



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Report on the visit made by the Subcommittee on  
Prevention of Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment for the  
purpose of providing advisory assistance to the  
national preventive mechanism of the Federal  
Republic of Germany**

**Report to the National Preventive Mechanism\*, \*\***

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\* In accordance with the decision taken by the SPT at its fifth session regarding the publication of its visit reports, the present document was not edited before being sent to the United Nations translation services.

\*\* In accordance with article 16, paragraph 1, of the Optional Protocol, this report was sent confidentially to the national preventive mechanism on 29 July 2013. The national preventive mechanism gave notification of its decision to publish the report on 16 September 2013, in accordance with article 16, paragraph 2, of the Optional Protocol.

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## I. Introduction

1. In accordance with its mandate set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Optional Protocol”), members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the SPT”) visited the Federal Republic of Germany (hereinafter referred to as “Germany”) from 8 to 12 April 2013.
2. The SPT was represented by the following members: Ms. Mari Amos, Ms. Aisha Shujune Muhammad (Head of the delegation), Mr. Felipe Villavicencio Terreros and Mr. Victor Zaharia.
3. The SPT was assisted by two human rights officers and one logistics officer from the Office of the High Commissioner for Human Rights (OHCHR), as well as four local interpreters.
4. The primary objective of the visit was to provide advisory services and technical assistance to the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “the national preventive mechanism – the NPM”) of Germany, in accordance with article 11 (b) of the Optional Protocol. The visit was intended to assist in strengthening the capacity and the mandate of the NPM, including through a review of its working methods, and in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment in Germany. Another aim of the visit was to assess the strategies to address the current challenges and difficulties faced by the NPM, taking due account of the SPT “Guidelines on the national preventive mechanisms.”<sup>1</sup>
5. This report sets out a series of recommendations for the National Agency for the Prevention of Torture (hereinafter referred to as “the National Agency”), which is the national preventive mechanism of Germany. The National Agency consists of the Federal Agency for the Prevention of Torture (hereinafter referred to as “the Federal Agency”), which monitors the places of deprivation of liberty under the jurisdiction of the Federation; and the Joint Commission for the Prevention of Torture (hereinafter referred to as “the Joint Commission”), which monitors the places of deprivation of liberty under the jurisdiction of the States (Länder). These recommendations are made in line with the SPT mandate to offer training and technical assistance and to advise and assist NPMs, in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol.
6. This report is being sent to the NPM on a confidential basis; it will be up to the Federal Agency and the Joint Commission to decide whether or not to make it public. **The SPT does, however, recommend that the NPM make the report public and requests that it be notified of the NPM decision in that regard.**
7. The SPT will send a separate confidential report to the German authorities in which it will make recommendations to the State Party. The SPT wishes to express its gratitude to the National Agency for its cooperation and the facilitation of the visit.

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<sup>1</sup> CAT/OP/12/5.

## II. Recommendations for the national preventive mechanism

8. The planning of the SPT advisory visit was a joint undertaking, as both the NPM and the SPT agreed in advance on the agenda of the joint meetings. Those meetings allowed the SPT to understand the achievements and challenges as well as the legal, structural and institutional obstacles faced by the NPM, along with its working methods.

9. During the course of the visit, joint site visits to two places of detention were conducted.<sup>2</sup> The places of deprivation of liberty were chosen by the representatives of the Federal Agency and the Joint Commission. This permitted the SPT to analyse the methodology of the visiting teams of the two components of the NPM. During the joint visits, members of the SPT adopted a role of observers, while members of the Federal Agency and the Joint Commission led the visits.

10. In addition to visiting places of deprivation of liberty, members of the SPT held meetings with a number of Federal and State officials and civil society organizations to discuss institutional aspects of the NPM and its relationship with other bodies, without presence of the representatives of the Federal Agency and the Joint Commission.

11. The SPT welcomes that both the Federal Agency and the Joint Commission strive for a non-bureaucratic approach, making recommendations on specific concerns to the authorities responsible for the places of deprivation of liberty visited. It is also welcome that the relevant authorities appear to respond positively and implement the majority of recommendations made by the NPM.

12. The SPT also welcomes the willingness of the NPM to voice criticism and encourages it to actively look for solutions to complex issues such as preventive detention, detention pending deportation or application of solitary confinement. The SPT observes that the Federal Agency and the Joint Commission have, since their foundation, conducted some 98 visits of places of deprivation of liberty. However, some institutions including the houses for elderly could not be visited due to insufficient resources and expert capacity currently available to the NPM. This should be addressed.

13. The Federal Agency and the Joint Commission appear to have a great deal of potential as a NPM, which can be further developed if it is given the human and financial resources that it needs to exercise its mandate, to build its technical capacities, to improve the methodology for visiting facilities and to enhance the scope of the reports it prepares on those visits.

14. At the same time, the SPT noted the need for the Federal Agency and the Joint Commission to further elaborate a strategic development plan to reflect on their respective achievements and strategies to address the current challenges. **In addition, the SPT recommends that both entities improve the preparations of their visits to be primarily unannounced and that they consider monitoring the material as well as legal conditions of deprivation of liberty since they are equally important.** Accordingly, the SPT is of the view that the members and staff of the NPM should be required to review jointly their working methods on a regular basis and undertake further training in order to enhance their ability to efficiently perform, collectively and individually, the functions entrusted to them under the Optional Protocol.<sup>3</sup>

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<sup>2</sup> The national preventive mechanism visited the Federal Police Station in Mainz, under the Federal jurisdiction, and the Detention Pending Deportation Centre in Mannheim Prison, under the State jurisdiction.

<sup>3</sup> CAT/OP/12/5, para. 31.

15. The SPT notes the allegations by the Federal and State authorities with which it met that no incidents of torture had recently been reported in Germany, and that a number of mechanisms monitored places of detention. This, however, does not diminish the significance of the mandate of the NPM to prevent torture and other cruel, inhuman or degrading treatment or punishment.

16. Notwithstanding the willingness of the Federal and State authorities to ensure compliance with the Optional Protocol, the SPT notes that there are legal, structural and institutional problems which may jeopardize the efficiency and the institutional credibility of the NPM as a whole. The authorities will therefore be required to address, for instance, institutional factors such as the current size, selection and composition of the NPM and its limited role in terms of commenting on the draft legislation, and in particular, the issue of adequate budgetary and personnel resources.

17. The lack of adequate resources for the NPM has been questioned by other international monitoring mechanisms, including the United Nations Committee against Torture, the United Nations Special Rapporteur on Torture and the European Committee for the Prevention of Torture. Therefore a number of legal, structural and institutional problems will be raised by the SPT in its separate and confidential report to the authorities, in accordance with article 11 (b), subparagraph (iv), of the Optional Protocol.

*Recommendations relating to main legal, structural and institutional issues*

***National Agency***

18. While the Optional Protocol leaves the decision regarding the institutional format of the NPM to the State Party, it is imperative that the mechanism be structured and that it carries out its mandate in accordance with the Optional Protocol, as reflected in the SPT Guidelines on national preventive mechanisms.<sup>4</sup>

19. **The SPT recommends that the NPM evaluate, where relevant, together with the concerned Federal and State authorities and other stakeholders, its activities and experience in order to ensure that it is exercising its mandate in accordance with the Optional Protocol and the SPT Guidelines on national preventive mechanisms. The SPT also recommends that the mechanism develop a strategic development work plan to set priorities and improve its operation in order to help achieve financial and operational independence of the NPM, with due consideration to the Paris Principles, in accordance with article 18, paragraph 1, of the Optional Protocol.**<sup>5</sup>

20. The SPT underscores that according to the part IV of the Optional Protocol, the role of the NPM is not to monitor existing monitoring mechanisms, but to exercise its own mandate to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment. At the same time, duplication of work and tasks should be avoided in order to use the resources efficiently, as well as not to send out mixed messages.

21. **The SPT recommends that whilst exercising its own visiting mandate, the NPM cooperate with the other existing mechanisms which monitor places of deprivation of liberty in order to seek possible synergies, including in the context of monitoring houses for the elderly. The SPT in particular recommends that the Joint Commission cooperate with the Municipal Supervisions of houses for the elderly as those**

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<sup>4</sup> CAT/OP/12/5.

<sup>5</sup> CAT/OP/12/5, paras. 33 and 12.

**institutions have not so far (with rare exceptions) been visited by the NPM due to a lack of adequate expertise.**

22. While the SPT appreciates and acknowledges that the NPM members possess a great amount of experience in their respective fields, the SPT observed that, due to insufficient resources and inadequate training, the NPM is concentrating on monitoring activities which are not carried out in an appropriate manner, while other aspects particular to its prevention mandate are not fully covered. According to the SPT, the prevention of torture and other forms of ill-treatment should not be limited to monitoring of the material conditions of deprivation of liberty but involves other aspects such as solutions to complex issues, including detention pending deportation, use of physical restraints (Fixierung), preventive detention and solitary confinement. In particular, the SPT noticed that the NPM did not pay adequate attention to the reasons for which persons were deprived of their liberty and to the issues of respecting legal safeguards, and that of non-refoulement in the context of deportations to the countries where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment upon return.

**23. The SPT recommends to the NPM that the strategic plan to be adopted (see paragraph 17) evaluate and articulate its needs regarding the mandate, resources and the concerned institutions' obligations. The NPM should systematically inform, in written form, all places of deprivation of liberty about the Optional Protocol, the concept of prevention of torture and ill-treatment, the NPM mandate and corresponding obligations of the Federal, State and detention authorities. The mandate of the mechanism should not be limited to visiting and monitoring the material conditions of deprivation of liberty, but it should involve innovative solutions for the prevention of torture and other ill-treatment such as in the context of detention pending deportation, use of physical restraints (Fixierung), preventive detention and solitary confinement. The SPT also recommends to the NPM that it (i) evaluates the reasons why persons were deprived of their liberty, (ii) considers the extent to which legal safeguards are observed in practice, and (iii) considers the practice concerning the obligation of non-refoulement in the context of deportations to the countries where there are substantial grounds for believing that a person would be at risk of torture or ill-treatment upon return.**

24. High turnover of the NPM members due to frequent resignations from the Joint Commission is a matter of concern. Resignations by the members who serve on honorary basis were explained as being the result of the lack of appropriate resources allocated to the mechanism and the lack of availability of some members due to their daily professional or other personal commitments. The SPT is of the view that this situation affects the ability to establish an effective professional NPM, as it cannot guarantee the continuity of the NPM work over time.

**25. The SPT recommends that members of the NPM should be available to perform their functions and serve the mechanism efficiently, as provided for in Article 5, paragraph 6, of the Optional Protocol.**

26. Members of the Federal Agency are being appointed while those of the Joint Commission are selected by the Ministers of Justice of the States. The current appointment procedure of the NPM members lacks transparency and inclusion as there is little outreach to the public and civil society. Further, the current practice of selecting members to the NPM does not reflect the SPT Guidelines on national preventive mechanisms as the members are not selected through an open, transparent and inclusive process.<sup>6</sup>

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<sup>6</sup> CAT/OP/12/5, para. 16.

27. **While being fully aware of the fact that it is the responsibility of the State Party to ensure transparency and inclusion in the designation of NPM members, the SPT recommends to the NPM to make public its vacant posts so as to enable civil society organizations and other stakeholders to contribute to the State Party's designation process and thereby ensuring its compliance with article 18, paragraph 2 of the Optional Protocol.**

28. As regards its composition, the SPT observed that the NPM did not have the adequate in-house medical, psychological and other related expertise such as in the areas of social work, security, pedagogy and children, which limits the NPM capacity to effectively monitor the places of deprivation of liberty. Moreover, the NPM has only occasionally engaged external experts, primarily due to limited resources.

29. **The SPT recommends, in the context of selection, expanding the NPM membership to include medical, psychological and other related expertise in order to allow the mechanism to carry out its activities in accordance with the Optional Protocol.<sup>7</sup> In order to cover missing specializations, the NPM should explore creative ways of strengthening the human resources at its disposal by, for example, engaging external expertise, setting up internship programmes or partnering with universities and civil society.**

30. The SPT witnessed a partial lack of efficient team work in the preparation and conduct of the inspection visits by the Federal Agency and the Joint Commission (see below methodological recommendations), the lack of an established common strategy as to which detainees and personnel to privately interview and, to some extent, incoherent methods of work. The functioning of the NPM could be improved with a clearer division of roles between individual team members during the inspection visits, better communication and an enhanced coordination of work between the Federal Agency and the Joint Commission. In this regard, the SPT was encouraged to hear from both institutions during the meetings on 9 and 11 April 2013, that the Federal Agency and the Joint Commission further aim to work as an effective collegial body, as envisioned by the Optional Protocol.

31. **The SPT recommends that the NPM develop clear guidelines in order to plan and carry out efficient monitoring and that its members and staff undertake further training jointly, in order to enhance their ability to efficiently perform, collectively and individually, the visiting capacity entrusted to them under the Optional Protocol.<sup>8</sup> The SPT also recommends that the NPM members improve coordination of working methods including the harmonization of the Working Guidelines of the Federal Agency and the Rules of Procedure of the Joint Commission into the common Rules of Procedure, regular information sharing, common visiting and interviewing strategies, updating the NPM webpage, and most importantly, improved collaboration and division of roles during the preparation and conduct of the visits.**

32. To the SPT knowledge, the Federal Agency and the Joint Commission do not submit regularly proposals concerning existing or draft legislation in their NPM capacity, in accordance with article 19 (c) of the Optional Protocol. One of the reasons for this may be the lack of clear legal basis for the mechanism to comment on draft laws, and /or the lack of human resources within the NPM to effectively carry out this function.

33. **In order to fully discharge its mandate in accordance with article 19 (c) of the Optional Protocol, the SPT recommends that the NPM take proactive steps to submit proposals and comments, at both Federal and State level, regarding existing or draft**

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<sup>7</sup> CAT/OP/12/5, para. 20.

<sup>8</sup> CAT/OP/12/5, para. 31.

legislation that relates to the prevention of torture and other forms of ill-treatment. To that end, it should have a strategy for setting priorities and should follow up on its comments and recommendations.<sup>9</sup> The SPT also recommends that the NPM present proposals to amend the decree of the Federal Ministry of Justice of 20 November 2008 and the State Treaty between the 16 Länder of 24 June 2009, and other legal acts as relevant, in order that those acts clearly reflect the mandate of the NPM to submit proposals and observations concerning existing or draft legislation related to its mandate. The NPM should also actively advocate for such an outcome.

34. The SPT noted with appreciation the distribution by the Joint Commission of a leaflet on the NPM. However, the SPT observed that the authorities in charge of places of deprivation of liberty, persons deprived of liberty and civil society do not clearly understand the role of the mechanism and the distinct roles between the Federal Agency and the Joint Commission as two parts of a single collegial body. The lack of visibility of the NPM may have a detrimental effect on its efficiency.

35. **The SPT recommends that the NPM increase its institutional visibility, design a strategy for making its mandate and work known to the general public and develop a simple, accessible procedure through which the general public can provide it with relevant information.<sup>10</sup> The SPT also recommends elaborating and distributing further materials on the mandate and activities of the NPM, in various languages, to the detention personnel and detainees and to the civil society at large, including associations of former service users, lawyers and the judiciary. In addition, the NPM should widely disseminate its Annual Reports, and transmit them to the SPT in accordance with Article 23 of the Optional Protocol.<sup>11</sup> The NPM should also increase its contacts and cooperation with other national and international stakeholders, including relevant ministries, and NPMs of other countries.**

36. The SPT is aware of other institutional, structural and legislative constraints which affect the work of the NPM, such as the lack of a sufficient travel budget, inadequate capacity to exercise follow-up visits and the lack of an adequate administrative support team for the members of the Federal Agency and the Joint Commission. The SPT is concerned that some of the federal institutions have tried to support the mechanism by providing logistical support and transportation, making the NPM dependent on the practical means provided by the federal administration. The SPT reminds that the provision of adequate financial and human resources constitutes a legal obligation of the State Party under Article 18, paragraph 3, of the Optional Protocol.

37. **The SPT recommends that the NPM engage in a proactive manner with the Federal and State Justice authorities and any other relevant institutions, in particular the Parliamentary Commission on Human Rights, with a view to eliminating any institutional, structural or legal constraints, including the current lack of adequate financial and personnel resources of the NPM. As a matter of priority, the SPT wishes the NPM to inform it of the strategies it has adopted and steps it is taking to seek additional financial and personnel resources, taking into account the experience of other NPMs. It also recommends that the NPM request an increase in the budget in order to enable it to its own premises as well as help secure and enhance its functional and perceived independence.<sup>12</sup>**

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<sup>9</sup> CAT/OP/12/5, para. 35.

<sup>10</sup> CAT/OP/1, para. 33.

<sup>11</sup> CAT/OP/12/5, para. 36 and 40.

<sup>12</sup> CAT/OP/12/5, para. 12.



38. The inspection visits to places of deprivation of liberty are generally of one day only, including to large establishments of 300 to 400 inmates.

39. **The SPT recommends to the NPM that it ensures that the time it spends conducting a visit to a place of detention is commensurate to the size, character and complexity of the place concerned.**

40. The SPT observed that the NPM did not seek to obtain access to all necessary documentation including detainee and incident registers and medical records. The SPT also observed problems in accessing files of detainees, including medical records due to their absence or the manner in which records are currently kept.

41. **The SPT recommends that the NPM seek prompt, regular and unhindered access to information on detainees during its visits, including the incident registers and medical records which should be kept at every place of detention, in addition to the personal files of each detainee.**

#### *Federal Agency*

42. The current size of the Federal Agency, comprising one honorary member, is inadequate and a matter of concern, since it is responsible for some 370 places of detention.

43. **The SPT recommends to the NPM that it seeks to expand the membership of the Federal Agency to reflect the number of institutions within its mandate.**

44. Visits by the Federal Agency to places of deprivation of liberty are generally announced in advance, last a maximum of one day and take place during working hours, although a night-time visit has been undertaken at Berlin Schönefeld Airport.

45. **The SPT recommends that Federal Agency visits be primarily unannounced in order to assist it ascertain the real situation of persons deprived of their liberty, and that the visits be carried out at various times, including during the hours of night.**

#### *Joint Commission*

46. The current size of the Joint Commission, which is comprised of four honorary members, is also a matter of concern, since it is responsible for monitoring some 13.000 places of deprivation of liberty.

47. **The SPT encourages the Joint Commission to advocate for and pursue its recommendations made to the 2013 Conference of the Ministers of Justice of the States that the membership of the Joint Commission be substantially expanded proportionally to the number of institutions within its mandate.<sup>13</sup>**

#### *Methodological recommendations*

48. In order to advise and assist the NPM in its task of protecting persons deprived of their liberty, the SPT makes the following recommendations concerning the preparation of visits, methods to be used during a visit and steps to be taken following their completion.

##### Preparation for visits

49. The NPM, as a collegial body of experts, should establish a work plan or programme which, over time, encompasses unannounced and follow-up visits with an appropriate

<sup>13</sup> Following its visit to Germany, the SPT was informed that the Conference of Ministers of Justice, held in June 2013, had taken a decision to reinforce the Joint Commission by additional expertise, increasing the number of honorary members to eight for this purpose.

frequency to all locations under the Federal and State's jurisdiction where persons are or may be deprived of their liberty, as provided for by Articles 4 and 29 of the Optional Protocol.<sup>14</sup>

50. **The SPT recommends that the NPM develops collectively criteria for selecting the facilities to be visited that will ensure that all facilities are visited periodically over time. These criteria should reflect the type and size of the places of deprivation of liberty, and the nature of any concerns of which the NPM is aware, and include all forms of institutions in all geographic areas.**

51. The NPM should plan its work and use of its resources so as to ensure that it is able to conduct its visits to places of deprivation of liberty in the most efficient manner.<sup>15</sup>

52. **The SPT recommends that the NPM allocate specific tasks to its members prior to their arrival at a place of deprivation of liberty, in order to avoid any duplication and to enable them to cover as many areas as possible. It also recommends that the NPM choose specific issues to be addressed in detail during each visit. The composition of the visiting team should be such as to allow both general and specific issues to be covered and should include a health-care professional, preferably a doctor.**

53. The SPT observed that not all the NPM visits were unannounced. Emphasizing the confidential nature of the NPM work as envisaged in the Optional Protocol, the SPT reaffirms that unannounced visits, or visits at short notice, are necessary to ensure that the NPM can form an accurate understanding of the experience of those deprived of liberty.

54. **The SPT recommends that information about the NPM visits should be kept confidential, with a view to enabling unannounced visits to be undertaken.**

55. The SPT believes that, in the medium term, it is important for the NPM to expand operational guidelines and handbooks that will provide a means of transferring knowledge when its membership changes. In this regard, the SPT welcomes the elaboration of a checklist for the visits. However, it observed some inconsistencies in the use of the checklist by team members during visits, noted that adequate answers to the checklist, including supporting documentation, were not always sought on the spot and that information was requested to be submitted later but without indicating a deadline.

56. **The SPT recommends that the NPM develop guidelines for visits to various types of places of deprivation of liberty, including guidelines for conducting private interviews, as well as policies for dealing with vulnerable groups of inmates, and ensure that information from all available sources is collected.<sup>16</sup> The SPT also recommends that the team members of the Federal Agency and the Joint Commission seek answers to their checklist, including supporting documentation, during the visits.**

During visits

57. The SPT observed that members of the NPM gave good introductions to themselves and their work to the authorities in places of deprivation of liberty, although only the Joint Commission presented to them the information leaflet. On the other hand, it observed that the equivalent presentation to detainees and interviewees was extremely brief and that the principle that interviews should be confidential and voluntary was not fully respected. The SPT believes that an accurate, complete presentation of the NPM mandate and objectives

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<sup>14</sup> CAT/OP/12/5, para. 33.

<sup>15</sup> CAT/OP/12/5, para. 34.

<sup>16</sup> CAT/OP/1, para. 13.

facilitates communication and trust-building with the respondents and thus improves the interviews.

58. **The SPT recommends that members of the visiting teams provide information leaflets to the authorities on the NPM and that its members undertaking interviews introduce themselves to persons deprived of liberty and tell them their name, profession and the position they occupy within the mechanism. The interviewer should explain the mandate of the NPM, placing particular emphasis on its preventive nature. The interviewer should also obtain the consent of the interviewee and make it clear that the interview is confidential, voluntary and can be interrupted at any time at the interviewee's request. The SPT also recommends that the NPM regularly update the leaflet that describes its mandate and working methods, explaining the concept of informed consent and providing contact information. The leaflet should also indicate and encourage persons deprived of their liberty to report any reprisal to the NPM using the contact details of the leaflet.**

59. Private interviews with persons deprived of their liberty are a fundamental component of preventive visits.<sup>17</sup> The SPT noticed that the majority of interviews conducted during the visits were collective, often done in the near presence of the warders.

60. **In principle, unless there are compelling reasons for doing otherwise, the SPT recommends that the NPM conduct private, individual and unsupervised interviews with detainees, staff and others, including the medical personnel. In addition, the SPT recommends that, as a general rule, members of the NPM include questions relating to the health of persons deprived of their liberty and their access to a health professional and facilities.**

61. The SPT observed that the visiting teams lacked measuring equipment to verify the actual conditions of the place of detention (e.g. size, light, temperature), such as torches, lamps, thermometers etc. In addition, not all the members of the team were wearing identification badges.

62. **The SPT recommends that the NPM use appropriate measuring equipment and wear visible identification.**

63. In the SPT view, given the scarce resources and distance it needs to travel to visit places of deprivation of liberty, the NPM ought to take full advantage of its presence by undertaking a thorough inspection of the facilities visited, examining documentation and talking with detainees and relevant staff.

64. **The SPT recommends that NPM team members inspect all facilities in the places of deprivation of liberty it visits, systematically examining records and files and cross-checking them with information from other sources. If records are unavailable, the NPM should recommend changes in existing practices that will enable them to become available. Due to their limited size, the SPT recommends that all members of the NPM visit teams speak with detainees, giving such interviews at least an equal priority with speaking to those in authority.**

65. The SPT noted that on one occasion some NPM members focused on individual complaints made by detainees and attempted to resolve them even though the NPM is not mandated to do so.

66. **Although the intention is laudable, the SPT recalls that the mandate of the NPM differs from that of other bodies working against torture and is characterized by**

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<sup>17</sup> Optional Protocol, art. 20 (d).

**its preventive approach which involves identifying patterns and detecting systemic risks of torture and ill-treatment. Rather than seeking to investigate or resolve individual complaints, the NPM should advise detainees on how and to whom to address individual complaints and seek to ensure the effectiveness of complaints mechanisms as a means of prevention.**

Follow-up to visits

67. The SPT observed that, in their final meetings with those responsible for the places of deprivation of liberty, visiting teams did not remind the authorities that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of the State Party's obligation.

**68. The SPT recommends that the NPM regularly reflect on the need to ensure protection of persons who provide information to the NPM from sanctions or reprisals through, inter alia, follow-up visits, contacts with family members, and by reminding those in authority that such behaviour will be reported and sanctioned.**

69. The NPM should prepare and make public reports on the visits it conducts, without disclosing confidential information such as personal information concerning individuals deprived of their liberty.<sup>18</sup>

**70. The SPT recommends that the reports should focus on prevention, identifying problems and proposing solutions in the form of recommendations. These recommendations must be concrete and well-grounded, should be directed towards developing preventive measures to deal with shortcomings in systems and practices, and should be practicable.<sup>19</sup>**

71. Since recommendations to the responsible authorities following the visit currently remain confidential until their publication in the Annual Report, the NPM should develop a strategy for presenting its visit reports to the authorities for timely publication and distribution and for using them as a platform for dialogue.<sup>20</sup>

**72. Pursuant to paragraph 36 of its Guidelines on national preventive mechanisms, the SPT recommends that the NPM set up procedures for regular follow up to its recommendations, with the relevant authorities and, insofar as possible, in conjunction with other relevant stakeholders.**

73. The SPT hopes that its recent advisory visit and the present report will mark the commencement of a constructive dialogue with the NPM of Germany.

74. The SPT stands ready to assist the NPM, as far as it is able, in their common goal of prevention of torture and ill-treatment and by translating preventive commitments into practical reality.

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<sup>18</sup> CAT/OP/12/5, para. 36.

<sup>19</sup> CAT/OP/1, para. 20.

<sup>20</sup> CAT/OP/1, para. 21; CAT/OP/12/5, para. 38.

## Annex I

### List of senior officials and other persons with whom the SPT met

#### *National authorities*

##### *Federal Ministry of Justice*

Mr. Alfred Bindels, Head of Directorate-General IV, Constitutional and Administrative law; International and European law

Mr. Dr. Hans-Jörg Behrens, Head of Division, Protection of Human Rights

Ms. Katja Behr, Head of Division, Protection of Human Rights

Ms. Sonja Winkelmaier, Desk Officer, Division for the Protection of Human Rights

Ms. Claudia Radziwill, Assistant Desk Officer, Division for the Protection of Human Rights

##### *Legislative branch*

Mr. Dr. Thomas Schotten, Head of Directorate, Petitions and Submissions, Administration of the German Bundestag

Mr. Wolfgang Finger, Head of the Secretariat, Secretariat of the Petitions Committee

##### *The Parliamentary Commissioner for the Armed Forces*

Mr. Fritz Günther, Head of Division, Policy, Principles of International Leadership, International Administration

##### *The Federal Public Prosecutor General at the Federal Court of Justice*

Mr. Kai Lohse, Senior Public Prosecutor at the Federal Court of Justice

##### *Federal Foreign Office*

Mr. Stephan Lanzinger, Desk Officer, Directorate-General for the United Nations and Global Issues, Human Rights Division

##### *Federal Ministry of the Interior*

Mr. Dr. Tobias Plate, Desk Officer, Division for European Law, International Law, Constitutional Law with Reference to European and International Law

Mr. Moritz Jürgen Wieck, Desk Officer, Division for Command and Operational Matters of the Federal Police

##### *Federal Ministry of Defence*

Mr. Carsten Denecke, Chief Legal Adviser, Bundeswehr Command Territorial Tasks

*Federal Ministry of Health*

Ms. Anne Kahmann, Desk Officer, Division for Medical and Nursing Issues of Long Term Care Insurance

*Federal Office for Migration and Refugees*

Mr. Michael Kleinhans, Head of the Directorate-General for Asylum Procedure, Right of Residence, Security, Information Centre Asylum and Migration

*Justice Ministry of Baden-Württemberg*

Mr. Justus Schmid, Head of the Division for Prisons Law, Budgetary Matters, Prisoner Accommodation and Employment, Financial Administration

*Senate Administration for Justice and Consumer Protection of the Land of Berlin*

Mr. Dr. Gero Meinen, Head of the Directorate-General for Corrections

*Hesse Ministry of Justice, Integration and Europe*

Mr. Torsten Kunze, Head of the Division for Legislation and General Matters Concerning the Law Governing Corrections; the Hesse Prisons Act; the Hesse Act on the Execution of Remand Detention, Privatisation; Public Relations for the Directorate; Data Protection Matters; International Corrections Matters

*Ministry of Justice and Consumer Protection of Rhineland-Palatinate*

Mr. Gerhard Meiborg, Head of the Directorate-General for Corrections

*National preventive mechanism*

Mr. Klaus Lange-Lehngut, Director of the Federal Agency

Mr. Rainer Dopp, Chairman of the Joint Commission of the Länder

Ms. Petra Heß, Honorary Member of the Joint Commission

Mr. Rudolf Egg, Head of the Criminology Centre (KrimZ)

Ms. Christina Hof, Head of the NPM Secretariat

Ms. Jennifer Bartelt, Member of the NPM Secretariat

Mr. Jan Schneider, Member of the NPM Secretariat

Ms. Sarah Mohsen, Member of the NPM Secretariat

*Civil society*

German Institute for Human Rights

Republican Lawyers' Union (Republikanischer Anwältinnen- und Anwälteverein e. V.)

Human Rights Watch

Amnesty International

## **Annex II**

### **List of places of detention visited by the SPT**

Federal Police Station in Mainz Railway Station, under the Federal jurisdiction;

Detention Pending Deportation Centre in Mannheim Prison, under the State jurisdiction.

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