



THE RATIFICATION OF THE OPTIONAL PROTOCOL (OP-CAT) TO THE UN CONVENTION AGAINST TORTURE (UN CAT) AND THE ESTABLISHMENT OF A NATIONAL PREVENTIVE MECHANISM IN IRELAND

A discussion paper

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Introduction

Ireland ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) in 2002, having signed it in 1992. Part of Ireland's obligations under the UN CAT is to take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment. Recognising that such measures should be strengthened through additional international commitments, the UN General Assembly in 2002 agreed the Optional Protocol (OP-CAT) to the UN CAT, introducing a combined system of national and international scrutiny of places of detention with a view to prevention of ill-treatment. Ireland signed the OP-CAT in 2007, but has yet to ratify it.

In its 2016 submission to the Human Rights Council,¹ the Irish Government stated that it is in the process of developing legislation to allow for the ratification of OP-CAT. It also stated that it had begun public consultations on the establishment of a Criminal Justice Inspectorate as a possible mechanism to implement OP-CAT in Ireland. It is, therefore, timely for the Irish Penal Reform Trust to produce a short discussion paper on the OP-CAT and the steps that should be taken in Ireland for its speedy ratification and implementation.

Thus, this paper discusses the following issues:

- a) What is OP-CAT and what are the international and national elements of the system of prevention of torture that OP-CAT introduces?
- b) Why is it important that Ireland ratifies OP-CAT and establishes a National Preventive Mechanism (NPM)?
- c) What are the key principles that should drive the establishment and the work of an NPM in Ireland?
- d) What could the NPM in Ireland look like?
- e) What should be the next steps to establishing an NPM in Ireland?

¹ General Assembly (2016) *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Ireland* (available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/021/22/PDF/G1602122.pdf?OpenElement>).

1. What is OP-CAT?

The Optional Protocol (OP-CAT) to the UN Convention against Torture (UN CAT) was agreed by the UN General Assembly in 2002, and came into force four years later.² The development of the OP-CAT, as reflected in its Preamble, came from the need to introduce measures to strengthen the protection of individuals deprived of their liberty in a variety of contexts against ill-treatment. It has also come from recognition that **prevention of human rights abuses rather than reaction after they have taken place** is the best way to ensure that ill-treatment of persons deprived of their liberty is eradicated.

The overarching objective of the OP-CAT, expressed in its Article 1, is to establish a system of **regular visits** to places of detention, undertaken by independent monitors. This system combines international and national scrutiny through the establishment of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the SPT)³ and the establishment at a State Party level of a National Preventive Mechanism (NPM).

At end of January 2017, 83 States Parties were signatories to the OP-CAT.

2. What is a National Preventive Mechanism (NPM)?

A National Preventive Mechanism (NPM) is a body – or a group of bodies – which monitor at a national level the treatment of and conditions for people deprived of their liberty. Sixty-four State Parties to the OP-CAT have so far designated a National Preventive Mechanism (NPM); this includes 23 Member States of the European Union.

The NPM's "major function"⁴ is the carrying out of visits – announced and unannounced – to places of detention in the territory of a State Party to the OP-CAT, examining such treatment and conditions, and, if necessary, taking steps to strengthen protection from torture or ill-treatment.

The 'jurisdictional' remit of an NPM is broad. In accordance with the OP-CAT, 'places of detention' are understood as any places "under [State] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence" (Article 4.1 of OP-CAT). 'Deprivation of liberty' in this context means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority" (Article 4.2 of OP-CAT). As such, any NPM

² *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by the UN General Assembly on 18 December 2002, UN Doc. A/RES/57/199, entry into force 22 June 2006.

³ This is a Subcommittee of the UN Committee against Torture.

⁴ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

needs to inspect and monitor a wide range of settings – from police cells, prisons and immigration detention centres, child detention centres, through mental health hospitals, secure care settings and any other institutions (public or private) which fall under the above definition. While IPRT agrees with the Government’s assertion that the majority of people who are deprived of their liberty are held within criminal justice institutions,⁵ we are strongly of the view that **any discussions on the establishment and/or designation of an NPM in Ireland must not lose sight of this range of settings.**

Visiting places of detention and making relevant recommendations is not the NPM’s only function. An NPM should be mandated to submit proposals and observations concerning existing and draft legislation of relevance to the treatment and conditions in places of detention (Article 19.c of the OP-CAT). Additionally, when establishing an NPM, State Parties should give due regard to their obligations under UN CAT and to the Principles relating to the status of national institutions for the promotion and protection of human rights (*The Paris Principles*⁶). It follows, therefore, that an NPM should also:

- i. Engage with the authorities of the State in a process of dialogue leading to the implementation of any recommendations made by the NPM;
- ii. publicise its findings and opinions to raise public awareness of issues regarding the treatment of and conditions for persons in detention;
- iii. advise the Government and other relevant bodies (including the Parliament) on any matters concerning the situation of persons held in detention and any other issues within the mandate of the NPM;
- iv. examine rules and regulations regarding the duties and functions of law enforcement personnel, medical personnel and public officials or any other persons who are involved in interrogation, detention and treatment of persons deprived of their liberty;
- v. contribute to education on human rights standards – and in particular on the UN CAT and other international instruments relating to prevention of torture or ill-treatment, and ensure that these are embedded into training of the relevant law enforcement and other personnel;
- vi. contribute to State reports or issue their own reports to international monitoring bodies, including relevant United Nations Committees; and
- vii. follow-up on recommendations made by international monitoring bodies.⁷

An NPM has to establish and maintain regular contact with the SPT (Article 20(f) of the OP-CAT). As with the NPM’s ‘jurisdictional’ remit, **it is important to consider all the above functions when setting up and/or designating an NPM in Ireland.**

⁵ Department for Justice (2015) *Proposals for a Criminal Justice Inspectorate* (available at: <http://www.justice.ie/en/JELR/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf/Files/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf>).

⁶ Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

⁷ See: Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

3. Why is it important to establish an NPM?

As highlighted by Manfred Novak, the then UN Special Rapporteur on Torture, in 2006,

*[...] torture and ill-treatment usually take place in isolated places of detention, where those who practice torture feel confident that they are outside the reach of effective monitoring and accountability. [...] torture [...] can only function as part of a system where the colleagues and superiors of the torturers order, tolerate, or at least condone such practices [...]*⁸

Many victims of torture or ill-treatment fear reprisals if they speak out, and when they do, their credibility is often undermined by the authorities.⁹ In light of this,

*[...] the only way of breaking this vicious cycle is to expose places of detention to public scrutiny and to make the entire system in which police, security and intelligence officials operate more transparent and accountable to external monitoring.*¹⁰

Establishment of an NPM gives all persons deprived of their liberty access to non-judicial means of protection and preventing torture, inhumane or degrading treatment or punishment. This is particularly important in light of the fact that many individuals held in different forms of detention often do not have access to professional legal advice or financial means to challenge their treatment through the courts.

In the particular circumstances of Ireland, IPRT notes that the Government's own discussion paper recently identified a number of gaps in inspection and monitoring regimes; this included the lack of regular inspection of the use of custody by An Garda Síochána.¹¹ In response to the discussion paper, IPRT raised its own concerns about current arrangements regarding inspection of health services (including mental health services) in prisons. **The establishment of an NPM provides an important opportunity to close these gaps and ensure that anyone deprived of their liberty can avail of the protection afforded by an effective NPM.**

4. What are the key principles that should be incorporated?

As stated earlier, Article 18(4) of the OP-CAT requires that when “*establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of*

⁸ Cited in: Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*, Geneva: APT (available at: http://www.apr.ch/content/files_res/NPM.Guide.pdf), p.4.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Department for Justice (2015) *Proposals for a Criminal Justice Inspectorate* (available at: <http://www.justice.ie/en/JELR/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf/Files/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf>).

*human rights*¹² (the ‘Paris Principles’). Additionally, the OP-CAT itself is clear that some key features must be in place for an NPM to be considered compliant with the Protocol. These are:

a) The NPM must have a statutory footing

The SPT is clear that the preventive mandate and powers of the NPM *must be* outlined in legislation which should specify the composition of the NPM and its remit (which must, in turn, be compliant with the OP-CAT). This may be a new or existing, amended legislation; it must, however, be of a constitutional nature or included in an act of parliament.

b) Unfettered access to places of detention

The body (or bodies) which has a role of an NPM must be granted ***unfettered access*** to places of detention, i.e. to “any place under [State] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence” (OP-CAT, Article 4). An NPM must be able to decide independently which institutions to inspect and how often.

Additionally, NPM staff should have the **power to interview** any person held in detention in private and the **power to access information** about such persons and their treatment in detention.¹³ Unfettered access (including the power to choose the timing of visits and to decide whether they are to be announced or unannounced), the power to interview individuals in detention, and the power to access documents and information must be guaranteed in the legislation establishing the NPM.

c) Independence of the NPM and its staff

Article 18(1) of the OPCAT states that State Parties ***must*** guarantee the functional independence of the NPM, as well as the **independence of its personnel**. This means that the legislation establishing an NPM must describe “certain key elements, including the appointment process, terms of office, mandate, powers, funding and lines of accountability.”¹⁴ The process of selection should, preferably, be prescribed in the legislation governing the NPM.¹⁵

The requirement of independence means that the NPM should not be placed under the control or supervision¹⁶ of the Executive – in the case of a prisons oversight mechanism, this means **structural** independence from the Department of Justice. An

¹² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

¹³ OPCAT, Article 19

¹⁴ Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*, Geneva: APT (available at: http://www.apr.ch/content/files_res/NPM.Guide.pdf), p.39.

¹⁵ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

¹⁶ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

NPM should also be independent of Parliament and other political structures (i.e. there should be no political appointments to its staff). An NPM should also have its own budget over which it should have appropriate control. *It is important to state here that where the body designated as an NPM performs other functions in addition to those required under OP-CAT, the NPM function should be separated into a distinct department, with its own staff and budget.*¹⁷

Budgetary independence is best achieved when the law establishing an NPM specifies the process for the allocation of annual funding and when that process ***is not under direct executive governmental control***.¹⁸ The Association for the Prevention of Torture advises in this respect (after the Office of the High Commissioner for Human Rights) that NPMs should be able to agree and suggest their own budget and put it to the vote of the Parliament.

In the context of a discussion about independence of staff, it is important to note the advice from the Association for the Prevention of Torture that Governments should make sure staff working for the NPM do not have an active role in the criminal justice system, or have close personal connections to anyone who does.¹⁹ It is therefore imperative that the process of any appointments process is open, transparent, independent and inclusive, and that *real* as well as *perceived* conflicts of interest do not arise. Of note in this respect is the recent work undertaken by the UK's NPM to decrease the number of personnel seconded to NPM bodies from places of detention. The decision to decrease the reliance on seconded staff followed a recommendation in the 2013 report by the UN Committee against Torture on the UK's compliance with UN CAT/OP-CAT obligations when the Committee recommended that this practice stops.²⁰

d) Expertise and diversity of staff

One of the requirements of the OP-CAT is that the NPM is multidisciplinary in nature. This requirement does not, of course, have to be delivered by one body, but it is nevertheless vital that the mechanism in place for inspection of places of detention is capable of ensuring a **multidisciplinary approach and assessment**. This means that staff need to have the skills, expertise and experience to be able to deliver on the NPM's functions and obligations *right across* the many functions performed and services provided in places of detention.

Staff appointed to any NPM should be both gender-balanced and representative of ethnic and minority groups in the country (Article 18(2) of the OP-CAT). The latter requirement is particularly important in Ireland, which in the last decade experienced large international inward migration and significant changes to the make-up of its

¹⁷ Subcommittee on Prevention of Torture (2010) *Guidelines on national preventive mechanisms* (available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en).

¹⁸ Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*, Geneva: APT (available at: http://www.apr.ch/content/files_res/NPM.Guide.pdf).

¹⁹ Ibid.

²⁰ National Preventive Mechanism (2015) *Monitoring places of detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 – 31 March 2015*, London: The Stationery Office.

prison population and populations of other places of detention, with the associated increase in national, ethnic, cultural and linguistic diversity.

e) Powers of the NPM and its staff

In accordance with Article 18 of OPCAT, the NPM should – as a minimum – have the following powers:

- To **regularly examine** the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhumane or degrading treatment or punishment;
- To **make recommendations** to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhumane or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- To **submit proposals and observations concerning existing or draft legislation.**

If the purpose of inspection and recommendations is “*with a view to strengthening, if necessary, their protection against torture*” and “*improving treatment and conditions*”, then it is imperative that appropriate enforcement mechanisms and mechanisms for binding recommendations are also outlined in national legislation establishing an NPM.

It is important to state that the OP-CAT (Article 21.2) obliges the NPM to treat all information provided to it as confidential and privileged. As such, no personal information can be published by the NPM without an express consent of the person concerned.

f) Protection of any persons communicating with the NPM and of the NPM staff.

Any legislation establishing and/or designating an NPM in Ireland will be required to ensure legal protection to persons or institutions who communicate with the NPM and provide it with information. Article 21 of OP-CAT is clear that no authority or state official should be able to order, apply, permit or tolerate sanctions against such persons or institutions.

Additionally, the SPT is clear that any staff acting on behalf of an NPM should enjoy privileges and immunities necessary for the performance of their functions without fear of reprisal and in an independent manner. Such privileges and immunities should be provided for in the national legislation establishing and/or designating the NPM.²¹

²¹ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

g) Resources.

States must ensure that necessary **resources** for the functioning of the NPM are provided (Article 18(3) of the OP-CAT). This includes *financial* and *human* resources that are sufficient for the NPM to conduct visits to places of detention with the frequency and in the manner required to fulfil the NPM's central role of **preventing ill-treatment**.

In IPRT's submission to the Department of Justice and Equality consultation on a single Criminal Justice Inspectorate, we raised a number of concerns about the current capacity of the Inspector of Prisons to provide regular visits to places of detention, while at the same time fulfilling a number of other obligations (such as investigations of all deaths in prison custody). While acknowledging that many of the powers of the Inspector are OP-CAT compliant, the issues of resources and capacity of the Office of the Inspector of Prisons would have to be given serious consideration if it were to be part of any future NPM in Ireland. Within this discussion, **it is important to keep in mind all the functions of an NPM listed earlier in this paper**, which would need to be properly resourced, rather than focusing only and specifically on visits to places of detention alone.

5. What could an NPM in Ireland look like?

The OP-CAT **does not prescribe** a model or a structure of an NPM, allowing for the flexibility required to find a model that would work in each national jurisdiction. However, the Association for the Prevention of Torture observes that four different models have developed since the OP-CAT entered into force in 2006. These are:

- a) creating a new and specialised body to act as an NPM;
- b) designating a national human rights institution (NHRI) or an ombudsperson's institution as an NPM;
- c) designating an ombudsperson's institution as an NPM, with formal involvement of civil society organisations;
- d) designating several institutions to serve the purpose of the NPM together.²²

The latter model of designation of several institutions was adopted by the UK, where 20 different inspection and monitoring bodies collectively make up the NPM. Ombudsperson institutions have been designated in a number of countries, including Albania, Croatia and Poland. The model of combined designation of an Ombudsperson and human rights groups (civil society) has been implemented in countries such as Austria and Denmark, while new institutions have been created, for example, in Argentina and Germany.²³

There is no doubt that there are advantages and challenges to any of the above outlined models. It is instructive, for example, that UK's multi-body NPM has identified significant challenges relating to its complex structure, including the differing

²² <http://www.apr.ch/en/npm-models/>

²³ Details of all NPMs can be accessed at: http://www.apr.ch/en/opcat_pages/opcat-situation-1/

understanding of OP-CAT between the different bodies; their differing ideas about methods of implementation; divergence in the nature of roles of the different members and the contexts in which they operate, as well as different views on the methods and levels of co-ordination that is required to comply with the OP-CAT.²⁴ On the other hand, a single-body NPM in Poland which is placed within the Office of the Human Rights Defender,²⁵ continues to face resourcing issues within the overall structure of the Office.²⁶

In order to propose the best model of an NPM for Ireland, there is the need for a detailed map of inspection and monitoring bodies that already perform functions which are core to the mechanism of an NPM as required by the OP-CAT.

It is important to reiterate here the advice of the Association for the Prevention of Torture (APT) on the process of establishment and/or designation of an NPM. The APT advises that any process of determining the shape of an NPM should start “with a factual ‘inventory’ of bodies which already carry out visits to places of detention”.²⁷ Such an inventory should include information summarising the different bodies’:

- a) scope of jurisdiction (which places of detention does it visit);
- b) structure (number of staff, functional independence, office locations);
- c) powers and immunities;
- d) budget and working methods (number of visits, duration of visits, implementation of recommendations, etc).²⁸

Some of the information relating to criminal justice inspection regimes has already been provided by the Department of Justice and Equality in its 2015 consultation on the possible creation of a single inspection body. It is IPRT’s view, however, that any review must be broader and led by the multi-disciplinary nature of the NPM and its ‘jurisdictional’ remit. It should also include a full inventory of places of detention, as defined by the OP-CAT, to identify any current gaps. As the APT suggests, such a review will also assist in identifying legislative, financial and human resources that are needed for the practical implementation of the OP-CAT and may assist with the decision-making process on whether to designate one or more bodies as Ireland’s NPM. If more than one body were to be designated, consideration should be given to establishing a co-ordination body (mechanism) of an NPM.

²⁴ National Preventive Mechanism (2011) *Monitoring places of detention: Second Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2010 – 31 March 2011*, London: The Stationery Office.

²⁵ The office is an ombudsperson institution, with a status of a national human rights institution.

²⁶ See: Office of the Human Rights Defender (2015) *Report of the Human Rights Defender on the Activities of the National Preventive Mechanism in Poland in 2014*, Warsaw: The Office of the Human Rights Defender (available at:

https://www.rpo.gov.pl/sites/default/files/Report_of_the_Human_Rights_Defender_%28Ombudsman%29_on_the_Activities_of_the_NPM_in_Poland_in_2014.pdf).

²⁷ Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*, Geneva: APT (available at: http://www.apr.ch/content/files_res/NPM.Guide.pdf), p.10.

²⁸ Ibid. See also: <http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/08/UK-NPM-self-assessment-write-up.pdf> for suggestions on how those bodies can self-assess in the process of collecting such information.

6. Next steps.

a) Ratification of OP-CAT.

There has already been a significant delay of more than 9 years in the ratification of OP-CAT by Ireland. The suggestion, including in the submission by the Government to the Human Rights Council in February 2016, is that ratification will be further delayed while the discussions on the relevant legislation and a designation and/or creation of an NPM take place. It appears that the Government prefers an option where the shape of the NPM is agreed upon and the necessary legislation is in place before ratification.

There is significant merit in this position, in particular to allow for extensive consultation with stakeholders in the statutory sectors and in civil society. However, there is enough flexibility in the OP-CAT to allow for the designation and/or establishment of an NPM before or after ratification. Article 24 of the OP-CAT explicitly provides for the possibility of State Parties making a declaration to postpone its implementation, including in establishing an NPM, for up to three years.

Additionally, the Subcommittee on Prevention of Torture is clear that the development of an NPM is an on-going obligation, “with formal aspects reinforced and working methods refined and improved incrementally”.²⁹ As such, it should be subject to on-going self-evaluation, if necessary with the assistance of the SPT and other NPMs. Both the OP-CAT and the guidance from the SPT are clear that a flexible approach is needed in any case to ensure that an NPM can develop and improve over time as appropriate.

*In light of the above, **there are very few reasons to further delay the ratification of the OP-CAT.** Immediate ratification would affirm and strengthen the message that the Irish Government is committed to the implementation of the OP-CAT and the creation of an NPM. It would also provide for a clear timeline (of up to three years) to put in place the necessary legislation and to consider the designation and/or creation of an NPM in Ireland.*

b) Agreement on the shape of an NPM.

IPRT welcomes the steps undertaken already by the Government to engage with a range of stakeholders in discussions about the shape and nature of an NPM in Ireland. We were grateful for the opportunity that was afforded to IPRT to contribute to those discussions in both meetings and written submissions.³⁰

In our submissions, IPRT highlighted a number of critical issues that need to be

²⁹ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf), p.2.

³⁰ The relevant Open Policy Debate on Proposals for a Criminal Justice Inspectorate took place on 23 November 2015 (details available here: <http://www.justice.ie/en/JELR/Pages/Open-Policy-Debate-Monday-23rd-November>).

considered in discussions about the establishment and/or designation of an NPM in Ireland. Amongst other concerns, IPRT cautioned that rather than adopting a particular form of an NPM and before designating an existing institution or considering a merger of existing institutions, the Government and civil society must carefully and exhaustively review the nature of the bodies already in place to ensure that it fully complies with OP-CAT requirements, make any necessary legislative amendments, and provide any increase in resources required.

IPRT therefore adopts the recommendation of the APT³¹ that a more comprehensive and detailed mapping exercise takes place with Irish inspection bodies, keeping in mind the need to create an NPM which will be multi-disciplinary in nature. We also adopt the APT's recommendation that consultation on the shape of an NPM should include, as a minimum:

- a) Government representatives (all departments with a role relating to any places of detention in the State);
- b) civil society organisations and national NGOs (again, reflecting the multi-disciplinary nature of the NPM);
- c) the national human rights institution (IHREC), as well as other Ombudsman institutions with an inspection function;
- d) all inspection and monitoring bodies (reflecting the multi-disciplinary nature of an NPM, so not just focused on the criminal justice system detention); and
- e) members of parliament.

Co-ordination of this process should consider the multi-disciplinary nature of the NPM. Consideration may therefore need to be given as to which Department or Departments take a lead on the process in a way that would avoid working in silos.³² The work on the NPM should be scheduled within a clear timetable and clear lines of responsibility for taking any agreement forward.

Consideration should also be given to seeking input into this process from external partners – existing NPMs, the Association for the Prevention of Torture, and the Subcommittee on Prevention of Torture.

c) Introducing relevant legislation.

Once the mapping exercise is completed, and the shape of an NPM is agreed, national legislation should be put in place addressing the structure of the NPM, its remit and its powers (where necessary, supplementing the powers of bodies which are already in place). IPRT notes the Government's statement that it is already working on an Inspection of Places of Detention Bill. A decision on the shape of an NPM should drive any legislative developments in this area, together with any guidance (as outlined above) of what such legislation should include.

³¹ http://www.apr.ch/content/files_res/opcat-manual-english-revised2010.pdf page 225

³² It has been suggested that the Department of the Taoiseach could potentially take on this role.

d) The practicalities involved in setting up an NPM.

Processes and procedures

The recent advice of the SPT relating to self-assessment of NPMs³³ states that following establishment and/or designation, the NPM should develop a number of procedures and policies for its daily operations. The SPT states that these should include (but are not limited to):

- i) organisation of the office, its work and budgets (including allocations to different activities);
- ii) procedures for decision-making;
- iii) employment and dismissal of staff (linking to the main legislation framework, especially in relation to independence and protection of staff from dismissal/reprisals);
- iv) prevention of conflicts of interest (again, in particular in light of advice relating to hiring staff on secondment or otherwise connected to places of detention);
- v) employment of external experts, the necessary qualifications and how the terms of reference of their work should be decided;
- vi) information sharing protocols within the mechanism (***this is particularly important if the NPM is made up of more than one institution***);
- vii) communication with national and international stakeholders (including the SPT and civil society – see also below), and the press; and
- viii) data protection and confidentiality.

This will, of course, take time and will be subject to self-evaluation and improvement following the establishment of an NPM. Agreement on those policies and procedures should therefore not delay the decision on the establishment and/or designation of an NPM in Ireland.

Strategies

The SPT advises that an NPM should develop short- and long-term strategies to ensure appropriate impact of its activities. These should encompass, amongst others, criteria for selection of the NPM's activities; strategies for implementation of those activities; budget allocations; human resource allocations; resourcing follow-up on recommendations, etc.³⁴ It is important that an NPM has a clear schedule of visits to places of detention, and timetable for a follow-up on recommendations.

An NPM should also have a clear strategy for communicating with relevant State authorities, civil society and other national and international actors (including the SPT) to ensure that its work is visible, as well as being consultative in nature.

Training

³³ Subcommittee on Prevention of Torture (2016) *Analytical assessment tool for national preventive mechanisms* (available at: http://www.ohchr.org/Documents/HRBodies/OPCAT/AnalyticalToolsNPM_en.pdf).

³⁴ Ibid.

Finally, it is vitally important that members/staff of an NPM receive appropriate training in (as a minimum):

- i. the UN Convention against Torture;
- ii. the requirements of the OP-CAT and the aims and objectives of an NPM;
- iii. their role as NPM staff/members;
- iv. if more than one body constitutes an NPM, training relating to the co-ordination of the NPM and any data sharing protocols;
- v. the nature of inspections/visits to places of detention;
- vi. interview skills;
- vii. information analysis skills; and
- viii. confidentiality and data protection.

7. Summary

In this discussion paper, IPRT has laid out the steps that should be taken in Ireland for the speedy ratification and implementation of the OP-CAT. It seeks to provide clarity on the OP-CAT and the international and national elements of the system of prevention of torture involved. It has underscored the importance of Ireland's ratification of OP-CAT and the benefits of establishing a National Preventive Mechanism (NPM). We have set out the key principles that should drive the establishment and the work of an NPM in Ireland, and some models to consider, along with the next steps to establishing an NPM in Ireland.

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