



## **Monitoring framework, methodology and further action by the Austrian NPM**

### **I. Preamble**

Under the Austrian Federal Constitution, the Austrian Ombudsman Board, together with its commissions, is vested with the responsibilities of a National Preventive Mechanism (NPM) in accordance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as with the monitoring and control of institutions, facilities and programmes in accordance with the UN Convention on the Rights of Persons with Disabilities, and with the monitoring and concomitant examining of authorities empowered to exercise direct administrative power and coercive measures.

### **II. Objectives and basic principles**

The **objective** is to protect and promote human rights, including but not limited to the regular, nationwide and generally unannounced monitoring and control by the commissions of institutions and facilities where persons are or can be deprived of their liberty, as well as of institutions, facilities and programmes designed for persons with disabilities and of the exercise of coercive measures by authorities empowered by the State.

The **benchmark** for the fulfilment of the responsibilities of the NPM is all the standards and principles developed under the provisions of both international law and Austrian regulations to protect human rights.

The joint work of the NPM is based on the following guiding principles:

- **“Quality before quantity”**: The preventive activity of the NPM serves to protect against violations of and intrusions into human rights. “Prevention” is defined as measures and strategies to minimise risks and anticipatory action to protect human rights. Therefore, the improvement of general quality standards is not a central re-

sponsibility of monitoring and control activities. The focus on preventive monitoring and control to protect against violations of human rights determines the core activities of targeted, unannounced visits in selected facilities and institutions and of confidence-building communication on-site with persons in all roles.

- **“Priorities and topics”**: Fundamentally, the visits by the commissions are oriented towards concrete monitoring topics and priorities that are understood as guidelines rather than rigid rules. The size and composition of the visiting delegations are based on the defined monitoring focal points chosen by the commissions, as well as the number and planned duration of these visits. Preserving the necessary flexibility, for example during general initial visits or in the event of unexpected impressions on-site, is reasonable and appropriate. It must be possible to maintain a free and unobstructed view of occurring tendencies and to react quickly and flexibly to acute situations.
- **“Harmonised procedures”**: The preparation, carrying out and follow-up of visits by the commissions is based on a jointly coordinated methodology. This is helpful for both, the delegation teams assembled from across the commissions and the further development of monitoring processes that can be compared across Austria. The intention is to counteract the obstacles and problems that arise from federal structures in similar types of institutions by way of monitoring procedures and assessment standards that are as uniform as possible Austria-wide, notwithstanding any necessary regional priorities.
- **“Documentation”**: The effectiveness of improvements or elimination of structural problems, which have been identified and detected, depends largely on factors such as specificity, traceability and the reliability of the source(s). The guiding principle is a documentation of the monitoring findings, which is as simple and un-bureaucratic but also as substantive and fact-oriented as possible. It should enable an assessment based on human rights and it should comply with the international principles that have been developed for this type of documentation. Additionally, simple impressions and provisional assessments can subsequently have certain relevance, in particular for the definition of follow-up visits or monitoring priorities.
- **“Communication”**: The intensive and ongoing sharing of experience within the individual components of the NPM is of essential importance. Communication that is direct and based on trust promotes the joint work and makes it easier. Likewise, ongo-

ing sharing of ideas and experience between the AOB and the commissions regarding the progress or the obstacles in their day-to-day work and in the political process is important; the AOB endeavours to participate in and to have the opportunity for discussions in all the regional governments.

- **“Continuing education”**: Ongoing information about international developments, offerings of special training and relevant specialist literature support the further development of joint monitoring and control activities, which must also be seen in the light of the high expectations directed towards the Austrian National Human Rights Institution – which is also the headquarters of the International Ombudsman Institute (IOI) – in terms of following and sharing “best practices”.
- **“Advisory functions”**: Interaction in the advisory process with the Human Rights Advisory Council, which is as target-oriented and efficient as possible, is a joint responsibility of the NPM. As consulting on the “definition of general monitoring priorities” and the submission of suggestions on “ensuring uniform procedures and investigative standards” are included in the area of competence of the Human Rights Advisory Council, this also supports the harmonisation of procedures.

### **III. Monitoring methodology**

A uniform methodology for on-site monitoring procedures must be differentiated from the assessment standards of human rights-based evaluation. One is the process of gathering information, while the other is the evaluation of the matter itself. These two components cannot be separated from one another completely, as they are intertwined. Depending on the focus of the information gathering (e.g. deployment of private security companies in psychiatric clinics or provision of food during forced returns), different steps or monitoring tools are necessary. This is why process and evaluation cannot be isolated from one another. Ultimately, the process is the means to arrive at an evaluation.

Consequently and in accordance with the monitoring objectives, principles and standards, the procedure of the commissions in how the actual practice of their visits is structured in order to achieve an Austria-wide comparability of the human rights-based assessments in accordance with international standards, particularly in accordance with the “Analytical self-assessment tool for National Prevention Mechanisms” (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Twelfth Session, 6 February 2012, CAT/OP/1) and the “Guidelines on National Preventive Mechanisms” (Sub-

committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 2010, CAT/OP/12/5), is carried out according to the following pattern:

- Definition of a clear and well-demarcated monitoring priority or monitoring subject, as this is necessary both for the quality of the information gathering and in order to have the necessary space to be able to perceive any other problems that go beyond the original scope.
- Explanation of which (inter)national standards and statutory framework conditions exist in this regard.
- Development within the NPM as to which investigative steps must (in any case) be taken (e.g. interviews with certain persons, access to certain documentation, etc.). In the course of this process, it must also be considered how circumstances that are discovered can best be cross-checked.
- The reports should show whether the agreed-upon investigative steps were undertaken or if not, why they were not possible.

#### **IV. Further action**

The visit reports conclude with a human rights-based assessment, which contains a recommendation directed towards the AOB on what action should be taken, as well as more detailed remarks. The commissions can additionally suggest that further investigations across multiple institutions and facilities be undertaken by the AOB. To the extent that it is not clear from the visit report that no further action is needed, the AOB confronts the highest body, which is responsible for the supervision and operation of the facility and, if appropriate, also the owner and/or operator of the facility with the observations of the commission (**consultation proceeding** or **confrontation proceeding**). The heads of the commission are kept informed on an ongoing basis.

After the investigation has been concluded, the **final assessment** (evaluation) is sent to the highest responsible body. It can contain suggestions on how to remedy the deficiencies that were found or how to implement preventive measures. Upon recommendation by the head of the commission or by the AOB, a “**recommendation in accordance with Article 148c of the Austrian Federal Constitution**” is drafted in some cases or if prompted by such a cer-

tain case. In addition to a brief and anonymised description of the case and/or any observed maladministration and the human rights-based assessment, this recommendation contains a summary, which defines the human rights standard applied and indicates which measures should be taken by the responsible state authorities.

Subsequently, the draft recommendations are submitted to the Human Rights Advisory Council and after it has dealt with them in its advisory capacity, they are sent to the supreme administrative bodies. The addressee of the recommendation is obligated to comply with the NPM's recommendation within a period of eight weeks and to notify the NPM thereof or to provide reasons in written form why the recommendation was implemented. The disclosures on the website must contain this statement; if need be, in abridged form.

To the extent that the owners and/or operators of the monitored institutions and facilities are not local or regional authorities, their management bodies are informed in a suitable way of the NPM's assessment, with Article 148c of the Austrian Federal Constitution being applied *mutatis mutandis*, and their competent state supervisory authority being notified. Once the recommendation has been adopted, its content is binding for the NPM (**guiding principle**). During follow-up visits, it must be ensured that the recommendation is complied with. On one hand, the guiding principles should help the commissions in preparing **follow-up visits** and on the other hand, they can be of assistance when generating visit reports. Thus, they not only identify human rights violations but also address the preventive character of the mandate.