



**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 State Party*, **

* In accordance with the decision taken by the SPT at its fifth session regarding the processing 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 State party on 29 July 2013. The State party gave notification of its decision to publish the report on 12 December 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 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 of Germany (hereinafter referred to as “the NPM”), in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol. The visit was intended to assist in strengthening the capacity and the mandate of the NPM, 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. To that end, this report sets out recommendations and observations to the State Party, in accordance with article 11 (b), subparagraph (iv), of the Optional Protocol.

5. During the visit, the SPT met with officials from the Federal Ministry of Justice; Federal Ministry of the Interior; Federal Ministry of Defence; Federal Ministry of Health; Federal Foreign Office; Federal Public Prosecutor General at the Federal Court of Justice; Federal Office for Migration and Refugees; Justice Ministry of the State of Baden-Württemberg; Senate Administration for Justice and Consumer Protection of the State of Berlin; Ministry of Justice, Integration and Europe of the State of Hessen; Ministry of Justice and Consumer Protection of Rhineland-Palatinate, and with the representatives of the German Bundestag (Lower Chamber of the Parliament), Parliamentary Commissioner for the Armed Forces and with civil society organizations (Annex I).

6. Since one of the main reasons for the visit was to provide the NPM with advisory services and technical assistance, a number of meetings were held with the members and staff of the NPM itself in order to discuss its working methods and explore ways of strengthening and increasing its effectiveness, as explained below. To observe how the NPM applies its working methodology, the SPT also visited, together with the NPM, two places of detention (Annex II).¹ The places of deprivation of liberty were chosen by the representatives of the Federal Agency for the Prevention of Torture (hereinafter referred to as “the Federal Agency”), and the Joint Commission of the States for the Prevention of Torture (hereinafter referred to as “the Joint Commission”). During the joint visits, members of the SPT adopted the role of observers, while members of the Federal Agency and the Joint Commission led the visits.

¹ The NPM visited the Federal Police Station in Mainz Railway Station, under the Federal jurisdiction, and the Detention Pending Deportation Centre in Mannheim Prison, under the State jurisdiction.

7. 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.

8. The SPT wishes to express its gratitude to the authorities of the Federal Government as well as of concerned States for the facilitation of the visit.

II. The national preventive mechanism

9. The Federal Republic of Germany ratified the Optional Protocol on 4 December 2008, entering into force on 3 January 2009, with a declaration in accordance with Article 24 postponing the obligation of designating or establishing a NPM within one year of the entry into force of the Optional Protocol for the State Party.²

10. On 8 November 2010, the State Party notified the SPT of establishment of the NPM under Part IV of the Optional Protocol, comprising two institutions: a Federal Agency for the Prevention of Torture for places of detention under Federal jurisdiction (detention facilities operated by the Bundeswehr,³ Federal Police and the German Customs Administration) and a Joint Commission for the Prevention of Torture for places of detention under the jurisdiction of the States (police, judiciary, detention facilities in psychiatric clinics, establishments of custody pending deportation, nursing homes, youth welfare establishments).

11. The modalities for the creation and functioning of the NPM were determined by the Ratification Bill of the Optional Protocol, published on 2 September 2008, and the decree of the Federal Ministry of Justice of 20 November 2008 which set up the Federal Agency, and the State Treaty between the 16 States of 24 June 2009 which set up the Joint Commission.

12. The Federal Agency and the Joint Commission constitute one institution: the National Agency for the Prevention of Torture (hereinafter referred as “the National Agency”). While the National Agency is operational, it faces serious challenges in relation to human and financial resources, a fact which has also been acknowledged by the State Party.

13. The SPT welcomes the efforts made by the authorities to combat and prevent torture and ill-treatment and to fulfil its obligations under the Optional Protocol, *inter alia*, through strengthening of the legislative framework, the adoption of comprehensive policies and the establishment of specific monitoring mechanisms of deprivation of liberty at the federal and state level.⁴

14. The SPT welcomes the fact that both the Federal Agency and the Joint Commission strive for non-bureaucratic approaches, making recommendations relating to specific concerns to the authorities responsible for those places where persons are deprived of their liberty which they visit. It also welcomes the positive responses given by the relevant authorities to the majority of recommendations made by the NPM.

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

² Article 17 OPCAT.

³ Federal Armed Forces.

⁴ For example, the psychiatric commissions, detention centres councils, municipal supervisions of elderly homes.

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 that 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.

18. In accordance with its mandate, as set out in article 11 (b), subparagraphs (ii) and (iii), the SPT will address a separate confidential report to the NPM of Germany.

III. Main legal, structural and institutional obstacles faced by the current national preventive mechanism

19. 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”.⁵

20. **The SPT recommends that the Federal and State authorities assist the NPM in its self-evaluation of its activities in order to ensure that it is exercising its mandate in accordance with the Optional Protocol and the SPT Guidelines on national preventive mechanisms.⁶ The SPT also recommends that the State Party take measures to ensure and respect the financial and operational independence of the NPM, in accordance with Article 18, paragraph 1, of the Optional Protocol.⁷**

21. 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.

22. **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 institutions have not so far (with rare exceptions) been visited by the NPM due to a lack of adequate expertise.⁸**

⁵ CAT/OP/12/5.

⁶ AT/OP/12/5, para. 15.

⁷ CAT/OP/12/5, para. 12.

⁸ CAT/OP/12/5, para. 10.

23. The SPT observes that the title of the NPM – the National Agency for the Prevention of Torture – implies it is focussing on the possibility that torture is taking place, and prompting a defensive reaction from many quarters which hinders the effective functioning of the NPM.

24. **Noting that the mandate of the NPM under the Optional Protocol is to engage in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the SPT recommends adjusting the title of the NPM to fully reflect its mandate, taking into account the socio-cultural sensitivities of the country.**

25. The SPT is particularly concerned about the inadequate budgetary and personnel resources allocated to the NPM, as referred above (paragraph 17). While the SPT is aware that there is a proposal to increase the size of the Federal Agency to 2 members, by appointing a deputy to the head of the Federal Agency, it should be understood that the Federal Agency's mandate extends to some 370 institutions. Therefore, even this increase of 100% will do little to ease the burden that the Federal Agency currently faces. This is also the case for the Joint Commission which has 4 members and a mandate which extends to some 13,000 places of detention.

26. **The SPT recommends that the size of the NPM and its support staff base be increased so that its capacity reflects the number of places of detention within its mandate, as well as be sufficient to fulfil its other essential mandated functions under the Optional Protocol.⁹**

27. The SPT reminds the State Party that the provision of adequate financial and human resources constitutes a legal obligation under Article 18, paragraph 3, of the Optional Protocol. In this context, the SPT notes that the Hessian Ministry of Justice has considered providing the NPM with additional staff and funding. Moreover, the SPT noted the readiness of the Federal Government to consider an increase in the share of funding allocated to the NPM as part of a re-negotiation of the administrative agreement with the States. The SPT wishes to be informed on the outcomes of any such initiatives.

28. **The SPT wishes to be informed, as a matter of priority, about the steps taken to provide the NPM with adequate financial and personnel resources to allow for its complete financial and operational autonomy. Noting that the Federal Government acknowledged that the resources available to the Joint Commission, with its broad mandate, meet only minimal requirements, the SPT also wishes to learn about the steps taken by the State Governments to improve the Joint Commission's financial situation.**

29. 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.

30. **The SPT recommends that necessary arrangements, including legislative changes be made if necessary, to ensure 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.**

⁹ 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.

31. 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.¹⁰

32. The SPT recommends advertising publicly vacant posts within the NPM and consulting civil society organisations and other stakeholders prior to the selection of the members in order to increase the transparency of the process. The SPT also recommends enabling candidates of different backgrounds to be considered for membership in the NPM, in order to increase the likelihood of a variety of professions and experience, including greater gender and ethnic balance and adequate representation of minority groups within the NPM and its visiting teams, in compliance with Article 18, paragraph 2, of the Optional Protocol.

33. The composition of the NPM has been a matter of concern. The SPT observed an inadequate in-house medical, psychological and other various expertise such as in the areas of social work, security, pedagogy and children, which limits the NPM capacity to carry out its work effectively. Moreover, the NPM has only occasionally engaged external experts, primarily due to limited resources.

34. 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. The NPM should be adequately resourced to be able to draw on outside expertise, as necessary, to address shortfalls in expertise.

35. To the best of the SPT knowledge, the Federal Agency and the Joint Commission do not submit regularly proposals concerning existing or draft legislation in their capacity as the NPM, in accordance with Article 19 (c) of the Optional Protocol. The reasons for this may be twofold; the lack of a clear legal basis for the NPM to comment on draft laws, and the lack of adequate human resources to engage in such exercises.

36. In accordance with Article 19 (c) of the Optional Protocol, the SPT recommends that the State Party amend the decree of the Federal Ministry of Justice of 20 November 2008 and the State Treaty between the 16 States of 24 June 2009, and other legal acts as relevant, in order to ensure that the NPM can submit proposals and observations concerning existing or draft legislation related to its mandate. At the same time, the SPT recommends that the State Party allocate the NPM sufficient resources to enable it to fully discharge its mandate in this regard.

37. The SPT is aware of other institutional, structural and legislative constraints to the NPM work, such as the absence of sufficient travel budget and adequate capacity to undertake follow-up visits. The SPT notes that some federal institutions have tried to support the mechanism by providing, for example, logistical support and transportation. While the SPT understands the good intentions of those federal institutions in doing so, such activities could affect the perceived independence of the NPM by making it dependent on the practical support provided by the administration.

38. The SPT recommends that the Federal and State Justice authorities and any other relevant institutions engage proactively with the NPM in order to contribute to the elimination of any current or future legal, structural or institutional constraints.

¹⁰ CAT/OP/12/5, para. 16.

The SPT also recommends that the State Party increase the NPM budget to the extent necessary to allow it to carry out its visiting programme in all regions of the country, conduct follow-up visits and be based in its own premises, recalling that an adequate budget helps secure the functional and perceived independence of the NPM.¹¹

39. While the SPT appreciates and acknowledges that the NPM members possess a great amount of experience in their respective fields, due to insufficient resources and inadequate training, the NPM is primarily focussed on material conditions of detention and its visits are not carried out in a sufficiently rigorous manner. Other aspects of its preventive mandate of the NPM, such as proposing innovative means of strengthening preventive safeguards in the context of detention pending deportation, the use of physical restraints (Fixierung), preventive detention and solitary confinement or the legal framework surrounding deprivation of liberty, are not adequately covered.

40. The SPT recommends that the State Party facilitate joint training of members and staff of the NPM, including the provision of adequate resources, in order to enhance its ability to efficiently fulfil, collectively and individually, the functions of the NPM as provided in the Optional Protocol.¹²

41. The SPT noted with appreciation the distribution of a leaflet on the NPM by the Joint Commission. However, the SPT observed that authorities in charge of places of detention, persons deprived of their liberty and civil society did not clearly understand the role of the mechanism and the distinct roles of, and relationship between, the Federal Agency and the Joint Commission as a collective body. The lack of visibility of the NPM may have a detrimental effect on its efficiency. For example, some civil society actors which the SPT met highlighted the lack of clarity and transparency concerning the activities, achievements and priorities of the NPM, including the process by which its members were selected.

42. The SPT recommends that the State Party (a) take steps to assist the NPM make its mandate and work better known to the general public, (b) ensure that the NPM is recognised as a key component in the country's system for prevention of torture and ill-treatment, (c) contribute to making the work of the NPM more visible by, for example, public awareness campaigns and other promotional activities including producing and distributing materials on the mandate and activities of the NPM, in various languages, to the detention personnel and detainees and to civil society, including associations of former service users, lawyers and the judiciary. In addition, the SPT recommends that the State Party publish and widely disseminate the Annual Reports of the NPM, including transmitting them to the SPT, in accordance with Article 23 of the Optional Protocol.

43. The prevention of torture and other forms of ill-treatment should not be limited to examining material conditions of deprivation of liberty but involves exploring other issues such as preventive detention, detention pending deportation, the use of solitary confinement, and much else besides.

44. The SPT recommends that the State Party assist the NPM by recognising its role as regards both material conditions of detention and the applicable legal and regulatory frameworks, both of which are equally important, and, in particular, recognising that its mandate embraces proposing innovative approaches to issues such as detention pending deportation, the use of physical restraints (Fixierung), preventive detention and solitary confinement etc.

¹¹ CAT/OP/12/5, para. 12.

¹² CAT/OP/12/5, para. 31.

45. The SPT observed that the NPM experienced problems in accessing the files of detainees, including detainee and incident registers and medical records, either because there were none, or because of the manner in which such records are currently kept.

46. **The SPT recommends that the State Party facilitate prompt, regular and unhindered access by the NPM to information relating to detainees, in accordance with Article 20 (b) of the Optional Protocol, and that registers on detainees, including incident registers and medical records, be kept at every place of detention, in addition to personal files.**

47. The SPT noted that during its meetings with the authorities, some were unable to provide concrete examples of recommendations that had been addressed to them by the NPM or comment on implementation. This suggests that these authorities are yet to enter into meaningful dialogue with the NPM. Moreover, the SPT is concerned about the absence of an established coordination mechanism between and among different stakeholders within the State Party. All bodies working in the field, including mechanisms of judicial oversight, the General Prosecutor Office, relevant Ministries, and various monitoring mechanisms working in places of deprivation of liberty should cooperate and coordinate between themselves on one hand and with the NPM on the other. The SPT wishes to stress that an absence of a platform for coordination could be an indicator of a lack of coherent and well defined national strategy to prevent torture and ill-treatment.

48. **The SPT is of the view that collaborative work could greatly increase the effectiveness of measures taken to reduce the likelihood of torture and ill-treatment. The SPT recommends that the State Party encourage a coordinated approach between the various relevant entities and institutions. Furthermore, the SPT recommends that, as provided for in Article 22 of the Optional Protocol, the competent authorities of the State Party shall examine the recommendations of the NPM and enter into a meaningful dialogue with it on possible implementation measures. In this regard, a focal point could be identified in each of, or for all, the relevant ministries to follow up on the implementation of the NPM recommendations and to engage with the NPM accordingly.**

IV. Final recommendations

49. The SPT recalls that prevention of torture constitutes an on-going and wide-ranging obligation of the State party.¹³ Therefore, the SPT welcomes the State Party's pledge to review the adequacy of the financial and personnel resources available to the NPM, and to encourage and support further development and refinement of the working methods of the NPM. The SPT requests that the State Party keeps the SPT informed of any legislative and policy changes and other relevant developments regarding the NPM, in order that it might continue to assist the State Party in fulfilling its obligations under the Optional Protocol.

50. The SPT believes that its visit provides Germany with an ideal opportunity to demonstrate its goodwill and readiness to fulfil its international obligations under the Optional Protocol.

51. The SPT hopes that its recent advisory visit and the present report will mark the commencement of a constructive dialogue with Germany. The SPT stands ready to assist Germany, as far as it is able, in fulfilling its obligations under the Optional Protocol, in particular by the provision of technical assistance and advice, in order to achieve their

¹³ CAT General Comment No. 2, CAT/C/GC/2, paras. 3 and 4.

common goal of prevention of torture and ill-treatment in the places of deprivation of liberty.

52. The SPT recommends that, the State Party make this report public, believing this in itself to be a preventive measure. In addition, the SPT recommends that the State Party distribute this report to all the relevant Government departments and institutions.

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.
