



CHECKLIST FOR THE EFFECTIVE IMPLEMENTATION OF THE OPCAT

-Establishment of National Preventive Mechanisms (NPMs)-ⁱ

1. Establishment of the NPM	
The NPM should be <u>established within one year</u> of the entry into force, of the OPCAT, for the state concerned, unless at the time of ratification a declaration has been made in accordance with Article 24 of the OPCAT. (<i>OPCAT articles 17 and 24 and SPT Guidelines on NPMs at para. 21</i>)	
A declaration of postponement of the implementation of the obligations under part III (visits by the SPT) or part IV (establishment of the NPM) shall be valid maximum three years (with a possibility of an extension for further two years by the Committee against Torture.) (<i>OPCAT article 24</i>)	
The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. (<i>SPT Guidelines on NPMs at para. 16</i>)	
The founding instrument should go beyond stating general principles and detail the actual functioning of the NPM. The NPM's mandate and powers, in accordance with the OPCAT, should be set out in a constitutional or legislative text. (<i>SPT Guidelines on NPMs at para. 6 and 7</i>)	
The founding instrument should ensure its independence and access to all places of detention as defined under Article 4 of the OPCAT. (<i>AI recommendation and SPT Guidelines on NPMs 10</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, privileges and immunities and the dismissal and appeals procedure. (<i>AI recommendation, SPT Guidelines on NPMs at para. 9, 16, and 26 and OPCAT article 35</i>)	
The founding instrument shall also include an agreed procedure for dissolving the NPM, so that it cannot be dissolved arbitrarily or unlawfully. (<i>AI recommendation</i>)	
2. Independence	
The functional and operational independence of the NPM and its members must be guaranteed. (<i>OPCAT article 18(1), SPT Guidelines on NPMs at para. 8</i>) This means that the NPM should be formed in such a way that it does not constitute any part of the government, parliament, judiciary or prison system. (<i>AI</i>	

<i>recommendation)</i>	
The appointment procedure for the members of the NPM should be through an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. It should set out a period of office that should be sufficient to foster the independent functioning of the NPM. (<i>Paris Principles: composition and guarantees of independence, principle 3 and SPT Guidelines on NPMs at para. 9 and 16</i>)	
The state should not appoint to the NPM members who hold positions that could raise questions of conflict of interest. (<i>SPT Guidelines on NPMs at paras. 18</i>)	
Members of the NPM must be guaranteed privileges and immunities that are necessary for them to function independently. (<i>OPCAT article 35 & SPT Guidelines on NPMs at para.26</i>) In particular, they 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 enjoy complete financial and operational autonomy and avoid actual and perceived conflicts of interest when carrying out its functions. (<i>SPT Guidelines on NPMs at paras. 12 and 30</i>)	
The NPM should have its own premises. Where the NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget. (<i>Paris Principles: composition and guarantees of independence, principle 2 and SPT Guidelines on NPMs at para. 32</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 the necessary resources, including adequate funding to function effectively. (<i>OPCAT article 18(3) and SPT Guidelines on NPMs at para. 11</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, including to hire, dismiss and pay its own staff. (<i>Paris Principles: composition and guarantees of independence, principle 2</i>)	
4. Independent, capable, gender-balanced and representative members	
The experts of the NPM must have the required capabilities and professional knowledge to function effectively, ensuring gender balance and adequate representation of ethnic and minority groups. (<i>OPCAT article 18(2) and SPT Guidelines on NPMs at para. 17 and 20</i>)	
The appointment procedure detailed in the founding instrument should take into account the specific expertise and experience	

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, and human rights experts. <i>(SPT Guidelines on NPMs at paras. 17 and 20 and AI recommendation)</i>	
The members and staff of the NPM should regularly review their working methods and undertake training in order to enhance their ability to execute their functions effectively. <i>(SPT Guidelines on NPMs at paras. 31)</i>	
5. Widest possible application of the definition of “places of detention” and “detainees”	
The founding instrument of the NPM must guarantee it access to any place under the state party's jurisdiction (i.e where it exercises effective 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. The NPM must function throughout a state party, including all parts of a federal state without limitations or exceptions. <i>(OPCAT article 4(1) and 29 and SPT Guidelines on NPMs at para. 24 and 33)</i>	
The definition of “places of detention” should include any places where people are or may be deprived of their liberty by 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. <i>(OPCAT article 4(1) and (2)). This includes police stations, military and other security forces' stations and detention centres, all pre-trial detention centres, remand prisons, prisons for sentenced persons (civilian and military), 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. (AI recommendation)</i>	
6. Full, immediate, unhindered access to all places of detention and detainees	
The NPM must be allowed to conduct regular visits, announced and unannounced, to all places of detention, their installations and facilities. <i>(OPCAT articles 4 and 20(c) and SPT Guidelines on NPMs at para. 24 and 25)</i>	
The NPM must be able to choose the places it wants to visit and set the frequency of its regular visits without interference. <i>(OPCAT article 20(e) and SPT Guidelines on NPMs at para. 25)</i>	
If there are several NPMs they must collectively monitor all places of detention. <i>(AI recommendation)</i>	
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>	
7. Unrestricted access to all relevant information	
The NPM must have access to all information relating to the number of places of detention and their location. <i>(OPCAT article 20(a))</i>	
The NPM must have access to all information relating to the number of persons deprived of liberty. <i>(OPCAT article 20(a))</i>	
The NPM must have access to all information about the treatment of persons deprived of their liberty and conditions of detention. <i>(OPCAT article 20(b))</i>	
The NPM must be able to choose the persons it wants to interview and to conduct private interviews. <i>(OPCAT articles 20(d) and (e))</i>	
8. Unrestricted, safe access to the NPM	
Guarantees must be put in place to ensure that no person or organisation is subject to any form of sanction, reprisal, or other harm for communicating any information, whether true or false, to the NPM. <i>(OPCAT article 21(1) and SPT Guidelines on NPMs at paras. 14 and 27)</i>	
Procedures must be put in place to ensure that confidential information collected by the NPM is not published without the express consent of the person concerned. <i>(OPCAT article 21(2))</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>(OPCAT articles 12(c) and 20(f))</i>	
If there are several NPMs there should be a clear and coherent process for coordinating and communicating with each other and the SPT. <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 with the aim of improving the treatment and the conditions of the persons deprived of liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. It should also be granted the power to submit proposals and observations concerning existing or draft legislation. <i>(OPCAT article 19(b) and (c) and SPT Guidelines 35 and 36)</i>	
The NPM should be able to independently make public the findings and recommendations from its visits without interference. 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 actively seek to follow-up on the implementation of any recommendations which the Subcommittee has made in relation to the country in question, liaising with the Subcommittee when doing so. <i>(SPT Guidelines on NPMs at para. 38)</i>	
The relevant authorities must examine the recommendations of the NPM and to discuss their implementation with the members of the NPM in a follow-up process. <i>(OPCAT article 22 and SPT Guidelines on NPMs at paras. 13)</i>	
The relevant authority must publish and disseminate the annual reports of the NPM. It should also ensure that it is presented to, and discussed in the national legislative assembly, or Parliament or other political institutions. The Annual Reports of the NPM should also be transmitted to the SPT which will arrange for their publication on its website. <i>(OPCAT article 23 and SPT Guidelines on NPMs at paras. 29)</i>	

ⁱ This is an updated version of the checklist contained in IOR 51/009/2007. The full text of the standards and guidelines cited are available here: *OPCAT*: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

SPT Guidelines on national preventive mechanisms:
http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc

Paris Principles: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/48/134&Lang=E>