



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

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Analytical self-assessment tool for National Prevention Mechanisms (NPM)

A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM

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I. Introduction

1. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) provides that the National Preventive Mechanism (NPM) shall visit places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment). The visits shall be undertaken with a view to strengthening, if necessary, the protection of persons deprived of their liberty against torture and ill-treatment. The NPM shall regularly examine the treatment of persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and ill-treatment; and shall make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture and ill-treatment. Moreover, the NPM may submit proposals and observations concerning existing and draft legislation. 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.

2. The State Party (SP) shall guarantee the functional independence of the NPM and provide it with the necessary resources to enable it to carry out its functions in accordance with the requirements of the OPCAT. The competent authorities are obliged to examine the recommendations of the NPM and to enter into a dialogue with it regarding the implementation of its recommendations.

3. The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally. Once the NPM is established, the Subcommittee on Prevention of Torture (SPT) shall maintain direct, and if necessary confidential, contact with the NPM and offer it training and technical assistance with a view to strengthening its capacities. The SPT will further advise and assist the NPM in the evaluation of its needs and means necessary to strengthen the protection of persons deprived of their liberty against torture and ill-treatment. Hence, the SPT should have a view on the manner in which the NPM addresses core areas of its mandate in order to advise it in its work for the protection of persons deprived of their liberty.

II. Development strategy of the NPM

4. Given the nature of its work, it is almost inevitable that an NPM will face challenges such as a reluctance within bureaucracies to change structures and practices, a lack of resources to implement recommendations etc., and sometimes negative public opinion. Some of these challenges will be outside the control of the NPM and to some extent of the relevant authorities with whom the NPM engages. Hence, there is a need for realism regarding what a national preventive mechanism might be able to achieve in practice in a given set of circumstances. In such a situation the NPM should nevertheless try to find and indicate creative solutions that might address an issue over time in an incremental fashion. The NPM should consider forming partnerships with national and international actors in order to raise awareness of the obligations of the State Parties among decision makers and within the general public in order to encourage and facilitate change in legislation, policies of authorities, general attitudes, and conditions and practices in places of detention. The NPM should also organise its use of human and financial resources so as to ensure that it addresses all aspects of its mandate and include all types of institutions in its visiting programme.

5. The NPM should develop a strategy for its work in order to achieve the maximum impact on problems and challenges relevant to its mandate in the local context. Activities and their outcomes should be monitored and analysed on an ongoing basis and the lessons learnt should be used to develop its practices. Such an assessment could be based on a framework, starting with existing challenges, such as resourcing issues, and an assessment of activities currently undertaken and moving through the a range of additional factors such as:

criteria for the selection of planned activity;

criteria for the composition, of working groups, visiting teams, etc; including the involvement of specific forms of professional expertise,

analysis of problems /challenges; and of good practices identified;

cooperation with other actors;

resources budgeted;

strategies and working methods to be adopted when implementing activities;

recommendations submitted to authorities;

follow-up actions on recommendations, including dialogue with the authorities;

any changes observed, and an assessment of implementation of recommendations;

systematisation of observations, recommendations issued, and the responses received from the authorities, including implementation;

analysis of how and why both successes and failures in effecting change have occurred;

resources spent;

consideration for the need to develop alternative strategies or approaches.

6. Core activities would be visits to institutions and assessment of legislation related to the mandate of the NPM. Experiences from visits to institutions could be treated individually for the particular institution or generically.

7. The work of the NPM should be understood to be an ongoing, context-based process of development that is based not only on the experience of the NPM itself but also on information, advice and experience from other relevant and reliable sources. Members and staff should receive on-going training on, inter alia, methodological, strategic, and ethical issues and they should participate in developing working methods.

III. Internal organization

8. NPMs should develop policies and rules of procedure which address, inter alia,:

Employment and dismissal of staff;

Decision making;

Organisation of the office, its work and budgets, including visits to places of detention and drafting of reports;

Sharing information within the NPM;

Communication with other actors, including the SPT and the press;

Data protection;

Employment of ad hoc external experts, necessary qualifications and terms of reference for their work.

IV. Implementation of activities

A. Planning

9. The NPM should ensure that it has inventories for all places of detention and keeps an archive of all relevant and available information about places of detention and the treatment of persons held there.

10. The NPM should ensure that it has criteria for selection of places to be visited which ensure that all places of detention are visited regularly, taking into account the type and size of institutions and their size and level of known human rights problem (whilst leaving room for flexibility in the allocation of resources to ensure that follow-up and urgent visits can be undertaken).

11. The composition of the visiting team should take into account the necessary knowledge, experience and skills of members, and its gender balance and adequate representation of ethnic and minority groups. The visiting team should have the necessary human resources and time available to it to properly carry out its tasks.

12. The NPM has a strategy for prioritizing legislation to be commented; for the treatment of an insufficient or missing legislation and for the follow-up to any recommendation.

B. Visit methodology

13. On an ongoing basis, the NPM should develop guidelines for visits to the various categories of places of detention, including guidelines for conducting private interviews, policies for dealing with vulnerable groups of inmates, and ensuring that information from all available sources is collected, i.e. the administration of the visited institution, from staff, and inmates from all areas and pavilions, and from other visitors if appropriate.

14. All facilities within institutions should be visited and existing registers, examples of case records and activities and services for the inmates assessed.

15. Practices to cross check and assess observations should be developed and data reflecting serious and generic problems be systematized.

16. There should be a policy providing for an immediate debriefing with the authorities at the end of the visit.

17. The NPM could consider developing a code of conduct for a visiting team, including how to address inmates and staff; how and when to conduct individual or group interviews, handling security issues, ensuring confidentiality, managing internal debriefings, etc.

18. The NPM should have clear guidelines for reporting individual cases of deliberate ill-treatment, requesting inquiries and maintaining the confidentiality of the victim, as well as having clear guidelines for protecting such persons against reprisals.

C. Visit reports

19. Visit reports should focus on the most important issues, i.e. reporting ill-treatment, gaps in policies, regulations, and practices, as well as the appropriateness of conditions under which inmates are living, reflecting systematic lack of protection of the rights of inmates. Good practices should be noted and filed for systematic analysis. Cases of deliberate ill-treatment should be analysed to identify gaps in the protection of persons deprived of their liberty.

20. Recommendations should be well founded and should have a preventive focus, addressing systematic gaps and practices (root causes); and be feasible in practice.

21. The NPM should, based on experience, develop a strategy for the use of the report which should include submission to relevant official bodies and tiers of government for publication, dissemination and dialogue.

D. Follow-up on SPT's and own recommendations for changes

22. The NPM should maintain a dialogue with both governmental authorities and institution directors/managers regarding the implementation of recommendations. The dialogue will involve both written and oral exchanges. Visit reports, including recommendations, should be published, if the NPM considers it appropriate to do so. Annual reports should be also be published and should, in addition to recommendations for change, include the outcome of the dialogue with authorities. The NPM may also publish thematic reports.

23. The NPM should maintain a dialogue with other relevant national and international actors, including civil society and consider all relevant information received from them.

24. The NPM should regularly verify the implementation of recommendations through follow-up visits to problematic institutions.

E. Prevention of reprisals against persons interviewed during visits and others providing the NPM

with information before or after a visit

25. The NPM should develop a strategy for the prevention of reprisals or threats from staff as well as from fellow inmates, against persons interviewed during visits, and against others providing it with sensitive or critical information before or after a visit. This could include the following:

The NPM should establish a policy setting out the types of information that can be collected during group interviews and the types of information that should be collected in private interviews only. Whenever sensitive or critical information is obtained during a private interview a number of additional private interviews should be conducted to preserve the anonymity of the source of the information.

Cases of particular concern should be followed-up and monitored, including after the transfer of the inmates to other institutions.

Intervention and the assistance of other actors, including NGOs, may be sought and facilitated.

Relevant information from other actors, including NGOs working directly or indirectly with inmates, which gives rise to concerns regarding the possibility of reprisals should be acted upon immediately.

With the consent of the inmates concerned, the cases of particular individuals at risk of reprisals might be brought to the attention of the authorities and followed-up.

In case of alleged reprisals the NPM should seek to ensure that a disciplinary investigation or a criminal investigation is initiated.

F. Issues related to the Constitution and legislative framework

26. The constitution and/or relevant legislative framework must encompass an absolute prohibition of torture and definition of torture in accordance with the provisions of the UNCAT, Article 1 and the penalties for infractions must be commensurate with the gravity of the offence.

27. The NPM should consider monitoring and analysing systematically the practice of proceedings against suspected perpetrators of torture and ill-treatment and advocate for, or facilitate the establishment of, a national register of allegations of torture, any investigation or criminal proceedings undertaken, and the outcome thereof.

28. The NPM is mandated to assess draft and existing legislation against the State's international obligations and against other international standards. Therefore, the NPM should propose and advocate for necessary legislative changes and lobby for their implementation, e.g. with parliamentarians and government, in conjunction with other relevant actors when appropriate.

29. The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text. The mandate and powers of the NPM should be in accordance with the provisions of the Optional Protocol.

V. Crosscutting issues

A. Cooperation and communication

30. The NPM should establish sustainable lines of communication with both relevant governmental ministries and with those responsible for the administration and management of places of detention, with other relevant national and international actors in the field of prevention of torture, including the SPT, and with civil society organisations.

31. The NPM should establish: (a) a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations, including urgent action procedures, (b) a means for addressing and resolving any operational difficulties encountered during the exercise of its duties, including during visits; (c) a policy for publicising reports, or parts of reports including the main findings and recommendations, and (d) a policy regarding the production and publication of thematic reports.

32. The NPM should establish a strategy for cooperation with other national and international actors, including the SPT, on prevention of torture and on follow-up of cases of suspected or documented torture or ill-treatment.

33. The NPM should establish a strategy for making its mandate and work known to the general public and should establish a simple and accessible procedure through which the general public might provide it with relevant information.

B. Systematization of experiences

34. The NPM should ensure that important concrete and contextual observations arising from its visits to institutions, its recommendations and the responses from the authorities are categorized, filed and regularly processed for use in dialogue with the authorities and for the ongoing planning of work and for the further development of its strategies.

C. Budgets; prioritizing resources

35. The NPM should seek to have its budget determined, and should prioritise its own use of resources, on the basis of a regular analysis of its practice and experience, and in the light of its evaluation of its needs and the means necessary for it to exercise its mandate appropriately. –The NPM should advocate for the provision of the resources necessary for the effective exercise of its mandate, with the assistance of the SPT and /or other relevant actors if necessary.

36. Whilst the NPM should prioritise the most important problem issues and most problematic institutions, it should not disregard any

particular form of institution or geographical area from the scope of its work.

D. Internal capacity building

37. The NPM should have a strategy – reflecting its composition and based on an analysis of its practical experience – for ongoing training and the development of working methods with the possible involvement of the SPT.

E. Annual report

38. The annual report of the NPM may include:

accounts of current challenges to the protection of the rights of persons deprived of their liberty and to the effective execution of the NPM's mandate, and strategic short and longer term plans, including setting priorities;

analysis of the most important findings and an account of recommendations and the responses of the authorities to them;

follow-up on issues outstanding from previously published reports;

consideration of thematic issues;

accounts of cooperation with other actors on the prevention of torture.