



Specific techniques of interviewing members of vulnerable groups – FOREIGNERS AND MEMBERS OF NATIONAL AND ETHNIC MINORITIES –

Methodological tool for carrying out the tasks of the national preventive mechanism

According to Article 19 of OPCAT,¹ national preventive mechanisms should regularly examine the treatment of persons deprived of their liberty, who are held at a place of detention specified in the Article 4 of OPCAT (e.g. in prisons, hospitals, schools, institutions involved in the care of children, the aged, the mentally ill or the disabled),² in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The main task in the preventive work of the NPM is to visit places of detention, during which the essential source of information is provided by the personal meetings with the persons deprived of their liberty, and interviewing them about their situation.

Although people deprived of their liberty may be considered as vulnerable in general, some groups, due to certain factors and/or circumstances, are exposed to particular vulnerability, such as women, juveniles, members of minority groups, foreign nationals, persons with disabilities, and members of sexual minorities.³ A combination of risk factors (intersectionality) may lead to enhanced vulnerability, and it can result in experiencing torture and ill-treatment in distinct ways.⁴

Those factors and circumstances which may render a person vulnerable may also affect communication, which needs to be considered during the preparation and conduction of monitoring visits.

Based on the exchange of views and experiences between the participants of the international workshop entitled “Interview techniques with vulnerable groups” organized by the Hungarian NPM on 29-30 September 2021, monitoring visits of NPMs to places of detention where persons in vulnerable situation are concerned should meet the following criteria:

1. Before the visit:

- careful planning and preparation;
- involvement of experts by experiment (at every stage of the monitoring process);
- composition of the visiting team (size, gender, age, professional training – multidisciplinary);

2. During the visit; interview techniques:

- “do no harm”;
- provide information to the interviewee;
- empathy;
- trauma-informed approach;
- adequate time;
- confidentiality;
- avoid labeling, generalization, prejudice;
- adequate language and terminology;
- maintain good body language;
- thorough information gathering, cross-check, triangulation;

- feedback;
3. After the visit:
- emphasis on prohibition of reprisals;
 - special attention to the content and structure of the report; taking into account international human rights standards;
 - follow-up;
 - importance of training and sensitization;
 - contact with the stakeholders (*SPT, CPT, NPM, Network, experts*).

Interviewing foreigners and members of national and ethnic minorities⁵

Due to their social isolation, differences in language, culture, customs and religion, lack of family ties and contacts with the outside world, foreigners deprived of their liberty are in a state of special vulnerability. In addition, some of them, especially refugees, became victims of torture in their countries of origin. Places of detention are usually unable to take into account their special needs – e.g. their own language, different culture and customs –, or they treat them according to the stereotypes associated with them.

Members of national and ethnic minorities deprived of their liberty may be considered vulnerable because of their social status, and the prejudices and stereotypes they face in society. They are overrepresented in the criminal justice system as people accused or convicted of crime.

Challenges of interviews with foreigners deprived of their liberty:

- language barriers;
- effective communication may be blocked by differences in social and cultural background;
- factors to be taken into account:
 - o gender of the interviewee;
 - o social status of the interviewee;
 - o the associated behavioral expectations (e.g. culturally specific ideas about physical interaction – handshaking, eye contact);
- the interviewee is a victim of torture or affected by cumulative negative events:
 - o traumatized;
 - o distrustful.

What can help to overcome these challenges:

- adequate composition of the monitoring team (gender, language skills, ethnic origin, knowledge about the culture, appropriate training and preparation, multidisciplinary);
- involving an interpreter;
- trauma-informed approach;
- wording and language:
 - o be as clear, simple, and unambiguous as possible;
 - o do not limit or influence the response (use open-ended questions);
 - o be ready to ask for more details and be prepared to ask the same question in different ways;
- take appropriate time with the interviewees (establishing trust takes time; multiple encounters may be required).

Working with an interpreter:

- careful selection (especially if s/he is not professionally trained):
 - o professional and personal background;
 - o taking into account the gender, age, ethnic origin, etc. of the potential interviewees;
 - o adequate language skills (dialects); familiarity with the culture; country- and region-specific knowledge;
- give him/her the necessary background information (including the principle of confidentiality);
- the interviewer should control the dialogue:
 - o speak directly to the interviewee;
 - o the interpreter should indicate if the interviewee does not understand a question, avoid to rephrase it.

Challenges of interviews with members of national and ethnic minorities deprived of their liberty:

- due to the continuous negative effects (prejudices, stereotypes), they may be traumatized – trauma-informed approach;
- intercultural knowledge is important for effective communication;
- due to their social exclusion, members of minority groups are often poorly educated – use plain language instead of complicated professional language.

International legal standards concerning foreigners and members of national and ethnic minorities⁶

- [UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990](#)
- [UN Convention relating to the Status of Refugees, 28 July 1951](#)
- [UN Convention relating to the Status of Stateless Persons, 28 September 1954](#)
- [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\) General Assembly resolution 70/175, annex, adopted on 17 December 2015](#)
- [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992](#)
- [UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012](#)
- [Report by the UN Special Rapporteur on minority issues on effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities \(A/70/212\); 30 July 2015](#)
- [Council of Europe Framework Convention for the Protection of National Minorities, Council of Europe](#)
- [Council of Europe, Recommendation CM/Rec\(2012\)12 of the Committee of Ministers to member States concerning foreign prisoners, October 2012](#)

- [Council of Europe, Recommendation Rec\(2006\)2-rev of the Committee of Ministers to member States on the European Prison Rules](#)
- [Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union](#)

Further reading related to interviewing foreigners and members of national and ethnic minorities

- [Chapter 11 – Interviewing. OHCHR: Manual on human rights monitoring. Professional Training Series No 7. New York ; Geneva: UN, 2011 \(HR/P/PT/7/Rev.1\)](#)
- [Krassimir Kanev: Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms \(2021\)](#)
- [Association for the Prevention of Torture \(APT\) and United Nations High Commissioner for Refugees \(UNHCR\): Monitoring Immigration Detention – Practical manual. 2014](#)
- [APT: Detention Monitoring Briefings No. 3 – Using Interpreters in Detention Monitoring, May 2009](#)
- [The role of interpreters and intercultural mediators in the work with refugees during COVID-19](#)
- [Principles on Effective Interviewing for Investigations and Information Gathering, May 2021.](#)

References

¹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

² UN Committee Against Torture, General Comment No. 2, CAT/C/GC/2 par 15. <https://undocs.org/en/CAT/C/GC/2>

³ SPT: The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the OPCAT CAT/OP/12/6, par 5(j) <https://undocs.org/en/CAT/OP/12/6>

and Report of the UN Special Rapporteur on torture (2016) A/HRC/31/57. <https://undocs.org/en/A/HRC/31/57>

⁴ CAT General Comment No 2, par. 22; Report of the UN Special Rapporteur on torture (2016) A/HRC/31/57, par. 9

⁵ Based on the following sources: Chapter 11 – Interviewing. OHCHR: Manual on human rights monitoring. Professional Training Series No 7. New York; Geneva: UN, 2011 (HR/P/PT/7/Rev.1) <https://www.ohchr.org/Documents/Publications/Chapter11-MHRM.pdf>

Krassimir Kanev: Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms (2021) [https://bim.lbg.ac.at/sites/files/bim/attachments/handbook - prisoners in a situation of vulnerability - bhc.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/handbook_-_prisoners_in_a_situation_of_vulnerability_-_bhc.pdf)

Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR): Monitoring Immigration Detention – Practical manual. 2014 https://www.apr.ch/sites/default/files/publications/monitoring-immigration-detention_practical-manual_0.pdf

and information shared on the international workshop "Interview techniques with vulnerable groups" organized by the Hungarian NPM on 29–30 September 2021, with special regard to the presentation of dr. Elisabeth Sándor-Szalay, Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities.

⁶ Based on the list collected by the APT concerning foreigners deprived of liberty: <https://www.apr.ch/en/knowledge-hub/detention-focus-database/groups-situations-vulnerability/foreigners>, and

minorities and indigenous peoples deprived of liberty: <https://www.apt.ch/en/knowledge-hub/detention-focus-database/groups-situations-vulnerability/minorities-indigenous>
and the lists on pages 37-38 and 48 of Krassimir Kanev: Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms (2021) https://bim.lbg.ac.at/sites/files/bim/attachments/handbook_-_prisoners_in_a_situation_of_vulnerability_-_bhc.pdf