



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Guidelines on national preventive mechanisms

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Introduction

1. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Optional Protocol”) provides considerable, detailed guidance concerning the establishment of a National Preventive Mechanism (“NPM”), including its mandate and powers. The most relevant of these provisions are Article 3, 4, 17–23, 29 and 35, though other provisions of the Optional Protocol are also of importance for NPMs. It is axiomatic that all NPMs must be structured in a manner which fully reflects these provisions.

2. It is the responsibility of the State to ensure that it has in place an NPM which complies with the requirements of the Optional Protocol. For its part, the SPT works with those bodies which it has been informed have been designated by the State as its NPM. Whilst the SPT does not, nor does it intend to formally assess the extent to which NPMs conform to OPCAT requirements, it does consider it a vital part of its role to advise and assist States and NPMs fulfil their obligations under the Optional Protocol. To this end, the SPT has previously set out ‘Preliminary Guidelines’ concerning the on-going development of NPMs in its First Annual Report. It has had the occasion to further amplify its thinking in subsequent Annual Reports and also in a number of recommendations set out in its visit Reports. In the light of the experience it has gained, the SPT believes it would be useful to issue a revised set of Guidelines on National Preventive Mechanisms which reflect and respond to some of the questions and issues which have arisen in practice.

3. These Guidelines do not seek to repeat what is set out in the text of the Optional Protocol but to add further clarity regarding the expectations of the SPT regarding the establishment and operation of NPMs. Section I sets out a number of ‘Basic principles’ which should inform all aspects of the work of an NPM. This is followed in Section II by guidelines addressed primarily to States and concerning a number of issues relating to the establishment of NPMs, and in Section III by guidelines to both the State and to the NPM itself concerning the practical functioning of an NPM.

4. As it gains further experience, the SPT will seek to add additional sections to these Guidelines, addressing particular aspects of the work of NPMs in greater detail.

I. Basic principles

5. The NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems.

6. The mandate and powers of the NPM should be in accordance with the provisions of the Optional Protocol.

7. The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text.
8. The operational independence of the NPM should be guaranteed.
9. The relevant legislation should specify the period of office of the member/s of the NPM and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM.
10. The visiting mandate of the NPM should extend to all places of deprivation of liberty, as set out in Article 4 of the Optional Protocol.
11. The necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol
12. The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.
13. The State authorities and the NPM should enter into a follow-up process with the NPM with a view to the implementation of any recommendations which the NPM may make.
14. Those who engage or with whom the NPM engages in the fulfilment of its functions under the Optional Protocol should not be subject to any form of sanction, reprisal or other disability as result of having done so
15. The effective operation of the NPM is a continuing obligation. The effectiveness of the NPM should be subject to regular appraisal by both the State and the NPM itself, taking into account the views of the SPT, with a view to its being reinforced and strengthened as and when necessary.

II. Basic issues regarding the establishment of an NPM

A. The identification or creation of the NPM

16. The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.
17. Bearing in mind the requirements of Article 18 (1) and (2) of the Optional Protocol, members of the NPM should collectively have the expertise and experience necessary for its effective functioning.
18. The State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest.
19. Members of NPMs should likewise ensure that they do not hold or acquire positions which raise questions of conflicts of interest.
20. Recalling the requirements of Articles 18 (1) and (2) of the Optional Protocol, the NPM should ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, *inter alia*, relevant legal and health-care expertise.

B. Designation and notification

21. The NPM should be established within one year of the entry into force of the Optional Protocol for the State concerned, unless at the time of ratification a declaration has been made in accordance with Article 24 of the Optional Protocol.
22. The body designated as the NPM should be publicly promulgated as such at the national level.
23. The State should notify the SPT promptly of the body which has been designated as the NPM.

III. Basic issues regarding the operation of an NPM

A. Points for States

24. The State should allow the NPM to visit all, and any suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the Optional Protocol, which are within its jurisdiction. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.
25. The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol.
26. The State should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions.
27. The State should not order, apply, permit or tolerate any sanction, reprisal or other disability to be suffered by any person or organisation for having communicated with the NPM or for having provided the NPM with any information, irrespective of its accuracy, and no such person or organisation should be prejudiced in any way.

28. The State should inform the NPM of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM.

29. The State should publish and widely disseminate the Annual Reports of the NPM. It should also ensure that it is presented to, and discussed in, by the national legislative assembly, or Parliament. The Annual Reports of the NPM should also be transmitted to the SPT which will arrange for their publication on its website.

B.Points for NPMs

30. The NPM should carry out all aspects of its mandate in a manner which avoids actual or perceived conflicts of interest.

31. The NPM, its members and its staff should be required to regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol.

32. Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget.

33. The NPM should establish a work plan/programme which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the Optional Protocol, which are within the jurisdiction of the State. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.

34. The NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.

35. The NPM should make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate.

36. The NPM should produce Reports following their visits as well as produce an Annual Report and any other forms of Report which it deems necessary. When appropriate, Reports should contain recommendations addressed to the relevant authorities. The Recommendations of the NPM should take account of the relevant norms of the United Nations in the field of the prevention of torture and other ill-treatment, including the comments and recommendations of the SPT.

37. The NPM should ensure that any confidential information acquired in the course of its work is fully protected.

38. The NPM should ensure that it has the capacity to and does engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations. It should also actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.

39. The NPM should seek to establish and maintain contacts with other NPMs with a view to sharing experience and reinforcing its effectiveness.

40. The NPM should seek to establish and maintain contact with the SPT, as provided for and for the purposes set out in the Optional Protocol.