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"NPM Impact Assessment"

A conference hosted by the NPM of Slovenia on the occasion of its 10th anniversary,
co-organized with the Council of Europe
17-18 April 2018
Hotel Slon, Ljubljana, Slovenia

General report

by Trevor Stevens

On the occasion of the 10th anniversary of the national preventive mechanism of Slovenia, the representatives of more than twenty European and North African NPMs gathered together in Ljubljana from 17 to 18 April 2018 for a conference on «NPM Impact Assessment». The conference was opened in the presence of the Minister of Justice of Slovenia, the Ombudsman and representatives of a wide range of Ministries.

There was broad agreement that during the decade following its very first visit on 19 March 2008, the Slovenian NPM had succeeded in establishing a climate of trust and respect. The high quality of the mechanism's work was recognised by all the Ministries represented and this was illustrated by the fact that a significant number of its recommendations had been implemented. Similarly, the NPM's proposals and observations on existing and draft legislation were valued.

It was stressed that the mechanism's on-site monitoring activities had been accompanied by considerable efforts to sustain a constructive dialogue with the authorities concerned, a dialogue which had led not only to improvements in specific institutions but also to system-wide changes. Reference was made in this connection to the NPM's participation in various ministerial bodies, including an inter-ministerial working group tasked with coordinating the execution of judgments of the European Court of Human Rights.

Specific mention was made of the significant contribution to the NPM's activities provided as from the outset by non-governmental organisations, through cooperation agreements

with the mechanism. The importance of the decision taken in 2014 to set up a special NPM unit within the Ombudsman's Office was also emphasised; this had been beneficial for the overall effectiveness of the mechanism and made it possible to significantly increase the number of visits.

The NPM «makes a difference» declared the Minister of Justice, as he paid tribute to the Deputy Ombudsman, Ivan Selih, who had led and inspired the mechanism ever since its inception.

Turning their attention to the issue of NPM impact assessment, participants noted that the representatives of six European NPMs had already exchanged views on «trying to gauge NPM impact» at a meeting held in Paris on 7 and 8 September 2017 in the framework of the European NPM Forum; a presentation was given of the main conclusions from that meeting and a written summary made available in English and French. Reference was also made to a concept paper on measuring the impact of NPMs which had been prepared by the European Training and Research Centre in Graz for consideration at the Paris meeting.

At the outset, it was acknowledged that the NPMs represented at the conference varied significantly in terms of size, legal structure, means and - above all - age. Any institution which has reached the 10 year milestone, such as the Slovenian NPM, is likely to feel the need to review its functioning, take stock of what has been achieved and seek possible new paths of action. In contrast, a relatively new mechanism will naturally be more focussed on establishing itself and developing its activities. Consequently, the conclusions reached would no doubt be of varying degrees of relevance for the different participants. But they should certainly provide food for thought for everyone present; indeed, any NPM had an interest in maintaining a critical eye on its performance at every stage of its existence.

The discussions at the conference were organised around four distinct - albeit far from watertight - themes:

1. Reasons for assessing the impact of an NPM, who should do the assessment and when should it be done ?
2. What is NPM impact (criteria) ?
3. How to measure impact (indicators: data needed, facts or perception,etc) ?
4. How to establish a link of causality between changes observed and an NPM's work ?

Each of these themes was considered in turn by two working groups meeting in parallel, followed by discussion of the working groups' conclusions in plenary session.

As from the very beginning of their discussions, participants wrestled with the concept of «impact» as compared to that of «effectiveness». The general tendency was to consider that attempts to assess the impact of an NPM inevitably involved evaluating the mechanism's mandate, resources and working methods. This was reflected in the conclusions reached under the different themes.

Theme 1: Assessing NPM impact: why, by whom and when ?

Participants considered that it was perfectly normal practice to review - at the appropriate time - whether a body entrusted with a particular task was achieving the goals/objectives which had been set. And this was all the more necessary when the body concerned - such as a national preventive mechanism - was financed by public funds. However, it was recognised that assessing the impact of an NPM was complicated by the nature of the overall objective i.e. *prevention* of torture and other forms of serious ill-treatment. The extent to which an objective of prevention was being met did not lend itself easily to evaluation.

The assessment process should certainly test whether the «internal performance» of the NPM was capable of having a preventive effect. This could identify and establish good practice and - if necessary - trigger a rethinking of strategies, specific objectives and working methods. It might also lead to a reinforcement of the means placed at the mechanism's disposal (staff, etc) if they were found to be inadequate. More generally, if carried out in the right spirit, assessment should be a source of motivation for the persons working for the NPM and could boost their self-confidence.

Assessment could reveal whether recommendations made by the NPM were being fully implemented by the national authorities and whether the changes involved - to practices, standards and laws - were having the desired effect i.e. improving in concrete terms the protection of persons deprived of their liberty. It could also fuel public debate about issues related to the prevention of ill-treatment and, more specifically, provide answers for the media and general public about what the mechanism has achieved.

If it was demonstrated that the NPM was having an impact, this would increase the mechanism's credibility vis-à-vis the national authorities, its interlocutors in places visited and the public at large. And such a positive assessment could be used to justify the maintenance of - and even an increase in - the NPM's resources.

If, on the contrary, the NPM's impact could not be demonstrated, was there a risk of the State reducing the mechanism's funding ? This was considered unlikely, especially if the assessment revealed that the lack of impact was the result of factors beyond the control of the mechanism; and such a negative assessment might even prove beneficial. For example, if the core problem was found to be an uncooperative attitude on the part of the national authoriites, the effect of the assessment could be to prompt a re-examination of the process of dialogue between the NPM and those authorities.

It was added that for certain NPMs at least, the risk of a reduction in their funding could be higher the *greater* their impact was demonstrated to be !

Assessment by whom and when ?

The importance - and even duty - of assessment of an NPM's work by the mechanism itself, using inter alia the tools provided by the SPT, was emphasised. That said, assessment by other bodies was also desirable in order to obtain an outside/objective view. Self-assessment and external assessment were seen as complementing each other.

As regards *self assessment*, an NPM should keep its resources and working methods under constant review, as from the outset of its activities. To assess the impact of the results of the NPM's work was obviously a different matter; time must be allowed for the implementation of the various recommendations made, especially those of a systemic nature. An interval of several years might be required before a valid assessment could be made of the effects in real terms of recommendations formulated by the mechanism. However, the conditions permitting in due course an evaluation of impact should be ensured without delay e.g. appropriate (SMART) formulation of recommendations; a procedure for systematically supervising their implementation, which is made known in advance to the authorities concerned.

Those directly concerned by the NPM's activities (its «stakeholders») should be involved in the self-assessment process. The mechanism should seek the views of the addressees of its reports and recommendations (government departments, management of places visited), of staff in places visited and - as far as possible - of persons deprived of their liberty.

Various forms of *external assessment* were possible. As a public entity, an NPM might well be subject to some form of control by another body (legislature, State audit office) and this could involve an element of impact assessment. For example, in several countries the NPM is obliged to report annually on its activities to the national Parliament, and this can give rise to a debate and conclusions. Similarly, sections of the media may decide at some point to take a close look at the mechanism's work. And the NPM may itself take the initiative to seek an external assessment of its activities, by an outside consultant, academia or an NGO with expertise in the area of the prevention of ill-treatment.

With regard to the evaluation of working methods, some participants attached particular importance to peer review by members of other NPMs. As for the impact of an NPM's recommendations, it was argued that the department in an Ombudsperson's Office which is responsible for investigating complaints would be well placed - in view of the information at its disposal - to make an assessment.

The general view was that any attempt to gauge the impact of an NPM in the manner defined during the September 2017 Paris meeting - namely «...to assess (as precisely, objectively and scientifically as possible) the effect (in the short, medium and long term; direct or indirect; alone or in combination with other factors) that it has on the changes occurring in its country in the situation of persons deprived of their liberty in terms of the prevention of torture and ill-treatment» - would certainly have to be entrusted to an external actor. An in-depth assessment of this kind by the NPM itself would place far too great a demand on its resources; and it could not be considered as «objective» if performed by the mechanism.

Theme 2: What is NPM impact ?

Participants recognised that it would be very difficult, if not impossible, to demonstrate that persons deprived of their liberty were *not being ill-treated* as a result of an NPM's work. Alternative means of gauging the impact of the mechanisms had to be found.

One approach would be to consider NPM impact as observable change triggered by the mechanism, such as a modification of practice or legislation, an improvement of living conditions or a judicial decision on a detention-related issue. However, this assumed that causality between the NPM's work and the change observed could be established. Moreover, given that the overall objective is prevention (of ill-treatment), an NPM's impact could not necessarily be assessed in terms of change; the mechanism's impact might consist of maintaining the status quo i.e. avoiding a worsening of the situation.

The very presence of an NPM in a place of deprivation of liberty might in itself be regarded as a form of impact, as closed institutions were thereby rendered visible to the outside world. However, it was argued that the presence of an NPM was not enough and could even become a fig leaf if it led to no tangible benefits in terms of strengthening protection from ill-treatment.

It was agreed that criteria on impact should address inter alia the «internal performance» of an NPM. Whether the mechanism concerned was able to have an impact would certainly depend to a considerable extent on how it went about the business of carrying out visits and drawing up reports and recommendations. Does the NPM have the necessary legal basis (independence, powers) and resources (financial and human); is there a well-defined visits strategy covering all forms of deprivation of liberty; are visits sufficient in number; are they properly prepared and carried out in a professional manner by a suitably-qualified team; is information sought from all relevant sources; are visit reports and related recommendations focussed on the key issues in terms of the prevention of ill-treatment and drafted in a «user-friendly» way; etc ? According to several participants, the focus should be less on the number of visits and recommendations and more on their quality combined with a strategic choice of establishments visited. In this connection, the advantages of thematic visits were emphasised.

At the same time it was underlined that an NPM's impact could not be assessed merely by reference to visits and reports. The involvement of the NPM in the process of transforming recommendations into positive change was equally important. The mechanism was not the decision maker, but it should seek to influence the outcome through dialogue with those possessing the power of implementation (the national authorities) and, when necessary, by enlisting the support of others.

This implied the creation of procedures/structures enabling a meaningful dialogue with the administration to occur. And if that dialogue proved fruitless, it was incumbent on the NPM to mobilise other forces (parliament, the judiciary, the media, staff trade unions, NGOs and

public opinion) in favour of change. In this context, reference was made to the «political» nature of the mechanism's work.

Some participants considered that criteria on impact could be devised by reference to the standards which the NPM seeks to have respected. The mechanisms should certainly be expected to strive to ensure compliance with the (minimum) standards which have been developed at regional and/or international level in relation to many types of places of deprivation of liberty. Of particular interest were the well-known «fundamental safeguards» which should apply as from the outset of custody - notification of a third party as well as access to a lawyer and to a doctor. Recent research commissioned by the APT had confirmed that these safeguards, if both recognised by law and applied in practice, significantly reduce the risk of torture and other forms of deliberate ill-treatment. As suggested in the concept paper prepared for the September 2017 Paris meeting, the impact of an NPM might be assessed in part by the extent to which it ensures compliance with these three key safeguards in the country concerned.

Similarly, was the NPM delving into the measures taken when there were indications of possible ill-treatment; did it check whether investigations were carried out by the relevant authorities and examine the «effectiveness» of any such investigations ? It was widely acknowledged that firm action when ill-treatment occurred had a powerful preventive effect.

For several participants, whether an NPM engages in the non-visit activities listed in paragraph 9 of the SPT's analytical assessment tool should also be taken into account when assessing impact. Particular reference was made to training for staff with responsibility for persons deprived of their liberty; if staff learned how to adopt the appropriate attitude in their relations with persons in their custody, this would pay dividends in terms of the prevention of ill-treatment. The importance of instruction for medical personnel on application of the Istanbul Protocol was also emphasised. Similarly, systematic training for the police, prison officers, etc on the NPM as such - its role, powers and working methods - could have a positive effect.

The degree of attention paid to an NPM's activities by the media and by the public at large (for example, on the publication of a visit report or the mechanism's annual report) was a factor to be considered in any assessment of the mechanism's impact. And what conclusions should be drawn if public opinion (for example, about conditions in prisons) was/remained out of step with the recommendations made by the NPM ? It was argued in this context that an NPM which lost the backing of the general public risked losing in turn the support of the authorities, with all the implications that this could have in terms of resources.

That said, public opinion in most european countries was at best indifferent to the treatment of prisoners (as distinct from certain other categories of persons deprived of their liberty, such as psychiatric patients or the elderly and children held in social care facilities). It

would be demanding a great deal to assess an NPM on the basis of its capacity to change this general attitude.

For certain participants, it was also important to keep in mind the potentially negative impact that an NPM could have on NGOs in the country concerned. In particular, if non-governmental organisations were closely associated with the operation of the NPM (i.e. a public body), this might have the effect of tempering their activism and thereby reduce their contribution to the overall goal of prevention of ill-treatment.

Theme 3: How to measure impact ?

The discussion focussed on trying to identify indicators in relation to various criteria/objectives : internal performance of the NPM; application of its recommendations; the coverage/resonance of the NPM's activities in the public arena; improvement in practice of the situation of detained persons.

As regards the internal performance of an NPM (its authority and credibility), many of the key points had already been mentioned during the discussion of theme 2. Reference was also made to the observation grid prepared by the association NPM Obs. and which had been widely circulated among NPMs; it provided many examples of possible indicators in relation to internal performance. It was noted that one important test of a mechanism's impact was its capacity - and determination - to respond rapidly to urgent situations involving a heightened risk of ill-treatment; in such cases, the action of the NPM could be preventive in a very immediate sense.

Whether an NPM's recommendations are translated into reality is clearly central to the mechanism's impact. The emphasis here should be on a qualitative rather than a quantitative analysis; precisely to what extent has each recommendation been complied with and, most importantly, what remains to be done to achieve the desired outcome ? This implies the existence of a clearly-defined and rigorous system for monitoring compliance with the recommendations: requirement for the authorities to respond within a deadline; written/face-to-face dialogue with the authorities; verification of progress during follow-up visits; in-depth review at regular intervals (e.g. three years) of action taken to implement recommendations of a systemic nature.

And faced with the rejection or only partial implementation of a recommendation, does the NPM take appropriate action to mobilise other forces ? If the recommendation concerns a precise and institution-specific issue, are other bodies which are empowered to visit/monitor the place concerned alerted to the matter (for example, a supervisory judge) ? If the recommendation relates to a more far reaching - perhaps systemic - issue, are there established channels of communication with parliamentary bodies or civil society actors ? Similarly, does the NPM make appropriate use of possibilities to instigate proceedings before the courts for the purpose of pursuing the implementation of its recommendations, or to associate itself with relevant legal proceedings instigated by others ? Particular emphasis was placed on the role that Constitutional Courts can play in certain countries in

terms of the implementation of an NPM's recommendations. And is consideration given to seeking the support of international monitoring bodies (SPT, CPT) ?

Obviously, the greater the implication of others in pursuing the issue addressed in a recommendation, the more remote will become the responsibility of the NPM for the end result. However, bringing about change will often not be possible without the support of other actors, and the impact of the NPM in such cases could be seen as the action of mobilising that support.

The setting up of a data base dedicated to the implementation of recommendations was seen as an important tool by several participants. Ideally, this would bring together information from a variety of sources, enabling the mechanism to keep track of the precise extent to which each of its recommendations had been accepted and complied with.

More generally, it was considered that a well-designed data base allowing an NPM to exploit all the information gathered over the years would enhance the mechanism's impact in every aspect of its work. In this connection, information was circulated about an extranet database which was being prepared by one of the NPM's represented at the conference.

There was general agreement that being in the «public eye» would promote the impact of an NPM's activities. Was there a strategy of communication ? Were its reports, whether on specific institutions or thematic, made public ? Did they receive extensive coverage in the local/national media ? And was the published material adapted to the audience ? Getting the message across in an effective manner required adjusting the wording, format, «packaging» to the addressee (government officials, the media, the general public, detained persons, etc). Several participants emphasised that photographic material can be very effective in generating awareness of and concern about an issue. It was also important not to focus only on the «bad news»; highlighting positive developments in the area of deprivation of liberty (for example, a vocational training programme yielding positive results) could help to counter preconceived ideas.

As for the objective of actual improvement in the situation of persons deprived of their liberty, there may well be positive changes that can clearly be attributed to the NPM's work; indicators designed to identify such changes would be needed. More broadly, the NPM's contribution to strengthening the protection of detained persons could be assessed using indicators probing its efforts to ensure compliance with recognised standards and preventive measures; in addition to the three fundamental safeguards already mentioned under theme 2, reference might be made to the Mandela and European Prison Rules, the Istanbul Protocol, the Bangkok and Havana Rules, the CPT's standards, etc.

The examination of theme 3 sparked a discussion about whether a distinction should be drawn between the notions of «impact» and «success». It was argued, by way of example, that if legislation was adopted in response to an NPM recommendation, the mechanism could certainly be said to have had an impact; but only if the legislation was subsequently implemented in practice could one speak of success. Certain participants had misgivings

about using the notion of «success» in the context of implementation of NPM recommendations. Nevertheless, it was acknowledged that impact should be seen as a multi-layered phenomenon; achieving the objective sought, especially as regards systemic change, could well require a succession of impacts in the context of an overall strategy.

Theme 4: Establishing causality between changes observed and an NPM's work (and how much does it matter) ?

Participants noted that causality might on occasion be clear, especially in relation to clearly defined and institution-specific issues. Taking away shutters from a cell window, improvements to hygiene, the transfer of a prisoner to a hospital facility or his/her removal from solitary confinement, the setting up an investigation into allegations of ill-treatment; it was not uncommon for concrete developments of this kind to be prompted by an NPM visit and they could even occur while the visit was underway. Moreover, when a new instruction was issued or law adopted, the administrative authority concerned or the legislator may directly refer to the NPM's findings/recommendations as the grounds for taking that measure or at least as being one of them. Similarly, the decision of a court related to the treatment of one or more detained persons (and perhaps with system-wide implications) may specifically refer to the NPM's findings or standards it has advocated.

That said, it was acknowledged that the link of causality would very frequently be far from clear-cut. Despite this, whenever a change was made which was consistent with recommendations made by an NPM, it was considered legitimate to presume that the mechanism had at least contributed to this development. And it was argued that NPMs should not be shy about laying claim to that contribution.

Situations might arise in which a change being introduced was controversial and the authority concerned made reference to the NPM's work as an excuse for the measure. It was argued that the NPM would have to accept being instrumentalised in this way provided the development in question was indeed in line with its recommendations. However, the mechanism should not hesitate to speak out if its position was being misrepresented; for example, if a recommendation to get rid of large-capacity dormitories was used to justify the introduction of a system of isolation. Other situations could occur in which it might be judicious for an NPM to acquiesce in another body (for example, the legislator) taking all credit for the change concerned, even if the mechanism had made a contribution.

Finally, it was recognised that an NPM was just one participant in a wider process involving numerous actors. There might be value in attempting, in an objective and scientific way, to pinpoint the place of the mechanism in that «ecosystem» and to evaluate the importance of its contribution. The insights provided by an investigation of this kind could enable the NPM to enhance its effectiveness and impact. That said, any such assessment would clearly have to be entrusted to a suitably-qualified body that was fully independent of the NPM concerned.

At the close of the Conference, the representative of the Council of Europe indicated that he felt that the important question of NPM impact assessment has now been sufficiently been reflected upon in a collective manner during the two European NPM Forum meetings in Paris and Ljubljana. It would now be of help to all if one or several NPMs proceeded with a self assessment of their impact combined with an external assessment and if those were made available to the community.

Proposals for an NPM-lead Network

by John Wadham

Introduction: John Wadham from the UK and Eva Csergö, the Europe and Central Asia Programme Officer of the Association for the Prevention of Torture gave an account of the discussions held in Geneva in February with a number of NPMs about the idea of setting up a NPM-lead European Network.

History: The need for an NPM-led network in Europe was voiced back at the 2016 First Annual Meeting of OSCE NPMs, conveyed by the OSCE/ODIHR and the APT in Vienna. Some NPMs thought that they needed to have a unified and independent NPM voice to advocate for enhanced consultation on NPM events organized by other parties. As a follow-up, 12 NPMs then wrote a letter to the OSCE/ODIHR, the European Union and the Council of Europe, calling for an NPM ownership of NPM meetings and events.

Geneva: Those present in Geneva agreed on the usefulness of resuming NPM exchanges at European level, which had been successfully carried out within the former European NPM network under the aegis of the Council of Europe (2010-2012)- but not sustained afterwards. Such Europe-wide initiative would usefully complement the existing NPM platforms and networks in the region, including: sub-regional NPM networks: the South-East European NPM network, the German-speaking NPM network (Austria, Germany, and Switzerland), the Scandinavian NPM network. the European NPM newsletter and other initiatives such as the Slack platform developed by SPT member Mari Amos.

A key reason for the initiative was to raise the profile and status of NPMs internationally: GANHRI, the Global Alliance of NHRIs, managed to successfully carry the voice of NHRIs, build their collective identity and lobby for their presence at UN level. NHRIs now have a consultative status at the UN, and the CRPD for instance also refers to them. For NPMs, many UN meetings- especially under the Human Rights Council- are not accessible, although they can now have private meetings with the UN Committee against torture prior to CAT reviews. As for now, they are for instance obliged to attend the UPR sessions of their State from the public gallery. They need to be more visible, and to get a higher status and recognition, even when they are under an NHRI or an Ombuds institution.
Coordinate on the topics and planning of NPM meetings organized by other stakeholders: If NPMs could speak with one voice, they could be consulted on the agendas and planning of possible NPM meetings conveyed by others. NPM could advocate for specific topics to be discussed at these meetings, and be consulted on the planning of these meetings which often are called late and can conflict with other obligations.

Following the meeting in Geneva Eva had undertaken a survey of NPMS, most of whom wished to see a continuation of this initiative.

Ljubljana: At the meeting in Ljubljana many people were also positive today but some expressed concerns that the initiative might have a negative effect on the current regional structures. However it was agreed to set up informal Steering Group of willing people from NPMs and that group should meet in next couple of months to sketch out some ideas and then to present them to the larger group at the next opportunity. Some people volunteered for the Steering Group.

Eva agreed to produce a note of the discussions, a written summary of the questionnaire responses and action points from the discussion and when these are circulated she will ask again for volunteers for the Steering Group.

It was hoped that a report back and further discussion could be planned at the next Europe-wide meeting, perhaps in Lithuania or at an APT and OSCE/ODIHR meeting for all NPMs in December.