



Jean-Jacques Gautier

## **NPM Symposium**



- **2015**  
Addressing vulnerabilities  
of LGBT persons in  
detention





association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

# Jean-Jacques Gautier NPM Symposium 2015

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**Addressing situations of vulnerability  
of LGBT persons in detention**

Outcome report

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. Since then the APT has become a leading organisation in its field. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture.

APT's vision is a world free from torture where the rights and dignity of all persons deprived of liberty are respected.

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ISBN 978-2-940337-87-3

Translation into English: Anthony Drummond

Original design: minimum graphics

Layout: Anja Härtwig, APT

JJG Symposium logo (on the cover): Shazeera Zawawi

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**Federal Department of Foreign Affairs FDFA**

*The APT would like to thank the  
Swiss Federal Department of  
Foreign Affairs for its support.*

# Acknowledgements

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This report reflects the discussions that took place during the Jean-Jacques Gautier Symposium on ***Addressing situations of vulnerability of LGBT persons in detention***. APT would like to thank all members of national preventive mechanisms against torture and other experts present at the meeting for their active participation and valuable contributions. APT would also like to thank Jean-Sébastien Blanc and Maud Correnti for organising the Symposium and preparing this report.

Finally, APT wishes to commend the entire staff for their total dedication and support in helping to ensure the smooth running of the Symposium, and conveys its special thanks in this regard to Mireille Gheryani, Barbara Bernath, Isabelle Heyer and Rosita Ericsson.



# Abbreviations

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APT	Association for the Prevention of Torture
CPT	European Committee for the Prevention of Torture
LGBT	Lesbian, gay, bisexual and transgender
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

**On 3 and 4 June 2015, the Association for the Prevention of Torture (APT) organised the Second Jean-Jacques Gautier Symposium focused on *Addressing situations of vulnerability of LGBT persons in detention*. The meeting took place in Geneva and aimed to address situations of vulnerability and risks faced by lesbian, gay, bisexual and transgender (LGBT) persons deprived of their liberty and to sensitise and train national preventive mechanisms (NPMs) to better respond to this issue.**

# Background to the second Jean-Jacques Gautier Symposium

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This symposium was the second in a series of annual meetings to allow NPM and other experts to share their knowledge and practices with regard to situations of vulnerability in detention.<sup>1</sup> In tribute to Jean-Jacques Gautier, the founder of APT, this series of meetings aims to strengthen the capacity of NPMs to fulfil their mandate to prevent torture in the most effective manner possible. To this end, the meetings provide a platform for peer exchanges and interaction with other experts on the specific issues raised by situations of vulnerability in detention.

APT decided to devote this second Jean-Jacques Gautier Symposium to the role that preventive bodies play or can play in response to situations of specific vulnerabilities faced by LGBT persons deprived of their liberty. The symposium was designed as a working meeting to encourage the greatest possible exchange between participants. This sharing of experiences from different regions of the world within a meeting format built around short presentations followed by a lively debate animated by a moderator was extremely rewarding and led to intense interaction in an informal and open atmosphere.

The Optional United Nations Protocol to the Convention against Torture (OPCAT), which entered into force in 2006, creates an independent system of monitoring places of deprivation of liberty both internationally through the United Nations Subcommittee on the Prevention of Torture (SPT) and at national level via NPMs. At the time of writing this report, 80 States from all regions of the world had become parties to OPCAT and 62 of them had officially designated an NPM, though some are not yet operational and a number of others have yet to fully meet certain key OPCAT criteria.

Beyond their structural differences or the geographical, political

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<sup>1</sup> The first symposium took place in June 2014 and focused on the issue of children deprived of their liberty. The report on that two-day meeting is available at: <http://www.apr.ch/en/resources/addressing-children's-vulnerabilities-in-detention-jean-jacques-gautier-npm-symposium-2014-outcome-report/?cat=61>

and socio-cultural contexts in which they operate, most NPMs face similar challenges in carrying out their broad mandate to prevent torture. One such challenge is to ensure the effective protection of persons in a particular situation of vulnerability when deprived of their liberty, whether they are for example children, women, LGBT persons or migrants.

The first day of the symposium brought together members of 13 NPMs from different parts of the world as well as 12 other speakers, including experts on LGBT issues, representatives of civil society, State representatives and regional and international bodies monitoring places of detention. Discussions focused on key issues raised by the situation of LGBT persons deprived of their liberty, in the context of the discrimination they often face. Participants identified the main risks facing these persons and discussed potential NPM strategies to effectively address them.

The second day was devoted exclusively to NPM members, with an open discussion on ways to include the issue of the specific vulnerability of LGBT persons in detention in their daily work. These exchanges also allowed for the sharing of good practices and working methods.

# Objective and structure of the report

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This document is the final report of the second Jean-Jacques Gautier Symposium entitled ***Addressing situations of vulnerability of LGBT persons in detention***. Its purpose is not to provide a detailed account of the two-day meeting, but rather to highlight the issues, strategies and main tracks identified during the discussions.

The first part of this report sets out the general framework of the theme by presenting the definitions and principles regarding the issue of LGBT persons deprived of their liberty. The second section focuses on risk factors and situations of risk identified by the participants. Finally, the last section highlights the potential role NPMs could play to address issues faced by LGBT persons in detention and outlines examples of best practices in this regard presented by participants.



# Summary

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During the two-day symposium, participants exchanged information on the situation of LGBT persons deprived of their liberty, a particularly 'invisible' minority group subjected to discrimination in detention. Due to the strong taboo around sexual orientation and gender identity issues, LGBT persons face many situations of risk from the moment they are deprived of their liberty until their release. Although discussions have mainly focused on the risks faced by LGBT persons during their arrest or detention by the police and in prison, it was stressed that all types of deprivation of liberty expose this particularly vulnerable population to abuse of all kinds.

In the prison context in particular, LGBT persons are typically consigned to the bottom of the informal hierarchy and often find themselves at the mercy of other detainees. They are victims of acts of violence and often do not enjoy the same detention conditions as other detainees, while prison authorities tend to ignore (or even encourage) discrimination against them. The situation of transgender persons was the subject of specific discussions as this population faces particular problems and needs, notably with regard to their allocation within detention centers and their access to health care. The separation of LGBT persons from the rest of the incarcerated population is sometimes considered by the detaining authorities as the only effective way of protecting them from violence and abuse. However, this type of measure is controversial and regarded as stigmatising, even discriminatory, and one that should only be applied as a last resort and with the consent of the person concerned. The use of prolonged solitary confinement - even as a means of protection - was denounced as a possible form of torture and could therefore run counter to the "**do no harm**" principle under which NPMs are committed never to take any action that is prejudicial to detainees.

In order to carry out their preventive mandate effectively, it is important that NPMs prepare their visits to places of detention. While

this is valid for all monitoring activities, it is especially the case for visits that focus on a specific group or situation. Such visits require collaboration and exchange with all actors engaged in protecting the rights of LGBT persons. As was pointed out during the first day of the symposium, decisions regarding the allocation and protection of LGBT detainees should be taken with their informed consent, in accordance with the principle "*nothing about us without us*". It is also important for NPMs to deepen their knowledge of these issues in order to better understand the risks to which LGBT detainees are exposed, in particular through consultation with relevant experts.

During their visits, NPMs are expected to advocate for non-discrimination and openness with regard to sexual diversity, to sensitise the authorities and staff on the importance of this issue, and to promote dialogue with detainees. These objectives stand a better chance of being met if detention visits are conducted by a team combining diverse skills and profiles. During monitoring visits, the need to identify LGBT detainees must be balanced with the risks that could be created for those concerned.

Finally, in order to give greater visibility to the difficulties faced by LGBT detainees, it was suggested that NPMs include this issue in their annual reports or, if appropriate, in specific reports dedicated to this topic.

# Introduction: definitions and general framework

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## Sexual orientation and gender identity

The acronym LGBT is used throughout this report to refer to lesbian, gay, bisexual and transgender persons.<sup>2</sup> The terms lesbian, gay and bisexual refer to the concept of *sexual orientation*. This in turn is defined as the predilection of an individual to be attracted emotionally and/or physically to individuals either of the same sex (homosexual), the opposite sex (heterosexual), or of more than one sex (bisexual). A transgender person can be defined in relation to the concept of *gender identity*, referring to the gender that an individual self-identifies with, regardless of whether or not it corresponds to the sex assigned at birth. A *transgender woman* may well be described as a person born with a male sex but who does not self-identify as a man. Conversely, one speaks of a *transgender man* as a person born with a female sex but who self-identifies as a man. It was also emphasised that gender identity should be understood as a continuum between the two poles of masculine and feminine and that many people reject a rigid identification with one or the other of the two genders. This identity fluidity explains why transgender persons do not necessarily opt for sex reassignment surgery.

Today, many countries condemn those considered to have a different sexual orientation than the accepted social norm and/or do not recognise the concept that gender identity may differ from the sex assigned at birth. Moreover, even in societies considered more tolerant and progressive it is clear that a taboo prevails on issues of sexuality, one that is even more pronounced in prison settings where the binary "man versus woman" and "masculine versus feminine" views leave little room for sexual diversity.

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<sup>2</sup> The letter "I" is sometimes added at the end of the LGBT acronym to designate intersex people. However, as the situation of those persons was not addressed during the symposium, LGBT is therefore the preferred acronym here.

## **A group in a “situation of vulnerability”**

Once in custody, all persons held become dependent on the detaining authorities and staff and find themselves in a situation of vulnerability linked to the power imbalance inherent in places of deprivation of liberty. While this applies to all detainees, some groups and individuals are more vulnerable than others if they present certain characteristics, have minority status, or suffer from social stigma. However, simply being LGBT does not automatically mean one is vulnerable, which is why it is preferable to speak of LGBT persons as a group “in a situation of vulnerability” rather than a “vulnerable” group.

As members of a minority group that is often stigmatised within society, LGBT persons are treated in this manner to an even greater extent in places of detention where they suffer marginalisation and discrimination. In the words of one participant, they “are confined within confinement” - imprisonment compounded by the discrimination they face stemming from the rejection of their variant sexual orientation and gender identification. This makes them particularly vulnerable to abuse, both from fellow prisoners and prison staff. Furthermore, in prison institutions they often find themselves at the bottom of the informal hierarchy, considered by other detainees as a class “apart” not to be associated with in any way. The stigma attached to LGBT persons is sometimes found embedded within the institutional culture of places of deprivation of liberty - especially prisons - leading staff to turn a blind eye to the discrimination against them. LGBT persons are an ‘invisible’ minority, forgotten and victimised. This is why it is important for NPMs to consider the difficulties faced by this population in order to reduce the risk of ill-treatment or even torture.

## **A heterogeneous group**

The debates and discussions emphasised the fact that LGBT persons are not a homogeneous group and that the acronym LGBT often encompasses very different realities, including in detention. It emerged that transgender persons in particular do not experience the same difficulties in detention as lesbian, gay or bisexual persons. However, the main risks are broadly similar for all LGBT persons as they are generated by discrimination based on sexual orientation and gender identity.

Discussions also focused on the intersectional character of the vulnerability of LGBT detainees. In other words, it is common for LGBT persons to have different forms of accumulated vulnerability linked to their age, background or social status. This is especially the case for migrants whose immigration status makes them particularly vulnerable in a detention setting. Indeed, LGBT migrants are subject to even greater discrimination and are at increased risk of abuse and ill-treatment. They suffer from isolation due to their "foreigner" status and, in addition, some have previously been persecuted or deprived of their liberty in their country of origin due to their sexual orientation or gender identity. These persons are particularly at risk in migrant holding centres, especially from abuse by their compatriots. The issue of LGBT minors was also discussed during the symposium. This group constitutes a highly vulnerable "minority within a minority", requiring appropriate protection. This further demonstrates the complexity of the LGBT issue and the importance for monitoring bodies to be attentive to different types of vulnerability and their intersectionality.

### **Influence of the context**

Throughout the discussions, the social and political context of different countries was highlighted as a major factor influencing the treatment of LGBT persons in detention. According to the International Lesbian, Gay, Bisexual, Transgender & Intersex Association (ILGA), 76 countries still have homophobic laws that criminalise same-sex relations. Decriminalisation of homosexuality is therefore a first step that needs to be taken before any sustainable change to the detention conditions of LGBT persons can be achieved.

That said, even in countries where homosexuality or transgender individuals are not criminalised, LGBT persons working in State institutions frequently face discrimination based on their sexual orientation or gender identity. In such cases, NPMs face many obstacles in their dialogue with the authorities.

For all these reasons, the role played by international and regional bodies was discussed in relation to issues such as the jurisprudence of regional courts, relevant advocacy or even denunciation, or the publication of reports or press releases on LGBT issues. For example, participants noted the important advocacy role that reports from

the SPT<sup>3</sup> or the Inter-American Commission on Human Rights<sup>4</sup> play in this regard.

Some countries face numerous obstacles to ensuring the fundamental rights of people held in detention in general, including overcrowding, violence and difficulties of access to health care. In such contexts, NPMs find it even more difficult to propose the establishment of preventive measures regarding LGBT detainees. Indeed, under these conditions respect for fundamental rights is regarded as a priority and LGBT issues are often relegated to the background. The political and social contexts in which NPMs are involved therefore have a significant influence on the implementation of preventive measures concerning LGBT persons deprived of their liberty. Participants therefore emphasised the importance of ensuring that any action by NPMs should, in all cases, take into consideration the context in which it is undertaken.

## General principles

Even though the contexts in which NPMs operate can vary, two general principles should guide all action they take in relation to LGBT detainees. In line with the principle "***nothing about us without us***", the main persons concerned should be included in all reflection and projects regarding LGBT issues. It is important for NPMs to be aware of the limits of their knowledge of such a complex issue and to engage with experts and especially with LGBT persons to jointly elaborate and implement their preventive strategies.

In accordance with the second principle, "***do no harm***", no action should be taken as part of the preventive mandate of NPMs that is prejudicial to detainees. While this principle applies generally to all NPM actions, it is particularly valid in relation to measures that affect people in situations of vulnerability. Although it is difficult to identify good practices and valid solutions in all contexts, this principle can be applied everywhere and at all times, and thus help NPMs to analyse the impact of their preventive measures.

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<sup>3</sup> Notably its 8<sup>th</sup> annual report which contains a section on the situation of LGBT persons in detention: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f54%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f54%2f2&Lang=en)

<sup>4</sup> For example, its press release in May 2015 on the violence and discrimination faced by LGBT persons deprived of liberty: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/053.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/053.asp)

## Virtual absence of international standards and lack of data

The very fact that a country criminalises homosexuality or non-binary gender identity in itself opens the door to abuse and acts of torture. However, the problem also resides in the absence of legislation providing specific protection to LGBT persons. Thus, only a minority of countries have adopted legislation specifically protecting individuals against discrimination based on sexual orientation or gender identity. This situation is partly explained by the virtual absence of international standards for the protection of LGBT persons. That is why participants particularly stressed the importance of incorporating into their work the only specific international instrument so far in existence: “The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity”.<sup>5</sup> Although these principles are non-binding, they constitute an internationally recognised reference and contain provisions concerning the right not to be detained arbitrarily, the right not to be subjected to torture or other ill-treatment, and the right to be treated with dignity while in detention.

Faced with this near total absence of standards, participants discussed the relevance of the creation of standards or guidelines for LGBT persons deprived of their liberty. Despite the large diversity of contexts and respective situations of LGBT persons in different countries, it was emphasised that the adoption of such standards would strengthen the protection of those concerned and provide the authorities with a better framework to adequately handle this population.

The virtual absence of standards is also accompanied by a lack of general knowledge and both quantitative and qualitative data on the topic of sexual diversity in places of detention. Indeed, several participants noted the lack of information concerning the LGBT prison population in their respective countries. This data gap does not mean that problems do not exist. On the contrary, they exist but there is little awareness of them. While transgender detainees seem more “visible” due, in particular, to the detention quarters they are allocated, the difficulties faced by lesbians in detention remain, with few exceptions, largely unknown.

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<sup>5</sup> <http://www.yogyakartaprinciples.org/>

For these reasons, it was stressed that exchanges and debates between NPMs in different parts of the world are particularly important since they allow the identification of good practices that can serve as guidance in other similar contexts and thus overcome, at least provisionally, the lack of international standards.

*“It is difficult to plan and develop proper tools and policies designed to help this population if we don’t know how many of them there are!”*

Mónica Leonardo, Guatemala

# LGBT persons in detention: risk situations and factors

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Once deprived of their liberty, LGBT persons become more exposed to ill-treatment. Some specific risk situations for this particular population have been identified. Participants especially highlighted issues related to violence among detainees and the practice of separating LGBT persons in prisons, or even placing them in solitary confinement. Also discussed was the lack of training and knowledge of prison staff and the institutional culture that sometimes leads the staff to adopt hostile behaviour towards LGBT detainees. Finally, some situations involving transgender persons were discussed specifically and are dealt with separately in a sub-chapter later in this report.

## Violence amongst detainees

A person whose sexual orientation or gender identity is different from what is expected in a heteronormative social context runs a greater risk of abuse and violence at the hands of fellow detainees. Indeed, participants agreed that LGBT detainees find themselves at the bottom of an informal hierarchy that often exists within prisons.

### **Kyrgyzstan: the “untouchables”**

In many countries of the former USSR, distinct, informal hierarchy systems exist in prisons. In such systems, inmates identified as lesbian, gay, bisexual or transgender are rejected and excluded by other prisoners and treated as total outcasts. Those relegated to the bottom of the hierarchy are called the “untouchables”. In Kyrgyzstan, the strong climate of homophobia and transphobia that exists in society, and particularly in prisons, has a direct impact on the work of the NPM. The stigmatisation of this category of prisoners is so strong that the men working for the Kyrgyz NPM risk being discredited in the eyes of other inmates and the authorities by simply conducting interviews with LGBT persons.

This means that they are treated in a discriminatory manner by their fellow prisoners who may, for example, refuse to share common areas with them (for example, during meals), use insulting language, and generally humiliate and abuse them in many different ways. The violence against LGBT persons may take more severe forms. It may for instance involve the violation of their physical and sexual integrity (through sexual assault or rape, for example). This underscores the importance for NPMs to be vigilant and even proactive on these issues.

### **Is the separation of LGBT detainees from other prisoners the solution?**

To prevent abuse, the management of places of deprivation of liberty must act to ensure the protection of groups in situations of vulnerability, including LGBT detainees. Various measures, including the separation of LGBT detainees from the rest of the prison population, were discussed as ways of ensuring their protection.

Although no solution emerged as ideal, various practices were outlined and discussed, starting with solitary confinement (which entails placing a person in a single cell for 22 hours or more a day). This measure was denounced by participants as a violation of several fundamental rights (in particular by depriving the detainee concerned of almost all social contact), and as a measure that, if prolonged, may be a form of torture. In practice, however, such measures are adopted in some institutions when authorities, faced with isolated cases of threats against LGBT persons, find no other means to ensure their protection.

Symposium participants also discussed another measure sometimes applied to protect LGBT detainees, involving their placement in a special wing reserved for people considered vulnerable. This measure targets various types of detainees, ranging from those with physical or mental disabilities to sexual offenders. Because of the diversity of situations of vulnerability and the stigma that such a measure may provoke, it was agreed that it should be used with caution and only implemented with the consent of the person concerned. It was agreed that the placement of an individual in such a special wing should not also be accompanied by a reduction in the level of their conditions of detention. In many cases, however, the special quarters allocated to vulnerable people effectively disadvantage those placed there because they have reduced access

to detention activities. Moreover, it was noted that being placed there does not completely eliminate the risk of abuse, particularly if the placement simply involves segregation without strengthening the broader protection framework for vulnerable groups.

Some institutions have a wing exclusively reserved for LGBT persons, a measure that seems to have been well received by the LGBT persons concerned who have reportedly advocated for the continuation of this system. However, participants pointed out the importance of being aware of the excesses that such a measure can generate, such as in the definition of selection criteria for access to these wings and the strong risk that their creation may lead to further stigmatisation of LGBT persons.

### **Turkey: the “Pink Prison” project**

In Izmir (Turkey), a prison reserved exclusively for LGBT detainees could open by 2017. The “Pink Prison”, as the media call it, highlights the discrimination and stigmatisation LGBT persons face in Turkey. This project is strongly criticised by local NGOs for the following reasons:

1. Such an institution will only strengthen the stigmatisation of this population and may also have a negative impact on the families who visit their relatives held there.
2. Nobody should be forced to disclose their sexual orientation or gender identity, as stipulated in the Yogyakarta Principles.
3. Placing an individual in a prison reserved for LGBT persons would be similar to a forced “coming out” (and the criteria for determining whether a person is lesbian, gay, bisexual or transgender is also a problematic issue).
4. Placing all detainees identified as LGBT persons in the same prison would not take into consideration the place of residence of their respective families or the city in which the judicial hearings of their cases are to be held.

These issues illustrate the negative impact of such a project and its incapacity to address the main problem: the abuse and ill-treatment LGBT detainees face based on their sexual orientation or gender identity.

Another danger identified by participants is that the separation of LGBT inmates from the rest of the prison population could, in extreme cases, result in the creation of detention institutions exclusively reserved for LGBT persons. Despite the intention to prevent abuse and discrimination against LGBT detainees this could have the reverse effect, for example, by reinforcing stigmatisation and depriving them of certain rights, such as access to detention activities.

*“If we consider prisons as a mirror of society, placing LGBT prisoners in isolation, or even in the Pink Prison, doesn’t tackle the core problem of the general discrimination against LGBT persons in society... In an effort not to further victimise LGBT persons, programmes to change the general behaviour and prejudices against LGBT persons inside and outside of prisons have to be established.”*

Eva Tanz, Civil Society in the Penal System (CISST), Turkey

Participants agreed that in cases where separation seems to be the only solution to protect LGBT detainees, its implementation must be carefully considered by the detaining authorities and should not be systematic. Moreover, the will of the person concerned must always be taken into consideration. In addition, several participants emphasised the fact that the separation of LGBT detainees does not substantively address societal discrimination based on sexual orientation and gender identity.

## **The influence of institutional culture**

The institutional culture of detention facilities in general can also be a significant factor in abuse and discrimination against LGBT persons deprived of their liberty. When the authorities and prison staff are prejudiced with regard to sexual orientation and gender identity, it is likely that this will greatly influence their treatment of LGBT detainees.

Given the power inherent in the function of people working in detention institutions - particularly in prisons - they can be a direct party to discrimination against LGBT detainees. Discrimination by detention facility staff can be deliberate, for example by allocating

LGBT persons the least comfortable cells or assigning them the most menial tasks. However, the discrimination may take a less visible form: prison officers may, for instance, become complicit by closing their eyes to the abuse and mistreatment of LGBT persons or by trivialising acts of violence against them.

*“It is well known that the penitentiary system in the State of Pernambuco is completely patriarchal, sexist and intolerant. The State of Pernambuco is one of the most violent States in Brazil [and], as a consequence, LGBT minorities are completely exposed to violations and non-respect of the rights guaranteed to all other detainees, for instance by refusing [them] intimate visits or clothing corresponding to their gender identity, or their sexual orientation.”*

Maria Clara De Sena, member of the mechanism for the prevention of torture in the State of Pernambuco, Brazil

One way to make an impact, however modest, on discriminatory institutional culture may be to conduct sensitisation campaigns on the issue of sexual minorities amongst detention facility staff. Several participants expressed the view that raising staff awareness on the concepts of gender identity and sexual orientation and on the specific protection and health care needs of the LGBT population would indeed represent a strategic approach to the issue and a potential means of breaking associated taboos. Participants also agreed that, wherever possible, NPMs should work with LGBT groups established by detention facility staff and/or unions.

### **United Kingdom: The presence of LGBT support groups in prisons**

LGBT persons deprived of their liberty in the UK can contact support groups to discuss the challenges they face. These local associations respond to requests from detainees to meet in their places of detention.

## The situation of transgender detainees

The perception that gender identity is fixed at birth is widespread and contributes to rejection and misunderstanding of the situation of transgender people who experience varying degrees of discrimination throughout their lives. In deciding to dress or change their appearance so that it corresponds to their perceived gender identity, transgender people face the scrutiny of others and are often rejected by society and their families. Numerous transgender people have had to give up their studies prematurely or leave their jobs because their expressed gender identity was considered by some as not in conformity with accepted norms. Transgender people thus face numerous difficulties, regardless of whether or not they undergo sex reassignment surgery.

In many countries, particularly in Latin America, transgender women are overrepresented among sex workers since they generally have no other means to survive. They are therefore often the object of police checks and patrols, which partially explains their overrepresentation in places of detention.

Transgender people have special needs that are generally not recognised in society and find it especially difficult in detention facilities to access appropriate medical care in what amounts to yet more discrimination against them. Indeed, the prison setting, with its binary conception of gender identity, is usually incompatible with the management of transgender people, particularly where the first criterion for inmate allocation is gender. This means that the sex indicated on official personal documents will usually determine the allocation of detention quarters for a transgender person.

Among the issues specific to transgender people in detention, participants mentioned the assignment of transgender women to women's prisons and the difficulties that can arise when co-detainees refuse the presence of someone they consider to be a man.

Also discussed were different cases of transgender women placed in men's prisons illustrating where they are particularly vulnerable to violence and abuse from other detainees and who usually do not benefit from appropriate care. For example, those who have undergone sex reassignment surgery or who follow hormone treatment are often denied the ongoing care they need, but which the authorities tend to regard as unnecessary.

The issue of body searches was also addressed and, in particular, cases where detention facility staff conduct body searches of transgender people who have not had sex reassignment surgery and who, therefore, possess the anatomical characteristics of both sexes. Given the high risks for the individual concerned in such cases, participants stressed that detaining authorities must respect the choice of the detainee regarding the gender of the staff member designated to conduct the body search.

Although it was not possible to identify good practices applicable to transgender people deprived of their liberty in all contexts, participants highlighted a number of guiding principles they considered should be adhered to at all times. These included the principle that no decision should be taken without consulting the people concerned, particularly with regard to the allocation of detention quarters or the conditions governing body searches. Furthermore, in accordance with the same principle of non-discrimination, all detainees should benefit from the same prison conditions regardless of whether they are placed in detention facility areas for men or women.



# Addressing situations of vulnerability of LGBT persons deprived of liberty: What role for NPMs?

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In line with their preventive mandate, NPMs can play a vital role in strengthening the protection of LGBT persons deprived of their liberty through their detention visits and reports as well as through their broader role which extends beyond problems identified in places of detention. The mission of NPMs is to identify the root causes of torture and other ill-treatment, as well as the gaps in legislative frameworks and current practices. NPMs can make recommendations to the authorities and establish dialogue and cooperation with them to facilitate their implementation. They can also submit comments on existing legislation and policies to strengthen the protection of LGBT persons deprived of their liberty against torture and other ill-treatment.

In order to fight against discrimination in detention facilities it is essential that NPMs develop an internal culture of non-discrimination and openness. To this end, NPMs should implement zero tolerance policies towards all forms of discrimination, including on grounds of sexual orientation and gender identity, and ensure that the composition of monitoring teams is as diverse as possible.

## Visits to places of detention

### Visit preparations

All participants agreed that there is a glaring lack of information and data on LGBT persons deprived of their liberty. A discussion followed on how best to prepare detention visits in the absence of comprehensive information and data on LGBT detainees.

While the use of a questionnaire was identified as a good practice, participants noted that it would be difficult to implement in all contexts and that, in the case of the UK, it was only one element of a complex methodology developed over the years by the UK prevention mechanism. Moreover, in many countries, posing

questions about the sexual orientation of detainees would be considered a violation of the right to privacy and personal data protection. Symposium participants concluded that such a practice could be counter-productive in countries characterised by their deep-rooted intolerance of sexual and gender diversity. In such contexts, detainees would not feel free to reveal their sexual orientation, even anonymously to the NPM, for fear of exposing themselves to reprisals.

#### **United Kingdom: the use of questionnaires prior to visits**

The Inspectorate of Prisons for England and Wales (part of the UK NPM) has a practice of distributing questionnaires to detention facilities prior to visiting them. These anonymous questionnaires cover various issues - including sexual orientation - and serve to gain an overview of the detainee population in a given institution. The questionnaires are then collected and reviewed by the Inspectorate which conducts statistical analysis, enabling prior identification of problems and issues that can be further examined during visits.

#### **France: Detainee correspondence as a source of information**

The French NPM collects valuable information from detainee correspondence (*saisine*). This enables the NPM to learn more about current problems faced by detainees. It is thanks to this information source that the *Contrôle général des lieux de privation de liberté* (CGLPL) became aware of the difficulties faced by a transgender detainee and began to address this problem. Individual situations described in detainee correspondence not only allows the NPM to follow up on specific cases but also to obtain a general overview of malfunctions and problems existing in places of deprivation of liberty prior to visiting them.

Dialogue with civil society organisations active at grassroots level was identified as central to the preparation of visits. Initial contact with experts on LGBT issues, or with local NGOs, was viewed as a potentially unique opportunity for NPMs to collect information on the LGBT population. In parallel, NPMs could contribute to the work

of local groups by informing them about the challenges faced by LGBT persons deprived of their liberty.

## Identification of LGBT detainees

Given that interviews in private with detainees constitute the core element of detention monitoring work, questions arose in relation to the identification of LGBT persons in the institutions visited. In this connection, it was considered helpful to distinguish between LGB and transgender persons, particularly in cases where the latter are segregated, thus making them immediately identifiable.<sup>6</sup> On the other hand, participants acknowledged the difficulties in identifying lesbian, gay or bisexual persons based on their allocated placement within an institution. Even when they are grouped in specific cells or wings (as is the case in institutions in some countries of the former USSR), caution was recommended when conducting interviews in private. In view of the sensitive nature of these interviews and the particularly high risk of reprisals in some countries, participants debated the need to identify LGBT persons in the places visited and concluded that the overriding priority in this respect was to ensure that NPM action is never prejudicial to detainees, in line with the "**do no harm**" principle.

Emphasis was placed on the fact that it is more important for NPMs to determine whether detainees suffer discrimination and abuse than to know their sexual orientation or gender identity. As part of their preventive mandate, participants considered that NPMs should be able to identify the dysfunctions at the origin of ill-treatment in order to propose appropriate action, and that this process did not necessarily require LGBT persons to be identified as such. NPMs were urged to send a clear message of non-discrimination and openness on the issue of sexual diversity during their interviews with detainees. This would have the effect of showing that the NPM cares about the issues LGBT detainees face in detention, without having to ask interviewees direct questions about their sexual orientation or gender identity.

Several NPM members shared their experience of carrying out interviews with detainees and recommended using open, general

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<sup>6</sup> It is of course essential to bear in mind that transgender identity is more subtle than simple physical appearance and not all transgender people necessarily want to make a visible change in their appearance.

questions on detainee rights, including access to health care and activities, when conducting them. This approach can help to establish a level of trust, making detainees more disposed to reveal the difficulties they may encounter, including those related to their sexual orientation or gender identity.

### **France: The importance of visit duration**

The French NPM is notable for the long duration of prison visits conducted by its multidisciplinary teams (one to two weeks depending on the prison size). Thanks to the length of time it spends in the places it visits, the NPM has observed that both detainees and prison staff tend to be more open and inclined to share information with members of its monitoring team. The long visits help create a climate of trust, conducive to information gathering, including among LGBT persons who have been victims of abuse or discrimination and are more willing to confide in the monitoring team.

## **Monitoring team composition**

Even though it is imperative that monitoring teams are as interdisciplinary and diverse as possible their composition cannot include every type of minority, especially in the case of NPMs with limited human resources.<sup>7</sup> However, it was stressed that the involvement (in one form or another) of LGBT persons within the NPM can be beneficial, for example by better enabling dialogue with LGBT detainees during visits

The establishment of a team dealing specifically with gender and sexual diversity issues requires resources and capacities NPMs do not necessarily possess. As an alternative, NPMs could designate a "focal point" responsible for communicating and exchanging information with LGBT experts and local NGOs, and for sharing relevant information with team members. In addition, the establishment of a

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<sup>7</sup> The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is very clear on this point (Art. 18.2): "*The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.*"

“focal point” helps demonstrate the importance an NPM attaches to the issue of sexual diversity, and promotes a message of openness and non-discrimination to the outside world. Recognising their importance, the SPT has designated one of its members as a “focal point” to deal with LGBT issues.

### **Brazil: The added value of having a transgender person in the monitoring team**

According to Maria Clara De Sena, a transgender women member of the local preventive mechanism in the State of Pernambuco, the inclusion of a transgender person in the monitoring team represents a clear added value, especially in a region characterised by a high level of violence against LGBT persons. It not only sends a strong message against discrimination to the authorities, detainees and the public in general, but also allows for a more thorough analysis of the situation of transgender people in places of detention.

### **Argentina: Creation of a “gender and sexual diversity” team**

In order to better prevent abuse against women and LGBT persons in detention, the Argentine Ombudsman for Federal Prisons (part of the NPM) has set up a permanent team to deal with the issue of gender and sexual diversity. Through exchanges with civil society and other experts in this field, the “gender and sexual diversity” team has developed a broad knowledge of the topic. It conducts monitoring visits focused on the difficulties faced by LGBT people in detention and publishes reports and specific recommendations. The existence of this team has also allowed the detainees concerned to identify external bodies engaged in the protection of their basic rights.

## **Beyond preventive visits**

### **Reports**

It is up to each NPM to decide how to integrate information on the situation of LGBT persons in the institutions it visits, based on its strategic goals, the relevance of observed problems, and respect

for the "*do no harm*" principle. While monitoring reports are mainly devoted to the institutions visited, thematic reports - or even a specific section in annual reports - may have a wider impact and reach not only prison authorities but also the general public. By highlighting difficulties faced by LGBT persons in detention, NPMs encourage the authorities to improve the detention conditions of this group and thus prevent future abuses, while bringing more visibility to a generally misunderstood issue.

### **France: Publication of an 'opinion' on the care and management of transsexual prisoners**

In 2010, the *Contrôleur général des lieux de privation de liberté* (French NPM) published an 'opinion' (*avis*) in the *Journal officiel de la République française* on the care and management of transsexual prisoners.<sup>8</sup> In what can be considered a short thematic report, the opinion details developments on this issue based on numerous testimonies gathered from prisoners serving long sentences during site visits or from their correspondence.

The opinion contains the following recommendations aimed at improving care for transgender detainees:

- enable transgender detainees to benefit from access to a clearly identifiable specialist medical team throughout the care pathway;
- ensure that transgender detainees receive adequate information and support;
- ensure that the physical integrity of transgender detainees is protected without having to place them in solitary confinement for this purpose;
- uphold the right of transgender detainees to intimacy and privacy.

Such opinions enable the thematic treatment of an issue and its dissemination beyond the professional context of the penitentiary world and usually attract significant media coverage.

<sup>8</sup> Opinion of 30<sup>th</sup> June 2010 concerning the care and management of transsexual prisoners, in: *Opinions and Recommendations of the French 'Contrôleur général des lieux de privation de liberté' 2008 - 2014*, see: <http://www.apr.ch/en/resources/opinions-and-recommendations-of-the-french-controleur-general-des-lieux-de-privation-de-liberte-2008-2014/>

Addressing the situation of LGBT persons in detention in a thematic report or in a section of the annual report also helps protect these persons against possible reprisals (they are less easily identifiable than in a visit report) and serves to highlight the main problems they face, regardless of the institution in which they are held.

Participants also noted that the drafting of thematic reports requires significant resources and specific abilities to conduct visits that monitor a particular issue. In order to produce a thematic report on the situation of LGBT persons in detention, NPMs have to identify LGBT persons during their visits at the risk of exposing them to unwanted attention. It is therefore important for NPMs to weigh the pros and cons before embarking on the drafting of such a report. That said, even in situations that may seem hostile, NPMs, given their preventive mandate and privileged access to the realities of detention, were encouraged to show innovation, where deemed appropriate, in efforts to fulfil their mission.

It was also stressed that the issues of sexual orientation and gender identity can be embedded implicitly in annual or monitoring reports, within the broader context of discrimination or violence in detention.

Finally, participants noted that NPMs should consult reports by regional and international bodies dealing with the issue of LGBT persons in detention and that they could be used as tools or information sources to enrich their own reports, as well as to legitimise NPM interventions.

### **Dialogue with the authorities and collaboration with civil society**

Depending on the context, dialogue with the authorities can be particularly difficult when the topic of LGBT persons deprived of their liberty is raised. However, participants reiterated that such dialogue is a central part of their mandate and must occur continuously. NPMs have a wide margin of manoeuvre to explore the most adept ways to cultivate and sustain a constructive dialogue, which can be achieved through thematic meetings - including on the issue of LGBT persons - with State institution representatives who do not generally participate in such proceedings.

As part of this process, participants suggested that a good practice could be to create discussion groups within government and relevant

ministries that could, for example, take the form of permanent entities that meet regularly, each composed of a representative from every ministry/department. Subsequently, the NPM could submit topics such as the situation of LGBT detainees for discussion to these groups.

Participants were unanimous in stressing how interaction with civil society is essential to address issues in relation to the situation of LGBT persons deprived of their liberty, and noted that even in contexts where civil society experts and activists are not engaged in detention work they are often leading partners and a pillar of support for NPMs dealing with this matter. Within the limits of their capacities, NPMs could raise the awareness of civil society actors on these issues with the aim of encouraging them to focus more attention on them. Finally, in contexts where NPMs are able to include external experts in their monitoring teams, participants emphasised the added value of ensuring the participation of LGBT persons from civil society in NPM detention visits, in accordance with the principle ***“nothing about us without us”***.

# Conclusion

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LGBT persons deprived of their liberty are exposed to a disproportionate level of abuse and discrimination. Vulnerable amongst the most vulnerable, detained LGBT populations in all regions of the world are severely marginalised, due mainly to societal factors. It was in recognition of the gravity and worldwide prevalence of this problem that APT decided to devote the second Jean-Jacques Gautier Symposium to this topic.

Monitoring bodies, especially NPMs, have a central role to play in protecting the rights of the most vulnerable persons deprived of their liberty. The preventive mandate conferred on them under the OPCAT, which guarantees them access to all detention facilities, places them in a unique position to assess the realities of incarceration.

The issue of discrimination and abuse against LGBT persons deprived of their liberty has so far only been partly addressed by monitoring bodies, partly due to the specific scope of their preventive mandate, but also because of the lack of specific guidelines on the management of this population.

Addressing this issue is particularly complex as it challenges a taboo deeply rooted in institutions and mentalities. It not only overturns the binary conception of sexual orientation and gender identity in the prison universe but also concerns what in reality is a very heterogeneous group. Participants thus concluded that any NPM intervention regarding LGBT persons must involve a differentiation of needs and risks specific to transgender persons on the one hand, and of homosexuals and bisexuals on the other (in addition to lesbian and gay persons respectively in the latter category).

Another challenge that emerged clearly from the discussions relates to the immense diversity of contexts in which NPMs operate. These range from States that criminalise same-sex relations, or that have prisons with informal hierarchies that relegate the incarcerated LGBT population to the status of "untouchables", to countries that

show more sensitivity to the needs of this population and implement specific preventive measures. This diversity of contexts makes even the drafting of a set of universally accepted guidelines a complex task.

Participants observed that given the extremely diverse management practices that exist for LGBT persons deprived of their liberty and the absence of common standards in this regard, it is not always easy to label a particular practice as good or bad. Faced with this lack of benchmarks, it was agreed that the governing principles should be to advocate for non-discriminatory conduct on the one hand, and to involve LGBT detainees in decisions that affect them on the other, as prescribed by the principle "*nothing about us without us*".

A good illustration of these diverse management practices relates to the different allocation systems for LGBT persons, particularly transgender people. Management practices in this regard range from placement in strict isolation, segregation in special units, or in mixed units for persons considered to be particularly vulnerable. While solutions must be found that take into consideration the reality of each context, isolation was not considered a tenable solution beyond the short term because, if prolonged, it may constitute a form of abuse or even torture. Participants furthermore observed that segregation based solely on sexual orientation and gender identity could contribute to the stigmatisation of those concerned.

Finally, notwithstanding the aforementioned obstacles, NPMs (and other monitoring bodies) were encouraged to consider the following recommendations within the scope of their respective capacities in order to better contribute to the protection of LGBT persons in detention:

- Raise the awareness of and train NPM members on the risks and needs of LGBT persons in detention. It is recommended that experts be included in any such initiative, particularly, experts from civil society organisations defending the rights of LGBT persons, in line with the principle "*nothing about us without us*".
- Similarly, sensitise detention facility staff on this issue, including through specific training. If an NPM is unable to provide this type of training, it can nevertheless formulate a recommendation to this end and possibly collaborate with civil society organisations to ensure its implementation. Awareness-raising also involves ongoing dialogue between NPMs and the authorities.

- During their visits, NPMs should at all times apply the principle of "**do no harm**", which is of particular importance when specifically monitoring the situation of LGBT persons in detention. In this regard, monitoring bodies are encouraged to question the relevance of identifying the sexual orientation and gender identity of persons with whom they conduct individual interviews and to avoid any action that could lead to even greater stigmatisation and discrimination against this group.
- The designation of a "focal point" on LGBT issues within the NPM is not a requirement and is not always a necessity. However, it enables the systematic recording and sharing of the information gathered on this issue with all concerned, the coordination of possible action with the authorities or civil society, and finally the dissemination of a clear message to the outside world illustrating the importance the NPM attaches to this question.
- Reports - especially thematic reports and annual reports - are the most visible part of the work of an NPM. Given their potential impact, for example, in highlighting some of the least known problems that exist in places of detention, NPMs are encouraged to consider the possibility of increasing thematic coverage of LGBT issues in their reports, while measuring the pros and cons of such action in terms of ensuring respect for the principle "**do no harm**".
- Given the complexity of the issue and the difficulties faced by NPMs in certain contexts to include information on LGBT persons deprived of their liberty in their reports, a proposal was presented to draft a global report containing the related findings and recommendations of NPMs from around the world.
- There is a glaring lack of standards or guidelines at the international level on the management and care of LGBT persons in detention, notably with respect to safeguards against discrimination and abuse. Participants agreed that this makes their monitoring task particularly difficult. In the absence of such standards, a first step would be to develop guidelines designed to help monitoring bodies refine their detention visit practices and better prepare their recommendations to the authorities.



# Annex I: Agenda

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Wednesday, 3 June 2015

*Objectives:*

- Examine the risk factors and situations which contribute to the abuse and ill-treatment of LGBT persons deprived of liberty.
- Identify strategies for NPMs to address these issues when carrying out their preventive mandate.
- Enable interaction between NPMs and other key actors to reinforce cooperation and share good practices.

Time	Session
8:30 – 9:00	Registration and welcome coffee
9:00 – 9:45	<b>Introductory session</b> <ul style="list-style-type: none"><li>• Opening remarks <i>Mark Thomson, APT Secretary-General</i></li><li>• Objectives and methodology; Detention Focus Database <i>Jean-Sébastien Blanc, APT</i> <i>"Tour de table"</i></li></ul>
9:45 – 11:00	<b>Session 1 – Setting the scene</b> <ul style="list-style-type: none"><li>• Sexual orientation and gender identity: concepts and definitions (8 min) <i>André du Plessis, International lesbian, gay, bisexual, trans and intersex association (ILGA)</i></li><li>• Multiplicity of situations of risk and scarcity of protection standards (8 min) <i>Victor Madrigal, UN Subcommittee for the Prevention of Torture (SPT)</i></li></ul>

	<ul style="list-style-type: none"><li>• CPT's 25 years of experience in monitoring places of detention: What focus on sexual orientation and gender identity? (8 min)</li></ul> <p><i>Maité De Rue, first Vice-President, European Committee for the Prevention of Torture (CPT)</i></p> <p>Moderated discussion: all participants (~1h)</p> <p>Moderator: <i>Barbara Bernath, APT</i></p>
11:00 - 11:30	Coffee break
11:30 - 12:45	<p><b>Session 2 - What “preventive” measures can be put in place?</b></p> <ul style="list-style-type: none"><li>• Preventing homophobic and transphobic violence from staff and co-detainees (8 min)</li></ul> <p><i>Lucie Montoy, Contrôle général des lieux de privation de liberté (NPM), France</i><ul style="list-style-type: none"><li>• The experience of Ecuador's Ministry of Public Health with regards to LGBT detainees (8 min)</li></ul><p><i>Patricio Aguirre, Ecuador's Ministry of Public Health</i><ul style="list-style-type: none"><li>• Segregation in special wings/special prisons (8 min)</li></ul><p><i>Eva Tanz, Civil society in the Penal System Association (CISST), Turkey</i></p><p>Moderated discussion: all participants (~1h)</p><p>Moderator: <i>Jean-Sébastien Blanc, APT</i></p></p></p>
12:45 - 14:15	Lunch
14:15 - 15:45	<p><b>Session 3 - Transgender detainees</b></p> <ul style="list-style-type: none"><li>• The situation of transgender detainees in Pernambuco (Brazil) and the value added of having a transgender person within the monitoring team (8 min)</li></ul> <p><i>Video of Maria Clara De Sena, member of the Local Preventive Mechanism of the Brazilian State of Pernambuco</i></p>

	<ul style="list-style-type: none"> <li>• Transgender detainees: stigmatisation, allocation, access to hormonal treatment and sex reassignment surgery (8 min) <i>Zhan Chiam, International lesbian, gay, bisexual, trans and intersex association (ILGA)</i></li> <li>• Violence by the police targeting transgender persons (8 min) <i>Mónica Leonardo, independent expert, Guatemala</i></li> </ul> <p>Moderated discussion: all participants (-1h) Moderator: <i>Isabelle Heyer, APT</i></p>
<p>15:45 – 16:15</p>	<p>Coffee break</p>
<p>16:15 – 17:45</p>	<p><b>Session 4 – Detention monitoring: challenges and good practices</b></p> <ul style="list-style-type: none"> <li>• The <i>Procuración Penitenciaria</i>'s approach to monitoring the situation of LGBT persons in detention (8 min) <i>María Santos, Procuración Penitenciaria de la Nación (MNP), Argentina</i></li> <li>• Identifying LGBT detainees: avoiding further stigmatisation and reprisals (8 min) <i>Colin Carroll, Her Majesty's Inspectorate of Prisons (MNP), United Kingdom</i></li> <li>• Specifics of monitoring the situation of LGBT detainees in immigration detention facilities (8 min) <i>Leila Lohman, former Organisation for Refugee, Asylum and Migrations (ORAM)</i></li> </ul> <p>Moderated Discussion: all participants (-1h) Moderator: <i>Jean-Sébastien Blanc, APT</i></p>
<p>17:45 – 18:00</p>	<p>Wrap up and close of meeting – <i>Jean-Sébastien Blanc, APT</i></p>
<p>19:00</p>	<p>Reception offered by the City of Geneva at the <i>Palais Eynard</i></p>

## Thursday, 4 June 2015<sup>9</sup>

### Objectives:

- Discuss the challenges faced by NPMs and the SPT in carrying out their preventive mandate with regards to LGBT persons deprived of liberty.
- Exchange good practices and working methods among NPMs and with the SPT.
- Strengthen cooperation among NPMs and with the SPT.

Time	Session
8:30 – 9:00	Welcome coffee
9:00 – 9:15	<b>Introductory session</b> Objectives and methodology <i>Jean-Sébastien Blanc, APT</i>
9:15 – 10:45	<b>Session 1 – NPMs’ feedback</b> <ul style="list-style-type: none"> <li>• For each participant, to raise the most prominent issues discussed during Day 1:                             <ul style="list-style-type: none"> <li>· one on the problematics faced by LGBT detainees</li> <li>· one on the implication for their work as NPMs</li> </ul> </li> <li>• Unaddressed issues during Day 1</li> </ul> Moderated discussion: all participants Moderator: <i>Barbara Bernath, APT</i>
10:45 – 11:15	Coffee break

<sup>9</sup> The 4<sup>th</sup> of June was a closed meeting for representatives of National Preventive Mechanisms (NPMs) and the UN Subcommittee for the Prevention of Torture (SPT).

11:15 – 12:45

**Session 2 – Methodological considerations**

- Selecting and identifying LGBT detainees
- Handling interviews
- Dealing with authorities and other detainees
- Visiting team’s composition
- Resorting to external expertise (during and beyond visits)

Moderated discussion: all participants

Moderator: *Jean-Sébastien Blanc, APT*

12:45 – 14:30

Lunch

14:30 – 15:45

**Session 3 - Reporting and dialogue with authorities and engagement with other actors**

- Reporting: ensuring the “do no harm” principle is respected
- Thematic reports on LGBT issues
- Dialogue with the authorities
- Dialogue with regional bodies

Moderated discussion: all participants

Moderator: *Isabelle Heyer, APT*

15:45 - 16:15

Coffee break

16:15 – 17:15

**Session 4 – NPMs as institutions with zero tolerance policy towards homophobia and transphobia**

- Institutional policy
- Opportunity of having a focal point
- Challenges

Moderated discussion: all participants

Moderator: *Barbara Bernath, APT*

17:15 – 17:30

**Wrap up and closing of the Symposium -**

*Jean-Sébastien Blanc, APT*



## Annex II: List of participants<sup>10</sup>

	<b>Name</b>	<b>Position</b>	<b>Institution/Country</b>
1	*Mr. Patricio AGUIRRE	National Director for Human Rights, Gender and Inclusion	Ministry of Public Health, Ecuador
2	Ms. Ingvild BARTELS	Senior Adviser	Parliamentary Ombudsman (NPM), Norway
3	Mr. Yuriy BIELOUSOV	Representative of the Commissioner for the NPM	Parliamentary Commissioner for Human Rights (NPM), Ukraine
4	Ms. Ajar BOOBKOVA	Expert of the Department of Coordination, Management and Analytics	National Centre for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM), Kyrgyzstan
5	Ms. Stella Maris CACACE	Commissioner	National Preventive Mechanism Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (NPM), Paraguay
6	Mr. Colin CARROLL	Inspector	Her Majesty's Inspectorate of Prisons (NPM), United Kingdom

<sup>10</sup> Participants with an \* in front of their name were present only on 3 June 2015.

7	*Mr. Zhan CHIAM	Gender Expression and Gender Identity Programme Officer	International lesbian, gay, bisexual, trans and intersex association (ILGA), Switzerland
8	Ms. Patricia DE OLIVEIRA	LPM Member	State Mechanism to Prevent Torture (LPM), State of Rio de Janeiro/ Brazil
9	*Ms. Maïté DE RUE	1 <sup>st</sup> Vice- President of the CPT	European Committee for the Prevention of Torture (CPT), Belgium
10	*Mr. André DU PLESSIS	UN Programme and Advocacy Manager	International lesbian, gay, bisexual, trans and intersex association (ILGA), Switzerland
11	Ms. Nadja KÜNZLE	Member	National Commission for the Prevention of Torture (NPM), Switzerland
12	Mr. Nika KVARAT- SKHELIA	Head of the Department of Prevention and Monitoring	Office of the Public Defender (NPM), Georgia
	Name	Position	Institution/Country
13	*Ms. Mónica LEONARDO	Independent researcher	Independent, Guatemala
14	*Ms. Leila LOHMAN	Consultant	Independent, Switzerland
15	Mr. Victor MADRIGAL	SPT member	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Costa Rica
16	Ms. Patricia MONTERO VILLALOBOS	Member of the NPM Unit	National Preventive Mech- anism (Ombudsperson's office), Costa Rica

ADDRESSING VULNERABILITIES OF LGBT PERSONS IN DETENTION

17	Ms. Lucie MONTOY	Controller	<i>Contrôleur général des lieux de privation de liberté - CGLPL (NPM), France</i>
18	*Ms. Mary MURPHY	Detention Adviser	International Committee of the Red Cross (ICRC), Switzerland
19	*Mr. Jonas PASQUIER	Diplomatic Officer	Federal Department of Foreign Affairs, Switzerland
20	Mr. Wojciech SADOWNIK	Specialist	Office of the Human Rights Defender (NPM), Poland
21	Ms. Maria SANTOS	Coordinator of the Working group on Gender and Sexual Diversity	Ombudsperson for Federal Prisons (NPM), Argentina
22	Mr. Boubou Diouf TALL	National Inspector	National Inspector of Places of Deprivation of Liberty (NPM), Senegal
23	*Ms. Eva TANZ	Project Officer	Civil society in the Penal System Association (CISST), Turkey
24	*Mr. Michael VAN GELDEREN	Human Rights Officer	Office of the High Commissioner for Human Rights (OHCHR), Switzerland

<b>Association for the Prevention of Torture</b>		
1	Ms. Barbara BERNATH	Chief of Operations
2	Mr. Jean-Sébastien BLANC	Detention Adviser
3	Ms. Maud CORRENTI	Intern
4	Ms. Isabelle HEYER	Americas Programme Officer
5	*Mr. Mark THOMSON	Secretary General



# Annex III: Background paper

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## **2<sup>nd</sup> Jean-Jacques Gautier Symposium: Addressing situations of vulnerability of LGBT persons in detention**

*3-4 June 2015 - Geneva, Switzerland*

### **Overview**

Lesbian, gay, bisexual and transgender (LGBT) persons have historically faced and continue to face discrimination and violence around the world. When deprived of their liberty, they find themselves in a particular situation of vulnerability and are at risk of serious human rights violations. The UN Special Rapporteur on Torture has stated that *“sexual minorities are often considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population. The Special Rapporteur has received information according to which members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards.”*

National Preventive Mechanisms (NPMs) established according to the Optional Protocol to the Convention Against Torture (OPCAT) have an important role to play in preventing abuses and ill-treatment against LGBT persons in detention. The Symposium aims to provide a unique forum for exchange and discussion on the issue of the vulnerability of LGBT persons deprived of their liberty. Fifteen NPMs and other key actors will be present. These two days will also help NPMs in carrying out their preventive mandate by identifying good practices in monitoring the conditions of LGBT persons deprived of their liberty.

## Objectives

### *Day 1: NPMs and other experts*

- Examine the risk factors and situations which contribute to abuse and ill-treatments of LGBT persons in detention.
- Discuss key issues regarding the difficulties faced when monitoring places where LGBT persons are deprived of liberty.
- Reinforce cooperation between NPMs and other key actors.

### *Day 2: NPMs*

- Discuss challenges faced by NPMs in carrying out their preventive mandate with regard to the specific issues addressed on the first day of the Symposium.
- Exchange good practices and working methods between NPMs.
- Strengthen cooperation between NPMs.

## Symposium Organisation

The June 2015 meeting is the second of a series of **Jean-Jacques Gautier Symposiums**. The Symposium is an international forum, unique in its kind, allowing the exchange of knowledge and practices on the issue of vulnerabilities in detention. In 2014, the first symposium focused on the special vulnerability of children in detention.<sup>11</sup> This new edition will look at the situation of LGBT persons deprived of their liberty.

Participants at this event will include fifteen NPMs from all regions of the world, regional and international monitoring bodies (including the Subcommittee on Prevention of Torture, SPT) and other experts with extensive knowledge of the issue. The limited number of participants is intended to create an environment which enables exchange and discussion among participants.

Each session will begin with a few brief presentations addressing specific issues and will be followed by discussions among all participants, allowing them to share good practices as well as challenges. Simultaneous interpretation will be available in English, French and Spanish.

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<sup>11</sup> The outcome report of the first symposium : **Addressing children's vulnerabilities in detention** is available here: <http://www.apt.ch/en/resources/addressing-children-s-vulnerabilities-in-detention-jean-jacques-gautier-npm-symposium-2014-outcome-report/?cat=61>

### *Day 1*

The first day will gather all participants: NPM representatives, experts, and representatives of regional and international monitoring bodies. The aim is to identify risk factors that lead to abuse and ill-treatment against LGBT persons deprived of their liberty, as well as to highlight key issues. This day will also offer the possibility to identify strategies for NPMs to effectively address these issues in their daily work. Finally, the meeting will also be an opportunity for NPMs and other stakeholders to meet and understand each other's work and to initiate or strengthen cooperation.

### *Day 2*

The second day will gather only NPM representatives as well as the SPT representative in a smaller setting, with the objective of debating challenges faced in the implementation of their preventive mandate. This meeting will also be an opportunity for NPMs to share their practices and working methods, in order to reflect on their actions regarding LGBT persons in detention.

### **Outcomes and output**

- Participants will have a clear understanding of situations of vulnerability faced by LGBT persons in detention.
- NPMs will have identified strategies to address these issues in carrying out their preventive mandate.
- Contacts between participants will help build future collaboration.
- Working methods of NPMs will be adapted to address vulnerabilities of LGBT persons in detention.
- The 2<sup>nd</sup> Jean-Jacques Symposium outcome report will be made public.



## Annex IV: Useful references

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- Association for the Prevention of Torture, Penal Reform International, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, Geneva, London, 2013: <http://www.apr.ch/en/resources/lgbti-persons-deprived-of-their-liberty-a-framework-for-preventive-monitoring/?cat=62>
- [www.apr.ch/detention-focus](http://www.apr.ch/detention-focus)





association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

Lesbian, gay, bisexual and transgender (LGBT) persons have historically faced and continue to face discrimination and violence around the world. When deprived of their liberty, they find themselves in a particular situation of vulnerability and are at risk of serious human rights violations.

National Preventive Mechanisms (NPM) established according to the Optional Protocol to the Convention Against Torture (OPCAT) have an important role to play in preventing abuses and ill-treatment against LGBT persons in detention.

On 3 and 4 June 2015, the Association for the Prevention of Torture (APT) organised the Second Jean-Jacques Gautier Symposium focused on the theme *Addressing situations of vulnerability of LGBT persons in detention*. The meeting took place in Geneva and aimed to address situations of vulnerability and risks faced by LGBT persons deprived of their liberty and to sensitise and train NPMs to better respond to this issue.

This symposium was the second in a series of annual meetings to allow NPM and other experts to share their knowledge and practices with regard to situations of vulnerability in detention.

This document is the final report of the second Jean-Jacques Gautier Symposium. Its purpose is not to provide a detailed account of the two-day meeting, but rather to highlight the issues, strategies and main tracks identified during the discussions.