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Amnesty International's 10 Guiding Principles for the Establishment of National Preventive Mechanisms¹

The Optional Protocol sets out certain minimum guarantees that all national preventive mechanisms (NPMs) must be granted. Amnesty International endorses these minimum guarantees as the basis for an effective NPM and urges states to ensure that the process for deciding upon an NPM is transparent, inclusive and comprehensive.

It is also important to bear in mind that these national bodies are not judicial bodies and therefore should never be seen as a replacement or alternative to an independent, impartial, properly resourced, accessible judiciary, whose rulings are enforced. Nor are they a replacement for law enforcement or other criminal investigative authorities that enforce the law, pursue criminal prosecutions and bring perpetrators of human rights violations to justice.

It is with this in mind that Amnesty International offers the following guiding principles for the establishment of NPMs.

These guiding principles are drawn from the provisions of the Optional Protocol itself, the Paris Principles, the organization's experience with national human rights institutions, and the following documents: Amnesty International, *Preventing Torture at Home - A Guide to the Establishment of National Preventive Mechanisms* (AI Index: IOR 51/004/2004), The Association for the Prevention of Torture, *Implementation of the Optional Protocol to the UN Convention against Torture: National Preventive Mechanisms*, 2006; *Establishment and Designation of National Preventive Mechanisms*, 2006; and the *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention*, 2004.

To help implement these 10 guiding principles Amnesty International has drawn up a checklist annexed to these principles.

1. Establishment by law:

The national preventive mechanisms must be established by law (i.e. constitutional amendment or other primary legislation enacted by the legislature). The law should include provisions which guarantee their institutional and functional independence. All states, including federal states or states with territories overseas, should ensure that these bodies function throughout the territory under those states' jurisdiction and control.

¹ In offering these guidelines, Amnesty International draws mainly on the provisions of the Protocol itself, the Paris Principles, the organization's experience with national human rights institutions, and the following documents: Amnesty International, *Preventing Torture at Home - A Guide to the Establishment of National Preventive Mechanisms* (AI Index: IOR 51/004/2004), The Association for the Prevention of Torture, *Implementation of the Optional Protocol to the UN Convention against Torture: National Preventive Mechanisms*, 2nd edition 2003, and *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention*, 2004, available at www.apt.ch.

Explanation:

The existence and functioning of the national preventive mechanisms must not rely on the goodwill of any particular government. Their founding instrument should reflect this. Where they are established merely by presidential or other kinds of decree, or on an ad hoc basis, it is easier to abolish them, or to limit powers which are necessary to their effective functioning. Legislation should go beyond stating general principles, and detail measures to ensure their function and independence in practice.

2. Independence:

The legislation establishing national preventive mechanisms must guarantee their institutional independence ensuring separate and distinct administration, premises, funding and means of communication with detainees, state institutions, the public and the Subcommittee. It is incompatible with the provisions and aim of the Optional Protocol for government representatives to be present, in any capacity, in national preventive mechanisms.

Explanation:

To help establish their actual and perceived independence national preventive mechanisms must not constitute any part of the government, parliament, judiciary, prison system etc. nor should they be perceived as such.

3. Adequate funding, free from political restrictions:

The founding legislation must provide for adequate long-term funding "to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence."²

Explanation:

Governments must not have the power to penalize or otherwise influence the national preventive mechanisms or their members for criticism or for any other reason by denying them funds. Members retain their rights to freedom of expression and association and their terms and conditions of membership should not be altered as a result of criticism arising from their mandate.

4. Independent, capable, gender-balanced and representative members:

The founding legislation for national preventive mechanisms should include a procedure for the appointment of the members detailing the method, criteria and duration of the appointment, immunities and privileges, and dismissal and appeals procedures. The membership should encompass a range of expertise in relevant fields such as human rights law, psychology, and medicine.

Explanation:

The Optional Protocol requires that the composition of the national preventive mechanisms should "reflect gender balance and the adequate representation of ethnic and minority groups in the country."³ Where necessary the founding legislation of an existing national visiting body designated as a national preventive mechanism under the Optional Protocol should be amended to ensure full compliance with these principles.

² Composition and Guarantees of Independence and Pluralism, Principle 2 of the Paris Principles, UN Doc. A/RES/48/134 (Annex).

³ Optional Protocol to the UN Convention against Torture, Article 18(2).

5. Widest possible application of the definition of 'places of detention' and 'detainees':

In accordance with the provisions of the Optional Protocol the form of national preventive mechanisms put in place by the states parties must ensure that all places of detention, as broadly defined by Article 4, are brought within their mandate. Where necessary, the mandate of an existing visiting body designated as a national preventive mechanism must be amended to reflect the full scope of the Optional Protocol.

Explanation:

This is to ensure that all persons deprived of their liberty are brought within the scope of the Optional Protocol.

6. Full, immediate, unhindered access to all places of detention and detainees:

National preventive mechanisms must be allowed to visit any place of detention. Visits may be planned, announced and coordinated in advance. However, in addition national preventive mechanisms must have the authority to arrive, unannounced, at any place of detention and be immediately admitted in, inspect all of the facility or any part they choose, for as long as they choose, and meet in private with any detainee or staff member they wish to speak to. Visits should include meetings with the directors of the place of detention. Funding should be sufficient to provide for visits that are frequent enough to facilitate effective monitoring.

Explanation:

This represents good practice for preventive visits to places of detention as it ensures that the authorities are not able to defeat the purpose of the visiting system by temporarily or superficially changing the conditions of detention.

7. Unrestricted access to all relevant information:

National preventive mechanisms must be allowed full and prompt access to all information they may need for carrying out their tasks including information on the number of persons deprived of their liberty, the number of places of detention and their location, as well as information on the treatment of these persons and their conditions of detention.

Explanation:

This is in order to give effect to Article 20 of the Optional Protocol which lists the type of information national preventive mechanisms can request. Unrestricted access to this information will assist national preventive mechanisms to build up as accurate a picture as possible of the treatment of detainees and conditions of detention. The inclusion of these requirements in the Optional Protocol can be considered to be international recognition of best practice for preventive visits to places of detention.

8. Unrestricted, safe access to the NPM:

All detainees, families and friends of detainees, detainees' lawyers, former detainees, staff of places of detention and any other person or organization wishing to complain or convey information to the national preventive mechanisms must be able to do so easily, promptly, privately and with no adverse consequences for themselves or for any detainees involved or mentioned. For that purpose, information on national preventive mechanisms and on ways of contacting them should be made available to detainees and to the public in general.

Explanation:

No sanctions should be brought against any person or organisation as a result of contact with the national preventive mechanisms.

9. Direct, unhindered, untapped communications with the Subcommittee:

National preventive mechanisms must be able to communicate or exchange with the Subcommittee in private whatever information they deem necessary. The government or any of its agencies should not interfere, monitor, record or demand information on such communications in any way.

Explanation:

This gives effect to Article 20 of the Optional Protocol and is a further essential safeguard to ensure the independence of the national preventive mechanisms.

10. NPM's recommendations and follow-up to be taken seriously:

National preventive mechanisms should be empowered, on their own initiative, to submit reports to and, where appropriate, address in person, directors of places of detention, legislative bodies, the executive and other political institutions. This should be provided for in the founding legislation. Mechanisms for cooperation and dialogue should include avenues for immediate contact with directors of places of detention and the executive, for instance in cases where urgent action is needed. Such mechanisms should also include forums for serious, detailed discussion of national preventive mechanisms' reports and recommendations, such as committees at the ministerial, parliamentary and prison service levels.

Explanation:

The Optional Protocol requires states to examine the recommendations of the national preventive mechanisms and to enter into a dialogue with them on possible implementation measures.⁴

⁴ Optional Protocol to the UN Convention against Torture, Article 22.

Annex: Checklist to implement Amnesty International’s 10 Guiding Principles for the Establishment of National Preventive Mechanisms (NPMs)

1. Establishment by law	
The NPM should be established by a constitutional or legislative text so that it can not be dissolved at will e.g. as a punishment by a government or by a change in government. The founding instrument should include an agreed procedure for dissolving the NPM. <i>(AI recommendation)</i>	
The functional independence of the NPM must be guaranteed in the founding instrument. This means that the NPM should be formed in such way that it does not constitute any part of the government, parliament, judiciary, or prison system. <i>(AI recommendation)</i>	
The founding instrument should go beyond stating general principles and detail the actual functioning of the NPM. <i>(AI recommendation)</i>	
The founding instrument should ensure that the NPM is able to visit all places of detention as defined under Article 4 of the Optional Protocol. <i>(AI recommendation)</i>	
The founding instrument should set out the appointment procedure for the members of the NPM detailing the method, criteria and duration of the appointment, immunities and privileges and the dismissal and appeals procedure. <i>(AI recommendation)</i>	
2. Independence	
The functional independence of the NPM and its members must be guaranteed. <i>(Article 18(1) Optional Protocol)</i>	
Members of the NPM must be guaranteed privileges and immunities that are necessary for them to function independently. <i>(Article 35 Optional Protocol)</i> In particular, the members of the NPM should have immunity from arrest, detention and any other legal processes as a result of the exercise of their functions. <i>(AI recommendation)</i>	
The NPM should have its own premises. <i>(Paris Principles: Composition and Guarantees of Independence, Principle 2)</i>	
The appointment procedure for the members of the NPM should be independent and set out the duration of membership. <i>(Paris Principles: Composition and Guarantees of Independence, Principle 3)</i>	
The NPM should be able to draft its own rules and procedures. <i>(AI recommendation)</i>	
3. Adequate funding, free from political restrictions	
The NPM must have adequate funding to function effectively. <i>(Article 18(3) Optional Protocol)</i>	
The founding instrument should provide for long-term funding and ensure that funding can not be restricted for spurious reasons e.g. as a punishment for criticism. <i>(AI recommendation)</i>	
The NPM should have financial control over its own staff i.e. to hire, fire and pay its own staff. <i>(Paris Principles: Composition and Guarantees of Independence, Principle 2)</i>	

<p>4. Independent, capable, gender-balanced and representative members</p>	
<p>The members of the NPM must have the required capabilities and professional knowledge to function effectively. <i>(Article 18(2) Optional Protocol)</i></p>	
<p>The membership should strive for a gender balance and adequate representation of ethnic and minority groups. <i>(Article 18(2) Optional Protocol)</i></p>	
<p>The appointment procedure detailed in the founding instrument should take into account the specific expertise required for visiting places of detention to prevent torture and other ill-treatment. Relevant experts would include lawyers, doctors including forensic specialists, psychologists, penitentiary management experts, human rights experts and civil society representatives. <i>(AI recommendation)</i></p>	
<p>5. Widest possible application of the definition of “places of detention” and “detainees”</p>	
<p>The founding instrument of the NPM must guarantee it access to any place under the state party's jurisdiction and control where people 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. <i>(Article 4(1) Optional Protocol)</i>.</p>	
<p>The NPM must function throughout a state party, including all parts of a federal state without limitations or exceptions. <i>(Article 29 Optional Protocol)</i></p>	
<p>The definition of “places of detention” should include inter alia: police stations, military and other security forces’ stations and detention centres, all pre-trial centres, remand prisons, prisons for sentenced persons, places outside prisons where prisoners are employed, hospitals or clinics where prisoners are treated, rehabilitation and similar centres for juveniles, immigration centres, transit areas at international ports, transit vehicles, centres for detained asylum seekers, refugees or internally displaced persons, psychiatric institutions, and other places of administrative detention where people are not permitted to leave at will, and places believed to be unofficial or secret places of detention. <i>(AI recommendation)</i></p>	
<p>6. Full, immediate, unhindered access to all places of detention and detainees</p>	
<p>The NPM must be allowed to conduct regular visits to all places of detention, their installations and facilities. <i>(Articles 4 and 20(c) Optional Protocol)</i></p>	
<p>The NPM must be able to choose the places it wants to visit. <i>(Article 20(e) Optional Protocol)</i></p>	
<p>If there are several NPM they must collectively monitor all places of detention. <i>(AI recommendation)</i></p>	
<p>The NPM should be able to set the frequency of its regular visits without interference. <i>(AI recommendation)</i></p>	
<p>The NPM should be able to initiate contact with directors of places of detention and the executive, in particular where urgent action is required. <i>(AI recommendation)</i></p>	

7. Unrestricted access to all relevant information	
The NPM must have access to all information relating to the number of persons deprived of their liberty. <i>(Article 20(a) Optional Protocol)</i>	
The NPM must have access to information on the number of places of detention and their location. <i>(Article 20(a) Optional Protocol)</i>	
The NPM must have access to all information about the treatment of persons deprived of their liberty and conditions of detention. <i>(Article 20(b) Optional Protocol)</i>	
The NPM must be able to choose the persons it wants to interview and to conduct private interviews. <i>(Articles 20(d) and (e) Optional Protocol)</i>	
8. Unrestricted, safe access to the NPM	
Guarantees must be put in place to ensure that no person or organisation is penalised for communicating any information, whether true or false, to the NPM. <i>(Article 21(1) Optional Protocol)</i>	
Procedures must be put in place to ensure that confidential information collected by the NPM will not be published without the express consent of the person concerned. <i>(Article 21(2) Optional Protocol)</i>	
A procedure should be put in place to ensure that information regarding the NPM and on ways to contact it, is readily available to the public and all persons deprived of their liberty. <i>(AI recommendation)</i>	
9. Direct, unhindered, untapped communications with the Subcommittee	
The NPM must be able to communicate and meet with the Subcommittee without interference. <i>(Articles 12(c) and 20(f) Optional Protocol)</i>	
If there are several NPMs there should be a clear and coherent process for coordinating and communicating with each other and the Subcommittee. <i>(AI recommendation)</i>	
10. NPMs recommendations and follow-up to be taken seriously	
The NPM must be allowed to make recommendations to the relevant authorities. <i>(Article 19(b) Optional Protocol)</i>	
The relevant authorities must be obligated to examine the recommendations of the NPM and to discuss their implementation with the members of the NPM. <i>(Article 22 Optional Protocol)</i>	
The relevant authority must be obligated to publish and disseminate the annual reports of the NPM. <i>(Article 23 Optional Protocol)</i>	
The NPM must be able to submit proposals and observations on existing or draft legislation. <i>(Article 19(c) Optional Protocol)</i>	
The NPM should be able to submit reports to and, where appropriate, address in person directors of places of detention, legislative bodies, the Executive and other political institutions. <i>(AI recommendation)</i>	
The NPM should be able to independently make public the findings of its visits without interference. <i>(AI recommendation)</i>	