



association pour la prévention de la torture
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association for the prevention of torture

Membership of National Preventive Mechanisms: Standards and experiences

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Introduction

The Optional Protocol to the UN Convention against Torture (OPCAT) is based on the premise that regular visits by independent experts to places of deprivation of liberty is one of the most effective means to prevent torture and ill-treatment. The key obligation of State Parties to the OPCAT is to create a National Preventive Mechanism (NPM) in the form of one or several independent national bodies empowered and capable to conduct these preventive monitoring visits. The State party needs to grant the functional independence of the NPM and of its individual members.

NPMs are generally composed of two or three categories of persons: the members of the NPM, the staff of the NPM and (sometimes) external experts. Members are the persons officially appointed to the institution, whereas the staff is employed by members to support their work. Some NPMs can further call on external experts for specific tasks such as visits to special types of places of detention.

Members of the NPM should collectively have the expertise and experience necessary for its effective functioning.¹ In a given State, the national law establishing the NPM defines the criteria for selection of NPM members and defines which authorities will nominate, select and designate these members. The process for the selection and appointment of members of the NPM should be open, transparent and inclusive and involve wide range of stakeholders, including civil society.²

¹ Subcommittee for the Prevention of Torture, Guidelines for NPMs (CAT/OP/12/5), § 17.

² Subcommittee for the Prevention of Torture, Guidelines for NPMs (CAT/OP/12/5), § 16.

Preventive monitoring is a specialised task that requires personal dedication and specific skills. NPMs can only be effective if they are composed of persons who combine both dedication to the cause and the required skills to conduct the monitoring. This briefing paper aims to provide guidance for these stakeholders involved in the selection and appointment process for NPM members to enable them to make the right choices. It would like to provide answers to the following questions:

- What kind of skills and profile do candidates for membership in a NPM need?
- What else do nominating and appointing authorities need to take into consideration when proposing candidates?

The OPCAT provides a series of standards. In addition to this, this paper also draws some preliminary lessons from existing NPMs and monitoring bodies in other parts of the world.

1. OPCAT standards

1.1 Independence

First of all, members, staff and experts of an NPM need to be personally and institutionally independent from State authorities. The OPCAT requires that the State Parties guarantees the functional independence of the institution as a whole and ensures that the institution is composed of independent personnel (OPCAT, Article 18.1). In practice, independence means that the NPM must be capable of acting without interference from State authorities. This includes obviously not tolerating interference from authorities responsible for prisons, police stations and other places of detention, nor from the government, and the civil administration. They equally must not tolerate interference by political parties. The NPM also needs to be independent from the judiciary and from other actors in the criminal justice system.

The NPM should therefore not include individuals who presently occupy (or are on short term leave from) active positions in the government, the criminal justice system or law enforcement. They should further be independent in the sense that they should have no personal allegiances with leading political figures or with law enforcement personnel. Even if the proposed member would in fact act in an impartial manner, if she or he could be perceived as being biased, this could seriously compromise the work of the NPM. Therefore, members must be independent and must be seen to be independent.

1.2 Required capabilities and professional knowledge

According to the OPCAT, "State Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism the required capabilities and professional knowledge". (OPCAT, Article 18.2).

Preventive monitoring relies on a multidisciplinary approach. The NPM thus needs to be able to draw on professional knowledge in a number of fields, such as human rights, healthcare (including physical and mental health), and the administration of justice.

In the field of healthcare, public health skills will contribute to understand the overall system of health provision in the places of detention. Psychological knowledge is key to understand the mental health aspects of detention, while forensic expertise is needed to examine victims of torture and ill-treatment.³

1.3 Pluralistic composition

Thirdly, the OPCAT requires that State parties “strive for a gender balance and the adequate representation of ethnic and minority groups in the country (OPCAT, Article 18.2)”. The pluralist composition of the NPM ensures that the NPM is well rooted in the different ethnic and social compositions of the country and includes different perspectives. This is of practical relevance when conducting monitoring visits so that the NPM can relate to the different persons it will encounter, and also for it to be able to convince large segments of the population about the importance of preventing torture and ill-treatment, and to communicate its messages in a convincing way.

2. Practical application

Different lessons can be learned from the application of these standards in practice. The following lessons are not an exhaustive list, and more aspects continue to appear with each new National Preventive Mechanism.

2.1 Availability

Preventive monitoring is time consuming. Preparation, conduct and follow-up to visits in all parts of the country take a lot of time. Moreover, members of NPMs need to be flexible in the employment of their time in order to be able to visit at all times of the day and night, as well as react quickly to urgent matters and emergencies in places of detention.

Appointing authorities have a tendency to appoint well-known persons that have proven their capacities and capabilities through a number of previous mandates and appointments at the national and the international level. Such person can indeed be key to give a high-profile to the institution, which in return can open doors and ears of policy makers and detaining authorities. Persons with a high-profile reputation

³ More information on the role of health professionals in detention monitoring is available in [“Visiting places of detention: what role for physicians and other health professionals?”](#), APT, Geneva 2008.

might be able to be more upfront and courageous in challenging the administration, which can be necessary at times to push for torture prevention reforms.

The downside of this choice is that such high-profile persons might not be available enough for the mandate as a member of the mechanism, for example if they are frequently out of the country or engaged in other activities.

2.2 Conflict of interest

Members and staff of NPMs need expertise related to detention and the administration of justice. But they will often have acquired this expertise through working within the system. This can lead to conflicts of interest.⁴ Conflict of interest can also arise where experts provide services in advisory capacities to authorities in charge of places of detention.

It is important to ensure that members of NPMs are not put in a position where they have to monitor the implementation of policies that are the fruit of their own advice, which would consist of a clear conflict of interest.

In order to avoid conflicts of interest, some appointing authorities have opted for appointing persons at the end of a career or persons that have already retired from service. But of course this will only be effective in societies in which alliance to a service or an administration effectively ends with the end of the contract or career.

In some jurisdictions, NPM members are nominated or proposed by their professional associations or by peers. This might also lead to conflict of interest, if they feel that they need to represent the interest of their professional association in the NPM.

Former prisoners can also make important contributions based on their expertise. Some NPMs have therefore started to call upon “former service users” as experts. However, former detainees might also be confronted with a different type of conflict of interest that can manifest itself in a lack of distance when confronted with difficult individual situations. Appointing authorities therefore have to be careful to avoid appointing persons who could be re-traumatised.

In small countries, appointing authorities have tried to avoid conflicts of interest for members of NPMs by appointing members who made their professional experience outside of the country to ensure that they have a certain distance from the civil servants and authorities.

⁴ Subcommittee for the Prevention of Torture, Guidelines for NPMs (CAT/OP/12/5), § 18.

2.3 Communication skills

National Preventive Mechanisms provide a link between some of the most vulnerable individuals in society, the illiterate and marginalised among the prisoners, to the highest level of authority in the state. Moreover, they need to be able to communicate their message effectively to the larger public.

Members of the NPM need therefore to be able to communicate with the vulnerable individuals in a simple and respectful way. On the other hand, they need to be able to gain the trust of members of parliament, ministers and senior officials.

This requires very good communication skills and an open mind. Experience in communicating with persons from all walks of lives can therefore become an important criterion for selection of members. Human rights defenders, doctors, lawyers or teachers might have gathered such experiences. On the other hand, negotiation skills and readiness to engage with high level authorities is necessary to obtain torture prevention reforms.

It is obvious that designating persons with a discriminatory attitude would be very inappropriate.

2.4 Group dynamic and composition

The NPM needs to be able to function and communicate as an entity. This is particularly challenging when made up of a relatively large number of individuals not engaged on a full-time basis. Appointing authorities have sometimes failed to consider the group dynamic. If a body is made up of several high-level individuals this might lead to a conflict of leadership within the NPM. Members of a NPM should therefore be ready to work in a team and respect each other and agree on a coherent joint methodology and purpose.

The NPM needs to be able to develop a group identity. This requires that the members will not represent other institutions during visits and meetings in which they represent the NPM. It would be harmful for the NPM, for example, if an NPM member stemming from an NGO providing a legal or medical service to detainees would mix up between the different roles while conducting visits.

The OPCAT requires from states to strive for gender balance in the composition of NPMs. In practice it has indeed proven very important for visiting teams to be able to rely on men and women, in particular because of the general segregation of gender observed in places of detention.

3. Conclusion

Preventive monitoring requires a set of quite specific skills, as briefly laid out in this paper. But an NPM can only succeed thanks to the commitment of individuals who are dedicated to preventing abuses against human dignity for all persons deprived of liberty. Successful NPMs are therefore made up of dedicated individuals ready to listen, to observe, to analyse and to follow through for the implementation of recommendations.

For more information check the "[Optional Protocol to the UN Convention against Torture: Implementation Manual](#)", APT 2010 and the [OPCAT data base](#) on the APT website.



Association for the Prevention of Torture - APT

Centre Jean-Jacques Gautier

Route de Ferney 10 P.O. Box 137

CH - 1211 Geneva 19

T +41 22 919 21 70 F +41 22 919 21 80

apt@apt.ch www.apt.ch