the same institution and how to allocate sufficient resources to both mandates. Coordinating the drafting of recommendations between the two bodies was highlighted as a good practice. However, the fact that those recommendations may still differ in some cases was pointed out as a remaining challenge.

3. Achieving change: effective follow-up and cooperation strategies

3.1. Strategic follow-up to recommendations

Background

10 years into the entry into force of the OPCAT, most of the 39 NPMs established or designated in the OSCE area are conducting visits to places of detention, reviewing legislation and policies, and consequently drafting recommendations for the improvement of the treatment and conditions of persons deprived of their liberty and the prevention of torture and other ill-treatment, as required by their OPCAT mandate (Art. 19 OPCAT). These recommendations can be targeting a specific institution, a specific type of institutions, or the broader policy or legislative framework; they are addressed to the variety of actors, amongst authorities, which can implement the required change. But what change have they so far contributed to achieving, and how effectively do they contribute to the protection of persons deprived of their liberty?

Whilst NPMs provide an assessment of conditions and treatment at places of deprivation of liberty, it is through their recommendations that they can demand concrete changes. States have an obligation to consider these recommendations and enter into dialogue about the measures for their implementation (Art. 22 OPCAT) - but it is the NPMs' responsibility to ensure that this dialogue takes place, and to monitor and evaluate the achievement of the concrete progress they want to foster in policies and practices.

NPM effectiveness lies in a combination of factors- starting with the key OPCAT requirements (independence, resources, multidisciplinary, access), but also relying on the ability of an NPM to strategically implement its mandate. Conducting monitoring visits or assessments on existing or draft legislation, and consequently providing authorities with recommendations, is not a guarantee for improvement in itself, but is only a part of the process leading to the improvements NPMs want to see.

To foster concrete change, NPM recommendations should be strategically formulated; they should be specific, realistic and well-targeted at those authorities responsible for the desired change, for instance based on the "Double-SMART recommendation model" promoted by the APT.¹⁵ A follow-up strategy then has to be set up and implemented by NPMs, which need to ensure that an effective dialogue with these authorities is taking place. Subsequently, NPMs need to monitor and evaluate these recommendations periodically to ensure they are taken into account, effectively implemented, and indeed contribute to accomplishing the change they want to achieve. These monitoring and evaluation strategies can vary depending on the nature of recommendations.

In practice, NPMs face challenges with regard to following-up on their recommendations and fostering the latter's effective implementation, amongst which the following can be

¹⁵ See Association for the Prevention of Torture, *Detention Monitoring Briefing N°1- Making Effective Recommendations*, November 2008, at <http://www.ap.t.ch/en/resources/n1-making-effective-recommendations/?cat=26>

named:

- Internal challenges: Insufficient allocation of time and resources to reflect on, monitor, and evaluate one's work, strategy and impact (possibly due to: an exclusive focus on visits and/or an overarching emphasis on visibility, a lack of internal evaluation capacities...); recommendations drafting processes (possibly due to: lack of multidisciplinary perspectives within the NPM team; gaps between the visit fact-finding process and the recommendations finalisation process...); lack of prioritisation of recommendations.
- External challenges: Lack of follow-up or implementation from the authorities' side (possibly due to: low awareness of NPM recommendations, low prioritisation of NPM recommendations, non-binding character of NPM recommendations, conflicting priorities and lack of political will...). The follow-up on systemic and structural recommendations requiring legislative or policy changes is more complex than the follow-up on recommendations linked to material conditions, among others since it involves several actors; it requires specific strategies.

During the discussions and in the context of the *time frame for the issuance of recommendations*, several NPMs explained their system of urgent/immediate recommendations that are issued within a few days after a visit and regular recommendations that are published in a report at a later stage addressed to the relevant institutions. It was found that the issuance of immediate recommendations to the place of deprivation of liberty helps to keep the momentum for change and to also conclude the visit with an immediate summary of findings. Other recommendations are addressed to governmental authorities and may be issued at a later stage. In some cases, following a visit to a place of detention, a summary of findings is presented by the NPM to the Ombudsperson who then decides on further steps to be taken. Other practices include issuing urgent recommendations that are published in the Official Gazette.

In terms of *follow-up on the implementation* of recommendations, several practices were shared by NPMs, for example producing a second follow-up report addressed to the same institution, followed by a final consolidated report. Participants mentioned the practice of dialogue and meetings with the authorities to discuss the recommendations and their implementation. This can take the form of bilateral meetings or working group meetings with different ministries.

In this context, good practices have been discussed such as a dedicated meeting once a year with all the relevant ministries, discussing the NPM's annual report or, in cases of thematic reports, the organisation of closed round table discussions prior to the publication of the report. The organisation of regular meetings with CSOs to discuss recommendations was also highlighted. Some NPMs have an advisory body that includes representatives of the authorities and CSOs that constitutes a platform to discuss the strategic follow-up of recommendations.

It was also underlined, that the use of allies is a useful method, especially given the importance of political will in the effective implementation of NPM recommendations. *Allies* mentioned by participants included relevant committees or representatives of Parliament. Regular meetings with the diplomatic corps are also used by some NPMs in order to strengthen the impact of their recommendations.

One specific example was shared regarding the improvement of the rate of implementation of NPM recommendations due to a parliamentary decision to address all relevant state structures with specific deadlines for implementation and the resulting accountability towards the parliament. This has increased the implementation rate to 60%. Several NPMs explained that their recommendations are always accompanied by a 30-day deadline for a response by the relevant institution.

In some cases, NPMs have developed a system and database where the level of implementation can be categorised as "not implemented – partly implemented – fully implemented" and analysed systematically. In addition, follow-up visits to monitor the implementation of recommendations are carried out. Other examples shared included the practice of sending a table summarising the level of implementation of the recommendations to each relevant Ministry on an annual basis.

Participants also discussed how NPMs themselves should draft their recommendations. For example, executive summaries (brief overview of findings and key recommendations) are used by some NPMs. The use of pictures, and a unique narrative in NPM reports more generally, was mentioned as an effective way to better address public opinion and prejudices related to places of detention.

Improving NPMs ways of working

One of the good practices identified was the process of analysing and reflecting on the quality of the recommendations made by NPMs themselves conducted by designating dedicated personnel. This includes regular updates of the internal working plan of NPMs, to ensure sufficient resources are allocated to the analysis of recommendations. Another practice shared was to prioritise recommendations according to the gravity of the human rights infringement and to use this information in the planning of the annual work plan of the NPM.

To carefully identify the *addressees of recommendations* has been mentioned as a key element for successful implementation. Recommendations should be addressed to the institutions visited as well as to the relevant ministries and departments on the governmental and local level. Other actors such as prosecutors and the judiciary should be addressed where relevant. The addressees depend on the type of recommendations.

With regard to institutions visited by the NPM, recommendations should be drafted as to enable them to develop action plans to improve their performance. Other practices include the development of generic recommendations for police stations applicable for all places and tailored recommendations for prisons.

In the case of the *failure to implement* NPM recommendations by the relevant authorities, participants mentioned different follow-up strategies, for example the issuance of public statements by the Ombudsperson as an important tool to push for implementation if not in contradiction with confidentiality considerations. Appealing to the highest national authority is used by some NPMs at different stages, depending on the national context: some consider it as a measure of last resort, while for others it is usual practice to present findings at the highest national level.

A common need identified by NPMs is the development of a communication strategy on how to work with the media. Obviously, many aspects and information received by NPMs should not be made public or requires the informed consent of victims. Some NPMs send reports to interested journalists. The use of social media (Twitter and Facebook) was also discussed as an important tool. It was found that appealing to the general public through media/social media may lead to better results, but it is not without challenges. Participants discussed the possibility to include journalists in monitoring visits, including follow up visits as already implemented by one NPM. Other participants mentioned that appealing to the public through media would only be a measure of last resort.

Almost all NPMs publish their respective reports on their website. In terms of *dissemination* of NPM reports and recommendations, the role of a coordination council, which includes NGO representatives, in ensuring the dialogue with state officials and the use of the recommendations in different fora and levels were mentioned by one participant. Another NPM mentioned its standard practice to send its reports to NGOs encouraging them to follow-up on its recommendations and to provide feedback on the implementation. Participants agreed that international and regional conferences to discuss NPM recommendations are an important tool that can further enhance the implementation of recommendations by national actors.

3.2. Cooperation with NGOs and other actors

Background

The OPCAT's preventive system is based on a triangular relationship between States parties, the SPT and NPMs. The treaty also provides for cooperation between the SPT and other international and regional human rights bodies. Although not explicitly foreseen by the OPCAT, experience has shown that interaction and cooperation between NPMs and other relevant actors at the national level, in particular civil society organisations, is very important to enhance the impact of the NPMs' work. NPMs are expected to interact and, to different extents, cooperate with other national torture prevention actors such as their national Ombuds institutions, the media, and civil society organisations (CSOs) including NGOs, professional associations and the academia. At the international level, they can establish beneficial relationships with international networks such as the European and International Ombudsman Institutions (EOI/IOI), international expert bodies such as the CPT, international NGOs, and international organisations such as the OSCE and when relevant, its field operations.

CSOs are fundamental actors NPMs should cooperate or interact with. Article 18 § 4 of OPCAT makes reference to the Principles relating to the status of national institutions for the promotion and protection of human rights (The Paris Principles) which states that in the view of the fundamental role played by the NGOs in expanding the work of the national institutions, they shall develop relations with NGOs devoted to promoting and protecting human rights.¹⁶ Experience also shows the positive impact of the various systems of cooperation NPMs have developed with CSOs.

In addition, in some OSCE participating States, CSOs conduct regular detention monitoring visits in the framework of civil society monitoring mechanisms; regarding such cases, it is important to note that the SPT in its guidelines on NPMs further clarified that "the NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems". In other participating States, CSOs may have access to places of detention for other purposes—such as handling complaints, providing individual support to inmates... Moreover, many CSOs which don't have the mandate to regularly access or monitor detention facilities possess an expertise which can inform the NPM's work.

The interactions between NPMs and CSOs are not limited to cooperation. CSOs also play an important watchdog role and can ensure the accountability of NPMs through their monitoring and critical evaluations of NPMs and their activities. The balance between formal cooperation with and independent evaluation of NPMs can be delicate but several CSOs have endeavoured to play both roles, whilst others do not enter into formal cooperation agreements. In all these cases, it is important that NPMs are fully aware of any critical assessments by CSOs and take them into account to reinforce their mandate and activities.

¹⁶ Paris Principles, United Nations General Assembly resolution 48/134 (1993), methods of operation, (g).

3.2.1. Cooperation with NGOs

In the OSCE region, a specific NPM model - referred to as "Ombudsman plus" NPM model - has been established, which involves the formal cooperation of CSOs with an Ombuds Institution to carry out the NPM mandate, particularly regarding monitoring visits. Furthermore, several NPMs involve CSOs in their work in an advisory capacity, through the creation of coordination or advisory bodies with a variable - from low to extensive - range of decision-making powers on their activities. Having NGO representatives in the NPM *coordination or advisory council* has been mentioned as a good practice by several NPMs. Many NPMs also rely on the expertise of CSO members for their visits, by hiring some of them as external experts.

During the discussion, it became clear that the *Ombudsman Plus* model, which naturally leads to the inclusion of NGOs in the NPM work,¹⁷ firstly enhances the cooperation with NGOs that are not part of the NPM and, secondly, helps to increase the number of visits conducted by the NPM.

The experience has shown that this model works better when: there are specific rules governing the cooperation between the Ombuds Institution and NGOs; NGOs are selected on the basis of a public tender; NGOs participate in NPM visits together with a representative of the Ombuds Institution; NGO members have their expenses covered by the Ombuds Institution and they also receive additional payment per each visit conducted and per each visit report drafted.

Among the challenges related to the *Ombudsman Plus* model, it was mentioned that NGO representatives participating in NPM activities do not always understand the preventive approach/mandate of the NPM and would need to clearly differentiate between their roles as service providers or human rights defenders and the NPM function. Also, the selection process of NGOs was mentioned as a field for improvement.

In addition to these examples of institutionalised cooperation, there are many good examples in the OSCE region of NPMs fostering the necessary synergies with CSOs active in the monitoring of places of detention and/or the prevention of torture- *inter alia* by regularly exchanging information on their work, their recommendations and the situations encountered, by joining forces to prevent reprisals against persons in detention they have been in contact with, by following-up on their recommendations, or by contributing to events jointly or organising joint events.

The modalities of this cooperation very much depend on the type and activities of CSOs which operate at the national level. During the discussion it was mentioned that the contribution of *NGOs that are not formally part of the NPM* is highly relevant because *inter alia* they work closely with former prisoners or patients of psychiatric institutions and can

¹⁷ e.g. Serbia, Slovenia, Ukraine and Kazakhstan.

therefore provide additional insight complementing the observations of NPMs obtained during visits to places of detention.

Many NPMs hold regular meetings with the NGOs or annual forums in order to discuss issues of concerns, NPM annual reports and recommendations. Some NPMs mentioned the practice of monthly meetings with NGOs to exchange information on selected topics or the practice to send "embargoed" (before publication) NPM reports prior to publication in order to enable CSOs to prepare related press statements.

It was stressed on several occasions that both the formal and informal cooperation with NGOs are essential to the NPMs' work. However, the exchange of information is sometimes perceived as one-sided by CSOs. Thus, the basis of the mutual cooperation could be better determined, including exchange of information but also exploring other possible ways of collaboration. Developing ways of cooperation and institutionalising communication between NPMs and CSOs would bring an added value.

Practical examples of collaboration with NGOs specialised in legal aid or other related fields have been discussed, such as the informal sharing of cases of allegation of torture prior to the NPM visit. In some cases, this collaboration also enhanced the access to information on individual cases, because victims had addressed the respective NGO first and the information was then shared with the NPM for follow-up action. Also, the different specialisations of the various NGOs can help the NPM to get a broader picture of the situation, including issues that do not directly fall within the NPM mandate. The fruitful collaboration and informal information sharing with specialised NGOs in relation with the refugee crisis or in relation to immigration detention was mentioned by several NPMs as a good practice example resulting in concrete actions taken by the authorities.

Other examples shared during the discussions included a planned consultation process with NGOs on alternatives to detention in the context of immigration detention, the joint elaboration of a draft law on asylum procedures, and the development of a unified database to collect information about torture and other ill-treatment, which includes information and statistics collected by the NPM and CSOs alike.

Some NPMs explained the recent developments towards a very close cooperation with NGOs which was not in place in the beginning of the NPM establishment. It was pointed out that some NGOs have been working on torture prevention and the monitoring of places of detention for many years prior to the NPM establishment and that it was an important process to align the activities of the NPM with the previous and current work done by NGOs. It was mentioned on several occasions during the discussions that the pluralistic and inclusive approach is the most effective way of implementing the NPM mandate under the OPCAT.

However, in some cases the overlapping of NGOs' and NPMs' roles may still need further clarification and has caused some challenges *related to the cooperation with NGOs*. In some cases, only NGO representatives being part of the NPM have access to places of detention,

which raises serious concerns in those contexts. Another challenge mentioned during the discussions is the risk for the NPM of being instrumentalised by NGOs and possible ways to safeguard the independence of the NPM.

3.2.2. Cooperation with other actors

During the discussion, it became clear that the factual and perceived *independence of an NPM* is a key factor for cooperation. By way of example, it was mentioned that lawyers' associations dealing with individual torture cases must be certain of the independence of the NPM before sharing information.

Regarding the cooperation with *international or regional organisations*, some NPMs mentioned the importance of their cooperation with the OSCE and the Council of Europe (CoE) as well as the UNHCR and international NGOs specialised in the work of NPMs such as the Association for the Prevention of Torture (APT).

A question was raised with regard to the meetings and consultations organised by international actors and whether such meetings are useful and can have a direct impact on the work of NPMs. It was suggested that international or regional actors such as the SPT and ODIHR should continue to support the peer-exchange among NPMs and other relevant actors. The Annual Meeting organised by ODIHR and APT was mentioned as a good example of how international or regional organisations can support NPMs by providing a platform for exchange of good practices. In this context it was mentioned that a possible second edition of this meeting in 2018 may focus on the cooperation between NPMs and other monitoring bodies.

Participants also supported the idea of taking more ownership themselves of such peer-to-peer exchange meetings by creating a NPM platform including NPMs from outside of the OSCE region. The South-East Europe (SEE) NPM Network was mentioned as an example for such initiatives. This may result in a collection of good practices and lessons learned among NPMs themselves. NPMs also stressed how the CoE NPM project, which ended in 2012, has been followed by national projects on exchange of good practices with other NPMs of the same region. These exchanges have had a very positive impact on the work of NPMs. Thus, peer-exchange meetings and projects are considered highly important for the work of NPMs. A concrete example of the need for peer-exchange was pointed out with regard to the methodology for visits to medical facilities and the lack of sufficient standards in this area. Thus, NPMs among themselves may elaborate minimum standards for such visits.

The OSCE's important role in strengthening the cooperation between the NPMs and NGOs through its OSCE field operations was also highlighted.

ANNEX I

2016 “ANNUAL MEETING OF NPMs FROM THE OSCE REGION”

13-14 OCTOBER 2016, HOTEL MERCURE WIEN WESTBAHNHOF, VIENNA

OBJECTIVES OF THE MEETING

1. Taking stock of NPM achievements and challenges in the OSCE region, 10 years after the entry into force of the OPCAT;
2. Empowering NPMs in the OSCE region to strategically and effectively implement their mandate, through exchange of experience and best practices with their peers and with other experts on preventive monitoring, including representatives of the UN Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT);
3. Facilitating interactions between the OSCE -including its field missions- and NPMs in their countries of operations, and enhancing joint understanding on how the OSCE, and in particular ODIHR can strategically support effective OPCAT implementation.

Day One | Thursday 13 October 2016

Time	Topics
08:30-09:00	Registration
09:00-09:30	<p>Welcome and opening speeches</p> <p><i>Chaired by Ms. Stephanie Selg, OSCE/ODIHR</i></p> <ul style="list-style-type: none"> • <i>H.E. Ambassador Pohl, German Permanent Representation to the OSCE</i> • <i>H.E. Ambassador Wild, Swiss Permanent Representation to the OSCE</i> • <i>Mr. Omer Fisher, Deputy Head of Human Rights, OSCE/ODIHR</i> • <i>Ms. Barbara Bernath, Chief of Operations, APT</i>
09:30- 12:30	<p>SESSION I- TAKING STOCK AFTER 10 YEARS OF OPCAT</p> <p><i>Moderated by Ms. Veronica Filippeschi, APT</i></p>
09:30-10:00	<p>Introductory speech by Sir Malcolm Evans, Chair of the UN Subcommittee on Prevention of Torture (SPT): <i>The OPCAT system, 10 years on- achievements, challenges and the future</i></p>
10:00-11:00	<p>Plenary discussion for all participants</p> <p><i>“Key achievements and challenges of NPMs, 10 years after the OPCAT’s entry into force”</i></p>

11:00-11:30	Coffee break
11:30-12:30	Plenary discussion- Continued <i>"Key achievements and challenges of NPMs, 10 years after the OPCAT's entry into force"</i>
12:30-14:00	Lunch
14:00- 18:15	SESSION II- PREVENTIVE MONITORING: GOOD PRACTICES AND CHALLENGES
14:00- 14:30	<i>Moderated by Ms. Stephanie Selg, OSCE/ODIHR</i>
14:30- 16:00	Introductory speech by Mr. Mykola Gnatovskyy, President of the European Committee for Prevention of Torture (CPT): <i>The CPT experience in developing standards, and the challenges in their implementation</i>
	<ul style="list-style-type: none"> • Working groups- phase 1 <p><u>Topic 1 (for Working Groups A and B)</u> - <i>Detention in the criminal justice system: Bridging the gap between detention standards and practice- the role of monitors</i></p> <p><u>Topic 2 (for Working Groups C and D)</u> - <i>Other places of detention: Challenges and good practices in monitoring psychiatric institutions and social care homes</i></p>
16:00-16:30	Coffee break
16:30-18:00	<ul style="list-style-type: none"> • Working groups- phase 2 <p><u>Topic 1 (for Working Groups C and D)</u> - <i>Detention in the criminal justice system: Bridging the gap between detention standards and practice- the role of monitors</i></p> <p><u>Topic 2 (for Working Groups A and B)</u> - <i>Other places of detention: Challenges and good practices in monitoring psychiatric institutions and social care homes</i></p>
18:00-18:15	Summary and highlights of discussion <i>by Mr. Mark Van Gool and Ms. Stephanie Selg, OSCE/ODIHR</i>
19:30	Dinner at the Mercure Wien Westbahnhof

Day Two | Friday, 14 October 2016

Time	Topics
<p>09:00- 11:00</p> <p>09:00-09:15</p> <p>09:15- 10:00</p> <p>10:00- 10:45</p>	<p>SESSION III- ACHIEVING CHANGE: EFFECTIVE FOLLOW-UP AND COOPERATION STRATEGIES</p> <p>Introduction of the session by Ms. Eva Csergö, APT</p> <ul style="list-style-type: none"> • Working groups- phase 1 <p><u>Topic 1 (for Working Groups A and B) - Strategic follow-up to recommendations</u> <i>Focus on authorities</i></p> <p><u>Topic 2 (for Working Groups C and D) - Cooperation with other actors</u> <i>Focus on civil society and international organisations including the OSCE</i></p> <ul style="list-style-type: none"> • Working groups- phase 2 <p><u>Topic 1 (for Working Groups C and D) - Strategic follow-up to recommendations</u> <i>Focus on authorities</i></p> <p><u>Topic 2 (for Working Groups A and B) - Cooperation with other actors</u> <i>Focus on civil society and international organisations including the OSCE</i></p>
<p>10:45 – 11:00</p>	<p>Summary and highlights of discussion <i>by Mr. Mark Van Gool and Ms. Stephanie Selg, OSCE/ODIHR</i></p>
<p>11:00 - 11:15</p>	<p style="text-align: center;">Coffee break</p>
<p>11:15-12:45</p>	<p>PANEL DISCUSSION - COOPERATION BETWEEN NPMS AND TORTURE PREVENTION PARTNERS</p> <p><i>Moderated by Ms. Stephanie Selg, OSCE/ODIHR</i></p> <p>Presentations from:</p> <ul style="list-style-type: none"> • Ms. Veronica Mihailu-Moraru, human rights lawyer, Moldovan Bar Association <i>Vocatie</i>, Moldova • Mr. Moritz Birk and Ms. Gerrit Zach, <i>Ludwig Boltzmann Institute for Human Rights</i>, Austria • Ms. Silvia Casale, <i>NPM Observatory</i>, France <p>Followed by Q&A</p>
<p>12:45-13:00</p>	<p>FINAL PLENARY SESSION: WRAP-UP AND WAYS FORWARD <i>by Ms. Barbara Bernath, APT and Mr. Omer Fisher, OSCE/ODIHR</i></p>

ANNEX II

LIST OF PARTICIPANTS

European Committee for the Prevention of Torture (CPT-CoE)

- Mykola GNATOVSKYY - President, European Committee for the Prevention of Torture (CPT)

United Nations Subcommittee for the Prevention of Torture (SPT)

- Malcolm EVANS - Chair, UN Subcommittee on Prevention of Torture (SPT)
Mari AMOS - Member and Head of Europe regional Team, UN Subcommittee on Prevention of Torture (SPT)

National Preventive Mechanisms (NPM)

- Alfred KOCOBASHI - On-duty Head of NPM, People's Advocate Institution, Albania
Dominik HOFMANN - Legal expert, Austrian Ombudsman Board, Austria
Arman TATOYAN - Human Rights Defender (Ombudsman) of the Republic of Armenia
Gohar SIMONYAN - Head of the Department for the Prevention of Torture and Ill-treatment, Office of the Human Rights Defender of the Republic of Armenia
Ivan DECHEV - Chief Expert, NPM, Office of the Ombudsman of the Republic of Bulgaria
Marie LUKASOVA - Senior lawyer, Office of the Public Defender of Rights, Czech Republic
Ivana BULJAN AJELIC - Legal Affairs Advisor to the Ombudswoman, Office of the Croatian's Ombudswoman, Croatia
Kambanella KALLIOPI - Human Rights Officer, Office of the Commissioner for Administration and Human Rights, Cyprus
Pia WIRTA - On-duty lawyer, Office of the Parliamentary Ombudsman, Finland
Anne-Sophie BONNET - Delegate, General Controller of Places of Deprivation of Liberty, France
Snezhana TEODOSIEVSKA
JORDANOSKA - State Counsellor, Office of the Ombudsman, Former Yugoslav Republic of Macedonia
Nika KVARATSKHELIA - Head of the Department of Prevention and Monitoring, Office of the Public Defender, Georgia
Monika DEUERLEIN - Member of the Joint Commission of the States, Federal Agency for the Prevention of Torture, Germany

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|---------------------------|---|
| Fotini PANTELIDOU | - Senior investigator, Human Rights Department of the Office of the Ombudsman and temporary coordinator of the NPM team, Greece |
| Gergely FLIEGAUF | - Head of the OPCAT NPM Department, Commissioner for Fundamental Rights, Hungary |
| Alessandro ALBANO | - Staff member Office of the National Guarantor for the Rights of Persons Detained and Deprived of Liberty, Italy |
| Askar SHAKIROV | - Commissioner (Ombudsman), Kazakhstan |
| Roza AKYLBEKOVA | - Deputy director of the NGO Kazakhstan International Bureau for Human Rights and Rule of Law, Coordinator of the Kazakh NGO Coalition Against Torture and member of the NPM Coordination Committee, Kazakhstan |
| Dinara SAIKOVA | - Deputy director, National Centre of the Kyrgyz Republic for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Kyrgyzstan |
| Kristina BRAZEVIC | - Advisor, Seimas Ombudsmen's Office, Lithuania |
| John BORG | - Member of the Board of Visitors for Detained Persons and the Board of Visitors of the Prisons, NPM, Malta |
| Mihail COTOROBAI | - People's Advocate (Ombudsman), Moldova |
| Zdenka PEROVIC | - Deputy Ombudsman, Office of the Protector of Human Rights and Freedoms, Montenegro |
| Edwin VAN HOUTEN | - Head, Care for people with disabilities and Forensic care Unit, Health Care Inspectorate and NPM, Netherlands |
| Helga Fastrup ERVIK | - Head of NPM Unit, Office of the Norwegian Parliamentary Ombudsman, Norway |
| Aleksandra IWANOWSKA | - Specialist, NPM, Office of the Commissioner for Civil Rights Protection (Ombudsman), Poland |
| Jose Alvaro Amaral AFONSO | - Visitor/Coordinator, NPM, Office of the Ombudsman, Portugal |
| Izabela CERNAVODEANU | - Counsellor for the People's Advocate Institution, Romania |
| Milos JANKOVIC | - Deputy Ombudsman (Protector of Citizens), Serbia |
| Ivan SELIH | - Deputy Ombudsman, Slovenia |
| Sandra IMHOF LINDER | - Head of Secretariat, National Commission for the Prevention of Torture, Switzerland |
| Gunilla BERGEREN | - Head of OPCAT Unit, Parliamentary Ombudsman, Sweden |
| John WADHAM | - Chair of the NPM – the UK's network of independent bodies preventing ill-treatment in detention, United Kingdom |
| Louise FINER | - Coordinator, NPM, United Kingdom |
| Valeriya LUTKOVSKA | - Ukrainian Parliament Commissioner for Human Rights (Ombudswoman), Ukraine |
| Kateryna CHUMAK | - Acting Head of Department for the NPM, Office of the Parliament Commissioner for Human Rights, Ukraine |

Andrew CHERNOUSOV - Expert, NGO Kharkiv Institute for Social Researches and member of the NPM, Ukraine

OSCE Field Missions

Madina ABUBEKER - Senior Programme Assistant, OSCE Centre in Bishkek
Milena CERANIC - National Legal Officer, OSCE Mission to Montenegro
Alba JORGANXHI - National Legal Officer, OSCE Presence in Albania
Gulmira KUENZHANOVA - National Legal Officer, OSCE Programme Office in Astana
Zarko MARKOVIC - National legal Officer, OSCE Mission to Serbia
Alina SECRIERU - National Legal Officer, OSCE Mission to Moldova
Radka RUBILINA - Human Rights Officer, OSCE Office in Yerevan

Other Experts/ Panel Discussion 14 October 2016, 11:15-12:45

Moritz BIRK - Senior Researcher and Head of Team, Ludwig Boltzmann Institute of Human Rights, Austria
Silvia CASALE - Chairperson, NPM Observatory
Markus JAEGER (observer) - Head of Cooperation with International Organisations and Civil Society Division, Directorate General Human Rights and Rule of Law, Council of Europe (CoE)
Veronica MIHAILOV-MORARU - Human Rights Lawyer, Moldovan Bar Association, Moldova
Gerrit ZACH - Research and Project Manager, Ludwig Boltzmann Institute of Human Rights, Austria

APT/ODIHR

Barbara BERNATH - Chief of Operations, APT
Eva CSERGÖ - Europe and Central Asia Programme Officer, APT
Ana Isabel DE ALMEIDA VALE - Intern, OSCE/ODIHR
Veronica FILIPPESCHI - OPCAT Adviser, APT
Omer FISHER - Acting Head of the Human Rights Department, OSCE/ODIHR
Stephanie SELG - Advisor on Torture Prevention, OSCE/ODIHR
Mark VAN GOOL - Human rights Advisor, OSCE/ODIHR