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National Preventive Mechanisms: Key Elements for Effectiveness

Budapest, Hungary – 14 May 2012



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Ratification of the OPCAT



12 January 2012
(with Declaration under Article 24 of the OPCAT)

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How to Implement?

- States have the choice to create one or more new visiting bodies or use one or more existing mechanisms;
- The deadline for Hungary is February 2015 at the latest.



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Example: Germany

Nationale Stelle zur
Verhütung von Folter

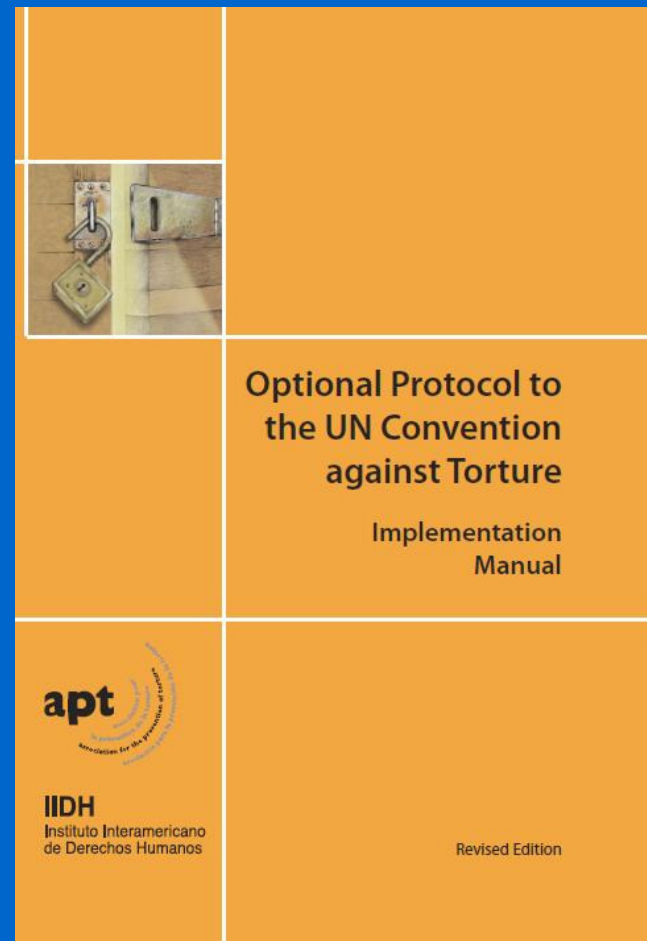
Die Würde des Menschen ist unantastbar.
Sie zu achten und zu schützen ist Verpflichtung
aller staatlichen Gewalt.

Artikel 1 Grundgesetz

Germany made a declaration under Article 24 of the OPCAT but it had its federal and regional NPMs in place in less than 18 months.

Conditions for NPM Operation

- Ensure the independence of the NPM and its members;
- Ensure access to places of detention, people and information;
- Finance the NPM;
- Ensure appropriate staff composition;
- Furnish the staff with privileges and immunities;
- There should be no reprisals;
- The importance of dialogue and the publication of annual reports;
- Others.



SPT Guidelines

United Nations

CAT/OP/12/5



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

Distr.: General
9 December 2010

Original: English

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

Twelfth session
Geneva, 15–19 November 2010

Guidelines on national preventive mechanisms



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The Importance of Dialogue

“The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society.”

SPT Guideline 16

How did this important process take place in Hungary?



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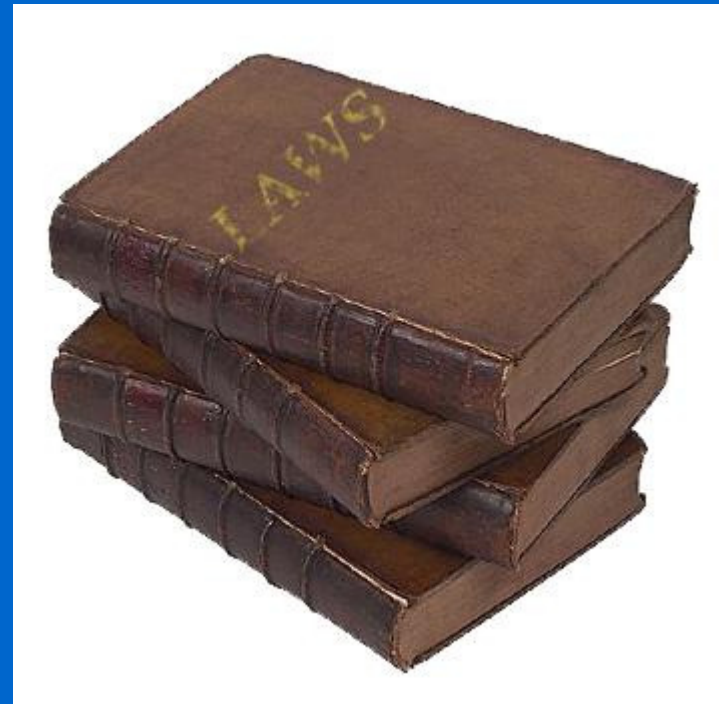
Example: Kyrgyzstan 2007 Onwards



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Key Element 1: Independence

- Functional independence of the mechanism;
- Independence of the personnel;
- Independence should be anchored in law;
- See Article 18 (1) of the OPCAT.



Example: France



Art. 1 Law of 30 October 2007 The « Contrôleur général des lieux de privation de liberté », independent public body, is in charge, without prejudice to the prerogatives given by law to the Judiciary or any court, to control conditions of management and convey of people who are deprived of liberty, in order to check enforcement of their fundamental rights. In his duties, he doesn't receive instructions from any authority.

An independent body

Submit a case

The tasks of the CGLPL

Biography

News

Submit a case to the "Contrôleur Général des lieux de privation de liberté"

Tasks and actions

The "contrôleur général" can visit at any time, all over France, each place where people are deprived of liberty.

→ [more informations](#)

→ NEWS

The first activity report

| 24 avril 2009

Jean-Marie DELARUE, appointed as Contrôleur général des lieux de privation de liberté on June 13th 2008, has submitted his first activity report to the Président de la République and the Chairmen of the Parliament.

Edito

04/23/2009



Appointed in June 2008, for a six years mandate, I have to check that everybody who is not free is treated with dignity.

The novelty of this body lies in its independency.

My role is to settle the consequences of a violation therefore to rule the consequences of a violation of fundamental rights for these people, and, above all, to prevent them.

My action, and my team's aim, are to upgrade places in which people are deprived of freedom, such as prisons, psychiatric hospitals, retention centers for foreigners, places of custody, so that they may have all the guarantees of a human treatment.

Jean-Marie DELARUE

<http://www.cgplp.fr/>

Example: France

JORF n°253 of 31st October 2007, page 17891
Text No: 1

Law No. 2007–1545 of 30th October 2007 appointing an Inspector General of Places of Detention (1)

NOR: JUSX0758488L

The National Assembly and the Senate have adopted,
The President of the Republic has proclaimed the following law:

Article 1

The Inspector General of Places of Detention, an independent authority, is entrusted, without prejudice to the prerogatives which the law has vested in judicial or quasi-judicial authorities, to monitor the conditions of detention and transfer of persons deprived of their liberty, with a view to ensuring the respect of their fundamental rights.

Within the limit of his or her powers, duties and functions, the Inspector General of Places of Detention will not receive orders from any authority.

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Example: Azerbaijan

“The Committee [against Torture] is concerned that the Ombudsman lacks the requisite level of independence ... to serve as the National Preventive Mechanism under the OPCAT.”

Geneva – 19 November 2009



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Key Element 2: Access



- The NPM should have access to all places of detention, people held or working there as well as any information found in those places etc.

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Key Element 3: Resources



- State should provide 'necessary resources' for the functioning of NPM;
- See Article 18 (3) of the OPCAT.

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‘Necessary Resources’?



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Example: Romania

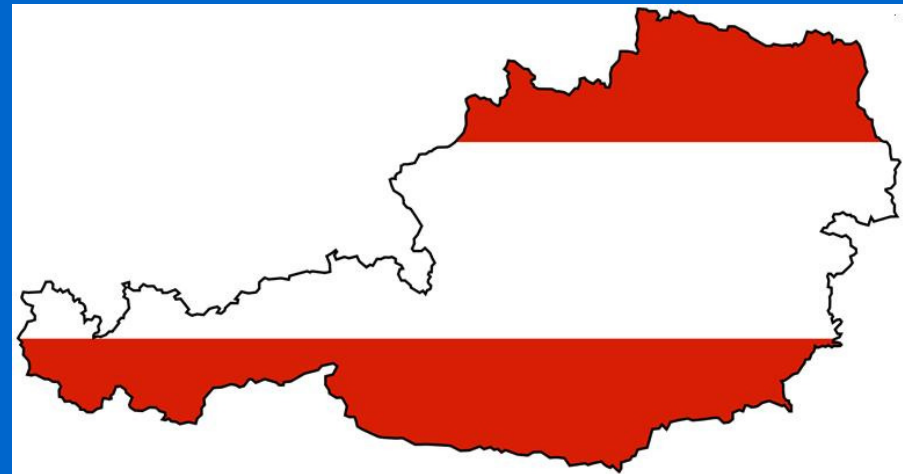


- Romania ratified the OPCAT in July 2009, but postponed the setting-up of its NPM;
- There exists a proposal to designate the Ombudsperson's Office as the NPM, but with little additional resources.

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Example: Austria

- The OPCAT Implementation Law comes into force in July 2012;
- The future NPM will be located within the Ombudsperson's Office, but as a new structure.
- Six regional monitoring commissions comprising seven persons will be set up.



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Example: Austria

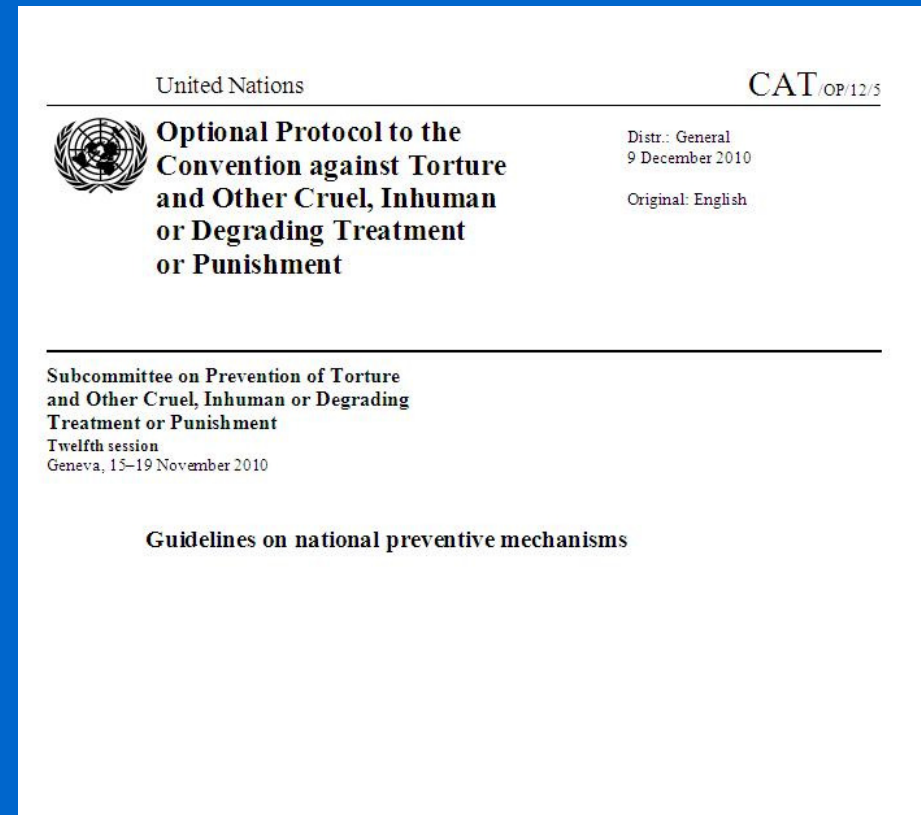
- The persons will work on a part-time basis i.e. at least 20 hours a month;
- The commissions will be multi-disciplinary;
- A 15-person Advisory Board will also be set up with some form of oversight function over the commissions;
- Projected overall budget – 1 million Euro?



SPT Advice

“The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.”

Guideline 12



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Key Element 4: NPM Composition



- The NPM members should have the required capabilities and professional knowledge;
- The importance of gender balance and adequate representation of ethnic and minority groups;
- See Article 18 (2) of the OPCAT and SPT guideline 20.

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Example: Austria

Persönliche Anforderungen:

- Fachkenntnisse und Fähigkeiten vor allem auf den Gebieten der Medizin, insbesondere der Allgemeinmedizin, der forensischen Medizin, der (klinischen) Psychologie, der Neurologie/Psychiatrie, der Frauenheilkunde, aus dem Fachbereich der Pflege, der Sozialarbeit, der Sonder- und Heilpädagogik; des gehobenen Dienstes für Gesundheits- und Krankenpflege, Bauwesens und Bautechnik, der Pflegewissenschaft und der Rechtswissenschaft bzw. -beratung.
- Bereitschaft Fachwissen zu teilen und in Besuchsprotokollen Wahrnehmungen über die menschenrechtsrelevante Situation in Einrichtungen zu dokumentieren;
- Bereitschaft sich Schulungen mit Schwerpunkt auf aufgabenbezogene, menschenrechtliche Themenstellungen zu unterziehen;
- Teamfähigkeit;
- Fähigkeit zum analytischen Denken;
- Hohe psychische Belastbarkeit;
- EDV-Grundkenntnisse;
- Zeitliche Verfügbarkeit für die Aufgabenerfüllung im Umfang von mindestens 20 Stunden im Monat.

Von Vorteil wären zusätzliche persönliche Erfahrungen:

- In der Betreuung von Gewaltopfern und –täterInnen sowie traumatisierter Personen;
- Auf dem Gebiet der Inklusion von Menschen mit Behinderungen, der rechtlichen, medizinischen, psychosozialen und rehabilitativen Betreuung und Versorgung von Häftlingen und Flüchtlingen, von älteren Menschen, von Menschen mit Behinderung oder Kindern und Jugendlichen bzw. Erwachsenen in schwierigen Lebenssituationen;



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Example: Serbia

- The Ombudsperson's Office is the NPM but its small team draws on the additional expertise of 9 NGOs - health-care expertise is especially needed;
- Similar collaborative approaches have been taken in Armenia, Denmark, Georgia, Moldova and Slovenia.



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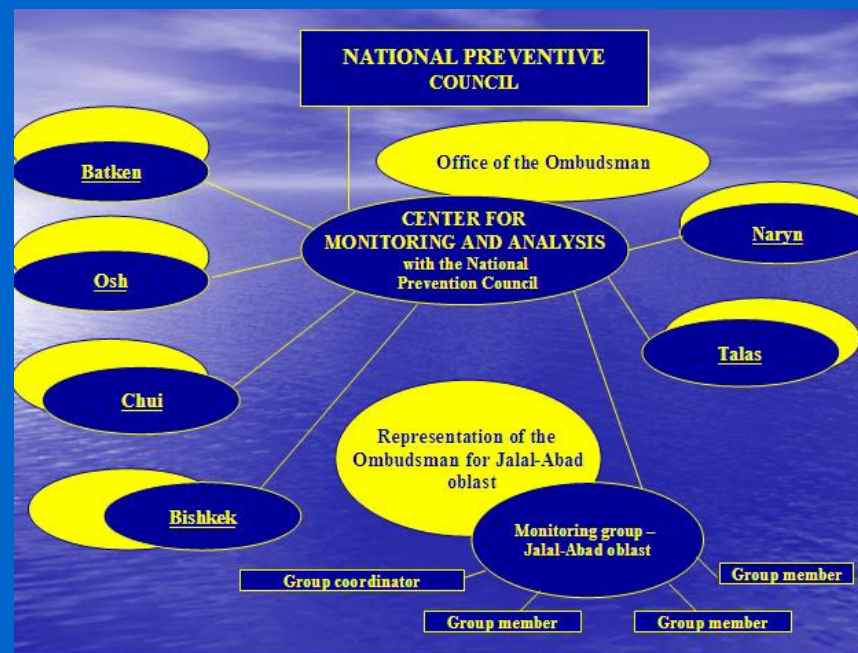
Key Element 5: Privileges and Immunities

“Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions...”

Article 35 of the OPCAT.

Example: Kyrgyzstan

- There exists a very good draft NPM law in Kyrgyzstan;
- The required OPCAT immunities and privileges have been incorporated into the draft law;
- The draft law passed its first reading in parliament early March 2012.



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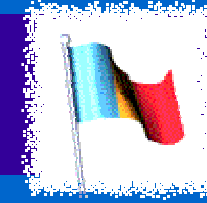
Key Element 6: No Reprisals

“No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.”

Article 21 of the OPCAT.



Example: Moldova



“It is forbidden to order, apply, allow or tolerate any kind of sanctions, as well as cause any other kind of damage to a person or organization, for rendering any, true or false, information to the ...[NPM].”

Article 23 (2) Law on Modification and Completion of the Law No. 1349-XIII of 17.10.97 on Parliamentary Lawyers (July 2007).

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Key Element 7: Dialogue



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

Article 22 of the OPCAT.

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Example: Malta

- The Maltese NPM comprises 2 different monitoring bodies;
- The NPM is reportedly extremely frustrated by the unwillingness of the authorities to enter into meaningful dialogue with it on a range of issues.

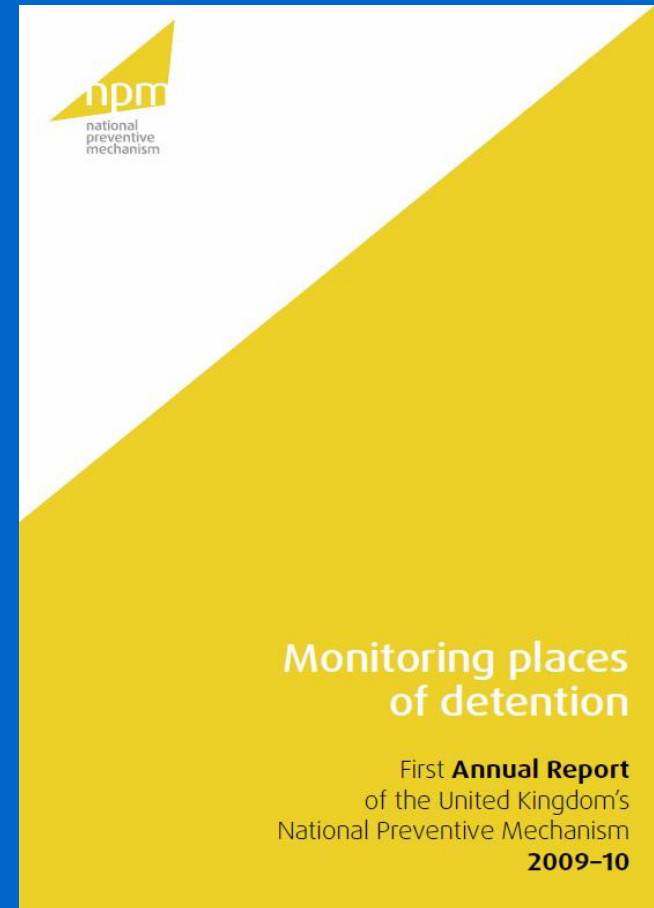


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Key Element 8: NPM Reports

“The State should publish and widely disseminate the Annual Reports of the NPM. It should also ensure that it is presented to, and discussed in, by the national legislative assembly, or Parliament...”

SPT Guideline 29



List of Annual Reports

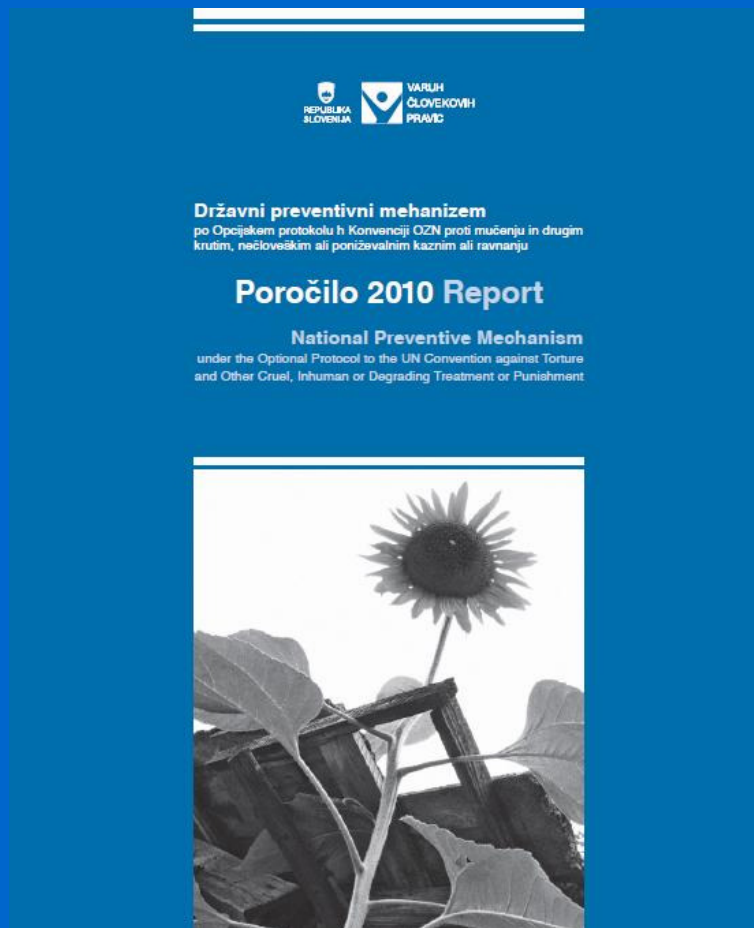
Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture

Annual reports received by the SPT from National Preventive Mechanisms

Note: Organizations and institutions that have authored the NPM Annual Reports posted on this page are responsible for the content and for the opinions expressed therein, which are not necessarily those of the SPT.

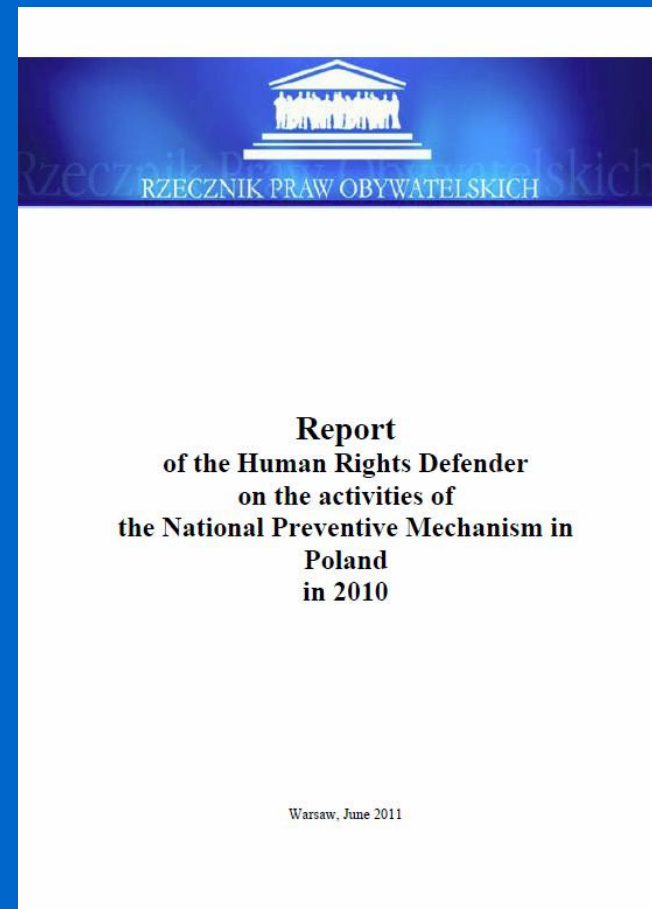
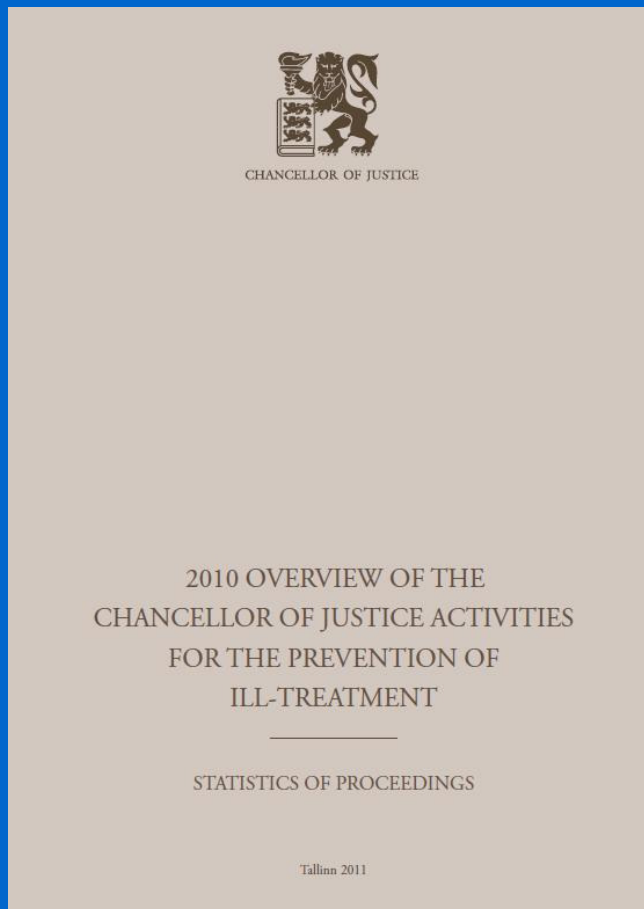
Designated NPM and notified to the SPT		
Country	NPM	Annual Report
Albania	People's Advocate http://www.avokatipopullit.gov.al	2008-2009
Azerbaijan	Human Rights Commissioner (Ombudsman) http://ombudsman.gov.az	
Costa Rica	Defensoria de los Habitantes http://www.dhr.go.cr	2008, 2009, 2010
Cyprus	Commissioner of Administration http://www.ombudsman.gov.cy	
Czech Rep.	Public Defender of Rights http://www.ochrance.cz	2006, 2007, 2008 (excerpts from the general Annual Reports of the Public Defender of Rights)
Denmark	Ombudsman http://www.ombudsmanden.dk	2009
Estonia	Chancellor of Justice http://www.oiguskantsler.ee	2008, 2009, 2010
France	General Inspector of Places of Deprivation of Liberty (Contrôle général des lieux de privation de liberté) http://www.cgplp.fr	2008, 2009, 2010
Georgia	Public Defender http://www.ombudsman.ge	Special report 2009-2010 - Right to health 2009, 2010

Structure of Annual Report



- Ideally, the NPM Annual Report should be separate from any other reports such as the Annual Report of an NHRI or, at least, a separate chapter.

Example: Separate Reports



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Conclusion

- Essential that the key features, referred to in the presentation, are anchored in any NPM;
- Please refer to the *SPT Guidelines on NPMs*;
- Adequate human and financial resources are vitally important.

