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**The concept of preventive monitoring and the respective roles of the SPT, the
CPT and the NPMs**

The role of NPMs

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I would like to present the role of national preventive mechanisms on the base of polish NPM experiences. In Poland, the National Preventive Mechanism (hereinafter the NPM) was officially designated on 18 January 2008 and its tasks were entrusted to the Human Rights Defender of the Republic of Poland. In practice, the active operation of the NPM commenced on 1 July 2008, after financial resources had been allocated for this purpose.

According to the OPCAT provisions, the aim of the national preventive mechanisms is:

- 1) to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- 2) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment taking into consideration the relevant norms of the United Nations;
- 3) to submit proposals and observations concerning existing or draft legislation;
- 4) to raise awareness of the society on the issues of preventing torture and on the relevant norms concerning the treatment of people deprived of their liberty – trainings, publications.

The role of mechanisms principally consists of conducting preventive visits in places of detention, but it is not limited to these visits.

The definition of places to be visited under the mechanisms is provided in Article 4 of the OPCAT, as well as the definition of persons deprived of their liberty. In practice, each country has to determine which places are covered by the definition. In Poland, there are approximately 1,000 such places, including 192 penitentiary institutions. Other establishments include: juvenile detention centres, refuges for minors, Police emergency centres for children, quarters for apprehended persons in Police organisational units, sobering stations, juvenile reform schools, youth sociotherapy centres, deportation custody centres, facilities for foreigners applying for refugee status or asylum, psychiatric hospitals, and social care centres.

The visits should be made on a regular basis as their effectiveness increases with frequency, which for many mechanisms poses a problem, since regular visits require adequate financial and human resources.

In 2008, the representatives of the Human Rights Defender implementing the National Preventive Mechanism tasks carried out visits to 76 places of detention, and in 2009 - to 106. These were predominantly unannounced visits, the places of detention were selected at random and all the available information on the visited facilities was taken into consideration.

In Poland the list of facilities of each type is regularly updated by the NPM. The NPM visits schedule is prepared a year in advance, but it is not made public. In the schedule, different types of places of detention and different locations around the country are taken into account. The Office of the Human Rights Defender has its three Territorial Departments in Gdansk, Katowice and Wroclaw that help in conducting preventive visits. At the moment 4 employees of those Departments are engaged in the NPM activities.

The minimum frequency of visits to individual detention places depends on the type of visit, on the category of place to be visited, and on the availability of other sources of information on a given place. The results of former visits, which were

carried out within the framework of the Human Rights Defender's statutory tasks, are also taken into consideration. Moreover, the data on irregularities in places of detention are submitted to the Office of the Human Rights Defender by non-governmental organisations with which the Polish Ombudsman cooperates in connection with functioning of the Mechanism. I would like to point out here that an "Agreement on the implementation of OPCAT" has been introduced in Poland, and the organisations operating within this network, such as Amnesty International Poland, Polish Section of the International Commission of Jurists, Association for Legal Intervention, Helsinki Foundation for Human Rights and Sławek Foundation, support the Polish Ombudsman in his preventive activities. Some additional information is obtained from reports, regularly submitted to the Office of the Human Rights Defender and concerning extraordinary incidents in penitentiary institutions, in Police units and in juvenile facilities. Once, an information on a high number of escapes from a juvenile reform school resulted in the NPM visit to the establishment. The visit revealed that numerous changes of a general nature were necessary in the facility, and that the girls living there were subjected to inhuman forms of treatment and punishment, which was the reason behind such big number of escapes. Besides, we get information about problems in places of detention from complaints that we are dealing with.

In general, places which we know to be facing serious problems require more frequent visits, similarly to custody suites, Police detention centres, and places housing the so-called vulnerable persons (for example women, minors, psychiatric patients).

The objective of the NPM is making ad-hoc or detailed visits. The aim of a detailed visit is to conduct a thorough analysis of the detention system, to identify the causative factors that lead, or may lead in the future, to torture or cruel or degrading treatment (including low quality of detention conditions), and to make appropriate recommendations.

Ad-hoc visits, on the other hand, are carried out in-between detailed visits in order to check whether the recommendations are being followed and to ensure that the detainees are not subjected to repressions.

In Poland, the substantial majority of visits are of the detailed type, due to a very high number of places of detention and a limited number of staff responsible for preventive visits. The implementation of recommendations, therefore, is verified chiefly through correspondence. We continue dialogue with the directors of the visited places.

The length of a visit evidently depends on the size of visited place and on the problems encountered on site. In Poland, a detailed visit to a large penal institution usually lasts three or even four days and to a smaller facility like the sobering-up centre or juvenile detention centre – one or two days. While performing the tasks of the NPM, the representatives of Polish Ombudsman hold an official identity card and an authorisation of the Polish Ombudsman to make a visit to a given establishment.

In 99% of visits the management of the establishment is not informed in advance of the planned visit. We inform of our intention to visit an establishment only in the case of large penitentiary institutions or custody suites designed for 800-1000 people, by fax message sent on the day of the visit or a day in advance. Our aim is to make the visit more efficient and to obtain, immediately upon arrival to the establishment, all the necessary information which would determine our activities. In this way we try to ensure that the management of a facility does not have time to introduce any changes. However, in some cases the detainees informed us of changes made just before the visit, such as distributing the facility's internal rules and regulations in the cells or removing from them triple bunk beds. As regards other types of detention places, we do not notify of the planned activities. Until now, we have only had a few problems with entering some Police units. Despite the fact that all the institutions were informed at the very beginning about the new role of Polish Ombudsman acting as the NPM, these difficulties obviously resulted from the lack of knowledge about the formal basis for the activities of the Mechanism in Poland. A dialogue with Police authorities helped us to eliminate these difficulties.

The course of a visit is strictly determined by the tasks of the National Preventive Mechanism, that is by the need to strengthen, if necessary, the protection of

persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. With this objective in mind, the representatives of the Human Rights Defender inspect the entire establishment, its installations and equipment, as well as the rooms where the persons deprived of their liberty stay, including sanitary facilities, kitchens and common rooms. An important element of every visit are the interviews conducted in such a way that no third parties can hear the answers given by the respondents. In Poland, we have developed several questionnaires to be used during the NPM visits, each being applicable to one of the following: penitentiary institutions; detoxification centres; Police units; Police emergency centres for children; juvenile detention centres and refuges for minors (shared questionnaire); juvenile reform schools and youth sociotherapy centres (shared questionnaire).

The questionnaires consist of several dozens of open and closed ended questions. Some of the respondents are selected because they are at a greater risk of improper treatment than others. Therefore, among interviewees in penitentiary institutions or custody suites there are always some detainees aged above 60 years, some physically disabled, some foreigners as well as persons who were subjected to direct coercive measures or who received the disciplinary punishment of solitary confinement in the last 6 months or the so-called dangerous prisoners. Irrespective of the type of detention place, in Poland we apply the principle that during every visit 10% of population of a given establishment should be interviewed. If some alarming circumstances are revealed during a visit, such as for example inadmissible forms of treating minors, the pool of respondents is appropriately broadened. The respondents are selected at random, but interviews with persons who volunteer are also admitted. In addition, short conversations with people deprived of liberty are held during the inspection of the facility, mainly cells.

The composition of the visiting team should be of an interdisciplinary character, which may pose a problem for some of the Mechanisms, as Ombudsman offices employ mostly jurists. In Poland, the visiting teams usually include some external

experts, most often psychologists, addiction specialists or doctors, when justified by a facility's profile. Opinions of those specialists are presented in the post visit report and taken into account when making recommendations. The teams that carry out the NPM visits consist mainly of jurists, political scientists and rehabilitation educators.

In Poland, we have adopted the practice of sending the NPM post visit reports to the head of the visited facility, to its superior authorities, to the judge supervising the facility, and to Helsinki Foundation for Human Rights. We submit the reports also to NGOs within the network of the Agreement on the implementation of OPCAT, which monitor the implementation of the National Preventive Mechanism by the Human Rights Defender.

The recommendations constitute the key part of every report. They should be presented in an understandable manner, and organised into a hierarchy according to their importance. Each recommendation should address one specific issue and indicate a proposed solution. The recommendations also provide a basis for periodical evaluation of the functioning of a given detention place, constituting a point of reference for the next visit. Formulating recommendations correctly and verifying their implementation properly might not be an easy task for every NMP at the beginning of its operation. Besides NPM's recommendations should be coherent with the CPT's and SPT's recommendations.

In Poland, we monitor the time span between sending the recommendations and obtaining a response. If the Office of the Human Rights Defender does not receive a response from the addressees of recommendations within a month, a reminder is sent informing of the need to adopt a stance on the recommendations. Often an exchange of arguments proves necessary, as well as a repeated explanation of the rationale behind the recommendations.

The task of the national preventive mechanisms also consists in submitting proposals and observations as regards the existing or draft legislation. For example, if during a visit some irregularities are found, resulting from the lack of binding regulations or from the need to amend the existing ones (for instance, lack of a clearly worded right of a minor to have a daily walk, or lack of the regulations specifying the

living conditions that the Police emergency centres for children should ensure), we request the competent minister to take appropriate legislative initiative. This is because the Polish Ombudsman does not have the right to a legislative initiative. We always monitor the course of legislative process, and if legislative initiative is not undertaken and we consider the matter to be relevant from the point of view of the aims of the NPM, we present our arguments and try to persuade the parties concerned. So far, in the majority of cases we have received a positive response to the problems indicated, however, it occasionally required some persistence on our part. In Poland, however, the legislative process usually takes a relatively long time. Therefore, the implementation of recommendations that require legislative changes is a prolonged process.

Since fulfilling the NMP tasks requires an analysis of the draft legislation, the Human Rights Defender submitted a request to the Prime Minister that all drafts of legal acts that make any reference to the persons deprived of their liberty be submitted to his Office. Currently such drafts are sent to the Office of the Human Rights Defender on a regular basis. In our practice so far, we have made more observations pertaining to the laws being already in force, after verifying the reality of their enforcement. For instance, we are currently analysing how the regulations concerning the use of closed-circuit television cameras in penitentiary institutions are being enforced. We are debating the manner of evaluating the issue from the point of view of the NPM, especially in the context of law which permits the use of cameras in bathrooms and sanitary facilities, provided the private parts of the body of persons deprived of their liberty are covered.

According to Article 23 of the OPCAT the States Parties are obliged to publish and disseminate the annual reports of the NMP. In Poland, the first annual report of the National Preventive Mechanism was compiled in 2009, describing the NMP activities in 2008. The approximately 100-page long report was prepared in Polish and translated into English. It was sent to the bodies in charge of the visited facilities, as well as to the Subcommittee on Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT). The report was submitted also to the CPT during

their periodical visit to Poland, as well as to the non-governmental organisations supervising the correct implementation of the OPCAT in our country, and to Ombudsmen in the majority of European countries.

Furthermore, following the publication of the annual report on the NPM, a meeting dedicated to its analysis was held, with the view to disseminate the information about the issue,. The meeting was attended by representatives of the media, of non-governmental organisations and of institutions in charge of places of detention visited within the framework of the Mechanism.

In order to make the information on the NPM activities in Poland publicly available, apart from the annual report, since 2009 the quarterly reports have also been drawn up on the realisation of the National Preventive Mechanism tasks by Polish Ombudsman. The quarterly reports are published on our website, thus far only in Polish.

The dissemination of information on the NPM in Poland has been facilitated by creating a section dedicated to the National Preventive Mechanism on the Human Rights Defender's website www.rpo.gov.pl. A matching tab was also introduced in the English version of the website.

The participation in meetings with representatives of the non-governmental organisations, as well as in conferences and seminars on penitentiary issues or dedicated to the functioning of other places of detention is also conducive to promoting the NPM activities.

The activities of the National Preventive Mechanism in Poland have not exposed any instances of torture. However, the visits conducted did reveal some situations that may lead to or constitute inhuman forms of treatment or punishment. Visits conducted to juvenile establishments revealed the need to take appropriate legislative action and to introduce some specific rights for minors to the legislation in force, to ensure that those rights are observed. Prohibiting the minors to go outside the building or banning their telephone contact with parents as a form of collective punishment for one's juvenile escape was judged as inhuman punishment. In order to prevent such situations in future, it has been decided to make visits to this type of

detention places more frequently. Appropriate steps have been taken, with the aim to regulate specific rights of minors in the relevant act. The visits alone cannot be an objective *per se*. Their aim is to identify a systemic problem and the changes that need to be introduced.

Thank you for your attention!