THE EUROPEAN NPM PROJECT

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an activity of the Peer-to-Peer Network"

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DEBRIEFING PAPER

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The present document[1] was prepared by Stefano Valenti of the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua, on the basis of notes taken by the meeting's secretariat[2], under the aegis of the European NPM Project team at the Council of Europe (National Human Rights Structures Unit, Directorate of Co-operation, Directorate General of Human Rights and Legal Affairs).

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[1] The electronic version of this document with annexes is also available at
http://unipd-centrodirittiumani.it/en/attivita/European-National-Preventive-Mechanism-against-torture-NPM-Project/458
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I. INTRODUCTION

A meeting of the European NPM[3] Contact Persons was convened on 27-28 January 2010 in Padua (Italy). This was one of the first events of the "European NPM Project"[4], which is part of a Joint European Union-Council of Europe Project called the "Peer-to-Peer II Project" with co-funding from the Human Rights Trust Fund. The meeting was co-organised with the Interdepartmental Centre on Human Rights and the Rights of People of the University of Padua. The meeting saw the participation of Contact Persons from 19 of the then 20 operating NPMs of the Council of Europe region, who make up the European NPM Network. In addition, representatives of the European Commission and the SPT[5], former members of the CPT[6], as well as APT[7] experts and Council of Europe staff contributed to this meeting.

The first day was dedicated to the substantive issue of the concept of preventive monitoring as opposed to the concept of complaints-based monitoring. The work programme under the Project for the coming two years was discussed and decided upon in the second day.

As a follow-up to this event, it was decided that this debriefing paper would be drafted to summarise the findings of the thematic part and provide practical information to the NPMs concerning the future work programme of the Project. Each chapter lists key points considered most relevant to the topics and discussions.

II. RATIONALE AND OBJECTIVES OF THE MEETING[8]

The present system of preventing torture has become a complex one, but also provides for new opportunities. There are a lot of actors in this immense field and many different ways to deal with the problem of torture and ill-treatment. That is why it is important to create an NPM network to learn from each other and find, with the support of other stakeholders, the most effective ways to prevent ill-treatment while maintaining coherence.

To reach this goal there are four complementary avenues:
1. Understanding, explaining and respecting each other;
2. Agreeing on the underling concept of preventive monitoring;
3. Mutually learning;
4. Mutual exchanges of information based on a culture of openness as opposed to a culture of secrecy.

First and foremost it should be clarified how NPMs will engage in the Project:
1. Through an annual meeting of Head of NPMs and Contact persons;
2. Organising and hosting thematic workshops;
3. Organising and hosting on-site exchanges;
4. Contributing to a monthly newsletter.

The meeting was convened to decide together how to best organize and use these tools.

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[3] National Preventive Mechanisms as foreseen by the Optional Protocol of the UN Convention Against Torture (OPCAT)
[4] For more information on the initial idea of the European NPM Project and its preparation see the document LHRCB/NPM (2010)2 "Description of the European NPM Project at:
http://unipd-centrodirittiumani.it/en/attivita/European-National-Preventive-Mechanism-against-torture-NPM-Project/458
[5] UN Sub-Committee for the Prevention of Torture.
[6] European Committee for the Prevention of Torture.
[7] Association for the Prevention of Torture.
[8] Based on the presentation given by Markus Jaeger, Council of Europe.

III. THE EUROPEAN UNION ACTION ON PREVENTION OF TORTURE[9]

The prevention and eradication of all forms of torture and ill-treatment worldwide represents one of the main objectives of the EU's human rights policy.[10] The EU available tools to eradicate torture are:
The EU external relations diplomacy towards the non-EU member States;
The Freedom, Justice and Security policy towards the EU member States;
Cooperation assistance;
Individual cases of torture addressed in ad hoc demarches, political dialogue and thematic discussions on torture with a third country.

The commitment of all the EU member States to the full ban of torture is reflected in Article 4 of the Charter on Fundamental Rights of the EU, which states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". As Members of the Council of Europe, all EU member States have ratified the CPT and as Members of the UN have ratified the UN Convention Against Torture. The establishment of the national and international monitoring mechanisms under the Optional Protocol to the UN Convention against Torture (OPCAT) provides an additional layer of scrutiny of UN States parties, thus the EU Institutions commitment to support OPCAT ratification both by EU and non-EU State members.

The recently adopted Stockholm Programme, which defines the framework for the EU action *inter alia* in criminal law cooperation, for the period 2010–2014, expressly recommends "to promote the exchange of best practices and the implementation of the European Prison Rules, approved by the Council of Europe". "Issues such as alternatives to imprisonment, pilot projects on detention, social rehabilitation of detainees and best practices in prison management could also be addressed. The European Commission is invited to reflect on this issue further within the possibilities offered by the Lisbon Treaty" The EU Commission is invited "to examine the possibilities of using the existing programmes to finance pilot schemes in the Member States testing alternatives to imprisonment"[11].

In both external and internal EU context, the "European NPM Project" lies perfectly within the EU priorities, since OPCAT and its NPM system is considered a primary tool for eradicating torture. The prevention of torture is one of the major priorities for funding under the European Initiative for Democracy and Human Rights (EIDHR). In this context EU is funding directly some European NPMs, such as in Moldova.

IV. THE CONCEPT OF PREVENTIVE MONITORING

1. Presentations

The substantive part of the meeting was on the concept of preventive monitoring. "The underlying rationale behind the concept of preventive monitoring is the proactive identification of situations prone to produce a risk of ill-treatment, in order to minimise the likelihood of such risk from

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[9] Based on the presentation given by Raphael Fisera, Human Rights and Democratisation, DG External Relation, EU Commission. Additional information at the EU web site:
http://ec.europa.eu/external_relations/human_rights/torture/docs/background_en.pdf
[10] In 2001 the EU adopted guidelines on EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment. The guidelines document does not create new legal obligations, but is a political commitment to carry out systematic and sustained action in the fight against torture. They provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights fora.
[11] "The Stockholm Programme - An open and secure Europe serving and protecting the citizen" Detention 3.2.6 page 28.and 29. Text available at http://ec.europa.eu/justice_home/news/intro/news_intro_en.htm

materialising, or to stop ill-treatment, if occurring, from re-occurring. This follows the idea that prevention is better than a cure. The ultimate aim of the preventive approach is to strengthen the system of protection of persons deprived of their liberty, in a vulnerable situation in custody, against ill-treatment. The preventive mandate is forward-looking, proactive and aims to identify and prevent systemic shortcomings that could in the future lead to ill-treatment. This approach complements and strengthens the redress mechanisms already in place that help reactively deal with complaints, and incidences, of ill-treatment that have happened in the past. The key link between the proactive nature of preventive monitoring and the more reactive redress mechanisms and complaints' handling lies in the assumption that incidences of past ill-treatment augment the possibility and risk that ill-treatment may re-occur in the future"[12].

Presentations[13] on this first part of the meeting addressed the concept of preventive monitoring and in particular compared the preventive concept to the approaches followed under complaints' based monitoring. Presentations were given by representatives of the APT and the SPT, as well as by former members of the CPT. A number of NPMs presented to the other peers their role and activities in preventing torture.

2. Discussion

Following the presentations a whole range of interesting issues were raised among participants and experts in a truly "peer-to-peer" spirit. All participants actively and openly discussed their respective roles and their understanding of how to effectively undertake the role of preventive monitoring within their respective mandates.

For example a question arose as to whether preventive monitoring also concerns the very moment when police holds a person, e.g. in a mob control operation, and in which way NPM' s monitoring is relevant in this situations. It was stressed that preventive monitoring is not solely related to places of detention such as prisons, but to the very situation of deprivation of liberty. The CPT, similarly to the SPT, and in line with the case law of the ECtHR[14], take the view that any person who is not free to leave a particular place is a person deprived of his/her liberty: prevention starts as soon as a person is in such situation. While there can be operational difficulties in NPM' s monitoring of police activities in the streets, nevertheless it can be within the NPMs role. A good example comes from the CPT, which has also examined in the course of its visits conditions in the vehicles transporting persons deprived of their liberty by the police. There are also static places where people have been deprived of their liberty: e.g. shops or street alleys. However, in this context it should be clarified whether we are in the realm of a particular person deprived of their liberty or in the context of mob control operation. In the later case, the intervention of an ombudsman on the basis of a complaint or by its own initiative can address the issue more effectively.

When the case concerns a set-up police operation, where the police have the whole control of the situation, this could be seen as amounting to the same condition of deprivation of liberty as in places of detention. Thus, *mutatis mutandis* the ECtHR's case law on cases of alleged ill-treatment by police in detention, the burden of proof should shift on to the State authorities, who must prove they have used all due diligence to avoid such treatment.

On another related issue, it was underlined that NPMs' focus of work is not only about visits but also about the planning of such visits. For this purpose, an on-going inventory of all known places

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[12] "The Concept of Preventive Monitoring" Outline paper prepared by Francesca Gordon, Manager of the Project, for the first meeting of the European NPM network Contact Persons.
[13] The experts presentations are available at the event site of the Interdepartmental Centre on Human Rights and the Rights of People of the University of Padua:
http://unipd-centrodirittiumani.it/en/attivita/European-National-Preventive-Mechanism-against-torture-NPM-Project/458
[14] European Court of Human Rights.

of deprivation of liberty and of those that are only supposed to be places of detention (maybe secret detention centers), is an essential starting point. This database in the hands of an NPM, constantly updated with all sources of information, can avoid and/or deter the establishment of "incommunicado" places of detention. Moreover, unannounced visits by the NPM to suspected places of secret detention could help better detect such places and deter its future establishment.

Another provocative, but instructive, question was about the source of legitimacy of the standards applied by NPMs, i.e. "who does give to NPMs the power to indicate to the prison authorities what have to be done in places of deprivation of liberty?" It was replied that an NPM has a precise mandate under the OPCAT and under the law of the country. It is therefore very important that the domestic law establishing NPM expressly refers to the OPCAT standards. These standards are within the threshold of the prohibition of torture principle, a *jus cogens* principle. At European level these standards are also applied by the ECtHR and should be implemented by domestic courts of State parties to the ECHR and have thus a normative character. However, when an NPM is conducting a visit, their monitoring role is not based purely on legality but also on detainees and prison's authorities' perception, which can enhance trust, respect and even obedience to NPMs recommendations. Moreover, NPMs can be allowed by their mandate to make recommendations for changes in the law. Thus, even in this aspect, NPM's work is not based solely on hard law but goes beyond it, by recommending changes and progressive development of the law and its application

The very issue of "who sets standards" was raised again in relation to the application of International and European standards at national level. According to some participants, there might be problems in strictly following these standards that often seem to create unjustified positive discrimination favouring detainees *vis à vis* the normal population. This applies, for example, to the standard that imposes compulsory medical screening for all detainees entering prisons and their free medical treatment, even for dental care. In the specific case, it was clarified by the experts that such standards were based on the assumption that a huge number of detainees are former or current drug users and there is an obligation by prison's authorities to avoid the spread of contagious diseases.

More generally, European standards are necessarily based on common norms, which should be articulated in different ways in order to be translated into the national context. There should not be a European standard as such but a good standard despite its geographical origin. A good omen would be that everyone accepts to apply those standards, even when problematic, in order to improve their credibility in those countries where authorities are still reluctant to apply them.

However, it was recognised that setting common standards is an unresolved problem: there are many actors and many points of view, which are difficult to combine. In this context, a CPT/SPT/NPM annual meeting was proposed to discuss the main issues at stake among these mechanisms. In particular these meetings should aim to devise best practices to support the work of NPMs and to discuss common standards and working methods.

Another specific question concerned the use of mobile phones by detainees. It was replied that the problem of security, including prison guards' security, should prevail or at least be balanced with the right to freedom of correspondence of detainees. However, there are places of deprivation of liberty, such as closed centre for irregular migrants, where mobile phones can be allowed. In more general terms, it was stressed that an NPM mandate is not only related to the prevention of human rights violations, *in primis* ill-treatment, but also the NPMs should look in to the respect of all rights, not necessarily human rights, whose violation can lead to a human right violation too.

V. COMBINING COMPLAINTS HANDLING WITH PREVENTIVE MONITORING

1. Presentations

The fact that the vast majority of the currently operating NPMs of the European NPM Network are a separate but integral part of an already established Ombudsman Institution made the focus of the discussion on the difference of the preventive approach compared with the complaints-based approach topical. Following the presentation on this subject by Dr Silvia Casale, the Project advisor, a tour de table among participants showed that in some countries there are, if not problems, at least overlaps in combining these two roles. Many NPMs reported that they have to daily deal with these two different approaches, often switching hats, and the key differences in both approaches is useful to note but difficult to apply in practice.

2. Discussion

It was reported that while visiting prisons, some NPMs' staff performing NPM duties, within a separate unit in the framework of the Ombudsman, accept complaints, but act just as a "letter box".

In the case of an "Ombudsman plus" model performing NPM duties it is considered difficult to combine the two roles in those visits made by a mixed delegation, since NGO members have a different perception of their role due to their different background.

Some participants considered that reception of complaints is a precious function, because, it allows for a better focused monitoring, thanks to the complaint's allegation.

It was stressed that when a special unit for the prevention of torture is created within an already well established Ombudsman regularly visiting prisons, detainees may not be aware of the difference between Ombudsman and NPM: thus un-announced visits can cause misunderstanding among detainees.

In some cases NPMs may not be bound to inform other institutions about the complaints received, nevertheless it was considered useful that they can confront prisons authorities with the substance of the complaints, if related to the prevention of ill-treatment.

Following this discussion, which clearly indicated a certain overlapping between the two roles, at least from the operational point of view, the NPMs representatives were asked whether there was any plan to better separate these two functions.

Concluding this session, it was stressed that there must be political will to support the provision of adequate staff members and budget to an ombudsperson in charge of performing NPM tasks. In some countries national ombudsmen refused to be designated as NPM because of a lack of resources.

In addition, there was a reminder that the starting point of all the discussions was about freedom of torture and different ways to protect this freedom: prevention is only one of the many tools to address torture. Moreover, prevention includes many different components, which are not all necessarily included in conducting visits of detention places. Prevention is much more than just visiting detention places, and should be combined with other means. In this context, the distinction between proactive and reactive behaviour is not so watertight. For example, the so called reactive means of addressing torture *post factum*, such as judgments of national and international courts which sanction violations of freedom of torture, could have a proactive effect by deterring State authorities from committing similar offences again. In conclusion, one of the biggest challenges in the area of preventive monitoring is to combine different levels of preventive work, which should not be confined just in one specific framework.

VI. THE ROLE OF THE NPMS

1. Presentation of the structure and activities of the Georgian NPM[15]

In August 2005 the Georgia ratified OPCAT and appointed the Public Defender's Office as NPM. Since 2005 systematic monitoring activities have been conducted for the prevention of torture in places of deprivation of liberty (401 visits in 2005; 587 visits in 2006; 290 visits in 2007; 384 visits in 2008 and 409 in 2009). Within the Public Defender's Office, NPM functions are carried out by the Department of prevention and monitoring, which is composed of 6 staff members and 2 interns from the department of justice. The department avails itself of ad hoc services provided by a pool of external experts (penitentiary experts, psychiatrists, child's rights experts, psychologists, general profile physicians, pediatricians, forensic doctors, social workers and lawyers). Despite a significant financial support provided by UNDP, Council of Europe and the European Commission, further funds are required to increase human and financial resources, as well as to organize training activities so as to stick to the 2010 planned NPM activities.

2. Presentation of the structure and activities of Polish NPM[16]

In Poland the tasks of the NPM are executed by the Commissioner for Civil Rights Protection (Ombudsman). Despite the fact that the main NPM' s role is to visit regularly and frequently places of detention, due to financial constraints, the number of visits has been cut down in the past with o 76 visit in 2009 (however 100 visits are planned for 2010 subject to sufficient budgetary allocation). The NPM staff within the Ombudsman office has increased from 8 to the 16 persons. There are also 3 de-centralised offices with 2 staff members each and the office is actively cooperating with specialized NGOs. Regular visits are prepared one year in advance and locations are decided on the basis of problems indicated in previous visits report. Almost all visits are un-announced. Only a fax message is sent one day before (or on the same morning) of the visit to announce the visiting team. In the past there were some difficulties in entering police institutions, because local police staff were not informed about the new function of the Ombudsman as NPM. Interviews are a very important tool for collecting information; detainees are randomly chosen for interviews, but are interviewed only on a voluntary basis. Normally, around 10% of the prisons population is interviewed. The composition of the visiting team is multidisciplinary and the NPM staff avail itself of external expert. Public annual reports, and from 2009 also quarterly reports, are published and posted on internet (http://www.rpo.gov.pl/index.php?md=7507&s=3). CPT recommendations, contained in its visit reports, are deemed useful and taken into consideration. The NPM sends to the CPT its annual report. Usually there are no differences between the findings of the NPM and the ones of the CPT, which are related to detention centres visited by both institutions. Exchange of visit reports have also taken place with the NPM of Slovenia and it has been suggested that this practice should be extended to other NPMs.

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[15] Based on the presentation given by Ms Teo Batsikadze, Contact Person of the NPM of Georgia.
[16] Based on the presentation given by Ms Ewa Dawidziuk, Contact Person of NPM of Poland

VII. SUGGESTIONS FOR IMPROVEMENT OF WORKING COOPERATION AND CROSS-FERTILISATION AMONG THE NPMs, SPT AND CPT

Following the above-mentioned contributions, NPMs shared their views on how they see in practice their role in preventing torture and how they saw their relations with SPT and CPT.

Various NPM Contact Persons strongly believe that on-sites visits are very important for NPMs and, due to the valuable experience of the CPT in the field, suggests that CPT should be involved in this kind of visit.

A number of participants wished for a clearer division of labour between the CPT and European NPMs, which should consist of ground-work visits by NPMs and on follow-up CPT visits to support NPM recommendations on urgent and topical situations. This division of labour could facilitate the conducting of more focused visit by the CPT.

The possibility of the participation, in addition to SPT members, of an active CPT member in the future thematic workshops was explored, to provide clarification to participants on CPT standings over relevant questions. The chair also stressed that the system of prevention of torture nowadays seems to have a architecture with a variable geometry with a lot of differences between the role of SPT and CPT in those countries that have NPMs and in those countries which have not such national mechanism.

From the SPT's perspective it is of the utmost importance for planning their visits to receive information from NPMs directly or trough their reports about the outstanding problems concerning deprivation of liberty in the specific country.

In addition it was stressed that SPT's role should not be to accredit NPMs but instead to assist and offer training to these national mechanisms. The same view on the relationship between SPT and NPMs was shared by APT representatives, who stressed that it is not the right moment for SPT to provide NPM's accreditation, since NPMs' establishment is still an on-going process which has started very recently.

One NPM proposed to share on regular basis other countries' NPMs experience, in order to learn how they solved common problems and established "best practice".

In general, NPMs shared the view that, in addition to these three mechanisms (i.e. SPT, CPT and NPMs) , NGOs' contributions in future thematic workshops would be an important added value.

VIII. DECIDING THE WORK-PROGRAMME OF THE EUROPEAN NPM NETWORK

The work programme under the Project for the coming two years was discussed and decided upon in the second day.

1. Thematic Workshops

The participants were invited to give their interest on the substantive and methodological issues proposed by the NPMs' Contact Persons before the meeting. The list of themes to be agreed upon was presented and commented by the Project experts[17]. The themes selected will be the subject of

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[17] Experts' presentations are available at site dedicated to this event by the Interdepartmental Centre on Human Rights and the Rights of People of the University of Padua:
http://unipd-centrodirittiumani.it/en/attivita/European-National-Preventive-Mechanism-against-torture-NPM-Project/458

at least six thematic two-day workshops to be organised as from March this year, with the possibility for at least one participant per NPM to attend. NPMs will have the possibility to host such workshops with full funding under the Project in order to raise their domestic and international visibility. In such case they will co-organise the workshop with the European NPM Project team in Strasbourg.

NPM proposed methodological themes

- Prevention
- Scope of NPM visits
- Powers of NPM
- How to prepare a visit
- How to visits all different types of setting
- How to deal with issues of access
- How to collect and check information
- How to work with external experts
- How to relate to local management /staff
- How to report
- How to follow-up on a visit / report
- How to handle public relation
- How to cooperate with authorities

NPM proposed substantive themes

- Mental health, other health issues and preventive health issues
- Detention conditions
- Security
- Rights related to prevention of ill-treatment
- Programmes in prison
- Contacts with the outside world
- Vulnerable groups in Detention
- Staff working in various detention settings

2. On-site exchanges of experiences

The organisers explained that interested NPMs can request on-site visits and exchanges of experiences in their countries. Four such exchanges are foreseen in 2010, funding for a larger number is secured for 2011. These meetings will as a rule last four days each and will be organised jointly by the Project Team and the NPM. They will consist of joint visits by the host NPM's staff and experts with personal CPT, SPT or APT experience during which the participants will share and compare their visiting methodology and experience.

3. Annual Meeting of NPM Heads and Contact Persons

It was proposed that every year there will be a meeting of the NPM Contact Persons to assess the work of the past year and adapt and organise the work of the NPM network for the following year.

4. Participation

The question of the number of institutions represented at the Project's events was also discussed. In principle, it seemed preferable having a restricted table of participants, including NPMs, SPT, APT and CPT, in addition to the CoE. However other participants, such as relevant national

NGOs, might be invited to the thematic workshops if they have an expertise in the relevant subject. In any case, information on this Project should be circulated widely among all potential stakeholders.

5. Newsletter

That draft content of a monthly newsletter was presented to participants for observations and proposals as to the format. This publication is addressed to the members of the network as well as to interested institutions and individuals. Each regular issue will cover retrospectively news and information, but also contain information on forthcoming activities and events, including those under the European NPM Project, and provides updates regarding the setting-up, the legislative bases and the functioning of NPMs in Europe[18]. The newsletter will be sent to subscribers electronically in the beginning of each month. NPMs were cordially invited to contribute to the "European NPM Newsletter" by sending information they wish to see circulated to npm.newsletter@centrodirittiumani.unipd.it

IX. WINDING-UP OF THE MEETING

During the first day a mutual exchange of information, based on a culture of openness, allowed for an open discussion among participants on their understanding of how to effectively undertake the role of preventive monitoring within their respective mandates.

Participants agreed that setting common standards is an unresolved problem: there are many actors and many point of views, which are difficult to combine. It was proposed that a CPT/SPT/NPMs annual meeting should be organised to discuss main issues at stake among these mechanisms.

The meeting allowed for a good initial planning of the activities to be carried out during the two years of the European NPM Project (2010-2011).

Based on the participants' comments, the Council of Europe's Project team was able to review and decide the list of subjects for the next six thematic two-day workshops to be organised. Also to plan for various NPM On-site Visits and exchanges of experiences to be organised with host NPMs.

The next European NPM Contact Persons meeting will be organized on 1-2 December 2010, in Strasbourg, France.

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[18] The newsletter's issues are posted on the website of the Interdepartmental Centre on Human Rights and the Rights of Peoples, of the University of Padua and can be downloaded from Human Rights Centre, University of Padua, at

http://unipd-centrodirittiumani.it/public/docs/NPMnewsletter_febmarch2010.pdf