



Statement of Principles on Legislation to Ratify the Optional Protocol to the Convention against Torture (OPCAT)

November 2018

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT')¹ is an international human rights treaty which assists States in preventing torture and other forms of ill-treatment in all places of detention.

Ireland signed the OPCAT on 2nd October 2007, but has not yet ratified the treaty. Legislation intended to ratify the OPCAT is expected to be introduced by Government before the end of 2018².

Introduction

National Preventive Mechanisms (NPMs) are the national component of the preventive system established by the Optional Protocol to the Convention against Torture (OPCAT). An NPM is a body – or a group of bodies – which monitors the treatment of and conditions for people deprived of their liberty in a particular State.

Once an individual country ratifies the OPCAT, it is obliged to establish a National Preventive Mechanism within three years from the date of ratification (Article 24 of OPCAT).

In accordance with the OPCAT, “places of detention” are defined 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 OPCAT).

This document outlines the minimum legislative requirements for any legislation intended to ratify the Optional Protocol to the Convention against Torture, across three areas:

- 1. Independence of National Preventative Mechanism**
- 2. Functions of National Preventative Mechanism**
- 3. Members/staff of National Preventative Mechanism**

This statement of principles closely reflects the most recently published Guidance from the Office of the United Nations Human Rights Commissioner³. In the preparation of this document IPRT also consulted several lawyers with expertise in this area as well as the Chair of the UN Sub-Committee for the Prevention of Torture. **Any errors or omissions remain with the authors.**

1 United Nations Office of the High Commissioner (2002) *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>

2 Houses of the Oireachtas (2018) *UN Conventions*, Question 1, 5th July 2018 <https://www.oireachtas.ie/en/debates/question/2018-07-05/1/>

3 United Nations Office of the High Commissioner (2018) *PREVENTING TORTURE: The Role of National Preventative Mechanisms – A Practical Guide, Professional Training Series No. 21* https://www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf

1. INDEPENDENCE OF NATIONAL PREVENTATIVE MECHANISM		
Issue	Principle	Minimum legislative requirements
1.1 Legislative mandate	NPM mandate must be set out in legislation which specifies: mandate, powers, selection process, terms of office, funding and lines of accountability.	
1.2 Operational independence	<p>NPM should not be placed under the institutional control of an executive branch of government.</p> <p>The law should explicitly provide that the executive branch does not interfere with the mandate and operations of NPMs.</p>	<ul style="list-style-type: none"> • Structural independence from the Department of Justice and Equality, Oireachtas and other political structures. • No political appointments to staff. • If the body designated as an NPM performs other functions in addition to those required under OPCAT, the NPM function should be separated into a distinct department, with its own staff and budget.
1.3 Financial independence	<p>Financial autonomy is a fundamental prerequisite for independence.</p> <p>Necessary financial and human resources must be in place for the functioning of the NPM to conduct visits to places of detention with sufficient frequency and in the manner required to fulfil the NPM's central role of preventing ill-treatment.</p> <p>Legislation must specify the process for the allocation of annual funding and that process should not be under direct executive governmental control.</p>	<ul style="list-style-type: none"> • Funding should not be attached to a sponsoring Minister for Justice and Equality. • Funding must be sufficient. • NPM draws up, submits and presents its own budget and determines own spending priorities.

2. FUNCTIONS OF NATIONAL PREVENTATIVE MECHANISM		
Issue	Principle	Minimum legislative requirements
2.1 Visiting function	<p>NPM must have the power to conduct visits to any place under the jurisdiction or effective control of the State parties where persons <i>are, or may be</i> deprived of their liberty in order to regularly examine the treatment of persons in those places and to make recommendations to the relevant authorities.</p> <p>Consistent with a preventative approach, a broad understanding of the meaning of “places of deprivation of liberty” should be adopted.</p> <p>Deprivation of liberty should be understood to include <i>de facto</i> deprivation of liberty.</p>	<p>NPM must have the power to:</p> <ul style="list-style-type: none"> ● access freely all places where it believes persons may be deprived of their liberty, including those places not situated within their territories but still within their powers or effective controls; ● regularly examine treatment of persons deprived of liberty in those places; ● select the timing of visits and whether they are announced or unannounced; ● choose persons to be interviewed; ● conduct interviews without the presence of the authorities; ● access all information, premises and persons necessary for pursuing its mandate without restriction; ● keep confidential information privileged; ● submit proposals and observations concerning existing or draft legislation; ● and have contact with the Sub-Committee for the Prevention of Torture.

<p>2.2 Advisory function</p>	<p>NPM should have the power to make proposals and provide guidance on draft and existing legislation in light of obligations under international human rights norms and standards.</p> <p>NPM may also submit to relevant authorities all opinions, recommendations, proposals and reports on any matters concerning persons deprived of their liberty or any other issues within their mandate.</p> <p>NPM must have the power to choose to publicly disseminate its materials to the extent that it decides is warranted.</p>	<ul style="list-style-type: none"> • State should alert NPM to any draft legislation which is relevant to their mandate. • State shall examine any proposals or observations received from NPM.
<p>2.3 Cooperative function</p>	<p>NPM should cooperate and communicate with national, regional and international actors on the prevention of torture.</p>	<p>NPM must have the power to:</p> <ul style="list-style-type: none"> • formulate and publish its findings and recommendations expediently, identify responsible persons and indicate timelines for compliance without any Ministerial involvement or control; • contribute to reports submitted by States to the UN treaty bodies; • and establish and maintain contact with the SPT through regular meetings and information exchanges. <p>The legislation must place a duty on the relevant authority to examine the NPM's recommendations, comply with the recommendation or explain the reason why compliance with the recommendation is not possible within the timetable specified by the NPM.</p>
<p>2.4 Educational and communication function</p>	<p>NPM should widely disseminate their opinions, findings and other relevant information through education, training and awareness raising programmes on OPCAT and related matters.</p>	<ul style="list-style-type: none"> • NPM should produce and widely disseminate an annual report. • The UNHCR has identified relevant professional groups who should be targeted for education, training and awareness raising.

3. MEMBERS/STAFF OF NATIONAL PREVENTATIVE MECHANISM		
Issue	Principle	Minimum legislative requirements
3.1 Independence	<p>Members should be personally and institutionally independent of State authorities.</p> <p>They should neither hold positions nor have personal connections that would give rise to a real or perceived conflict of interest when undertaking their mandate.</p>	<ul style="list-style-type: none"> • No secondment of staff from places of detention, the Department of Justice, the Irish Prison Service, the Probation Service, the Parole Board, the Office of the Director of Public Prosecutions, the Court Service, the children detention school etc.
3.2 Appointment Process	<p>NPMs should choose their own staff without external interference. NPMs should also be able to engage external expertise when necessary.</p> <p>The appointment process should be open, transparent, independent and inclusive, and safeguards should be in place so that real as well as perceived conflicts of interest do not arise.</p>	<ul style="list-style-type: none"> • The recruitment process should be managed by the Public Appointments Service. • There should be no Ministerial or political involvement in the process. • The appointments process should be widely advertised.
3.3 Terms of Office	<p>The terms of office should be sufficient to foster the independent functioning of the NPM.</p>	<ul style="list-style-type: none"> • Security of tenure and remuneration should be sufficient to attract appropriate candidates and foster the independent functioning of the NPM. • Legislation should specify privileges and immunities of the role. • Legislation should specify protection of NPM staff against reprisal. • No authority or state official should be able to order, apply, permit or tolerate sanctions against the NPM or its staff.

<p>3.4 Multidisciplinary Expertise and Diversity</p>	<p>The members must collectively have the skills, expertise and experience to be able to deliver on the NPM’s functions in respect to places of detention.</p> <p>The NPM must be diverse and capable of ensuring a multidisciplinary approach.</p>	<ul style="list-style-type: none"> • Relevant expertise will include legal, medical, psychological, child-related and gender expertise. • Processes must be in place at the recruitment stage to ensure that staff will be gender-balanced, include a diversity of professional backgrounds and representative of ethnic, minority and indigenous groups, and of those who have experienced deprivation of liberty. • Consistent with the State’s obligations under the UN Convention on the Rights of Persons with Disabilities, relevant expertise will include expertise by experience.
<p>3.5 Training</p>	<p>NPM staff must be appropriately trained.</p>	<p>All staff must receive training in the UN Convention against Torture and the UN Convention of the Rights of Persons with Disabilities; the requirements of the OPCAT and the aims and objectives of an NPM; their role as NPM staff/ members; co-ordination of the NPM and any data sharing protocols; the nature of inspections/visits to places of detention; interview skills; information analysis skills; and confidentiality and data protection.</p>

Any legislative developments on the ratification of OPCAT should be driven by guidance (as outlined above) on what such legislation should include.

The establishment of an NPM provides an important opportunity to close gaps in inspection and monitoring regimes, and ensure that anyone deprived of their liberty can avail of the protection afforded by an effective NPM. It also has the potential to create a culture of accountability in places of detention, and a culture of prevention of ill-treatment. **IPRT therefore repeats its long-standing recommendation to the Government to ratify the OPCAT without further delay**

Irish Penal Reform Trust

The Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for the rights in the penal system and the progressive reform of Irish penal policy, with prison as a last resort.

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“The Committee recommends that the State party... Expedite the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Degrading Treatment or Punishment, 2002 and the establishment of a National Preventive Mechanism.”

Concluding Observations of the UN Committee against Torture
following Ireland’s first periodic review under UNCAT (June 2011)

“The State party should... Ratify forthwith the Optional Protocol to the Convention (“OPCAT”) and establish a national preventive mechanism, ensuring that this body has access to all places of deprivation of liberty in all settings”

Concluding Observations of the UN Committee against Torture
following Ireland’s second periodic review under UNCAT (August 2017)

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