

## **CHECK LIST FOR HELPING TO ASSESS POTENTIAL NATIONAL PREVENTIVE MECHANISMS UNDER THE OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE (OPCAT)**

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the United Nations in 2002, will establish a system of regular visits to all places of detention in order to prevent torture and ill-treatment. Visits will be carried out by an international Sub-Committee to be established by the UN and by one or several National Preventive Mechanisms that States Parties have to set up, designate or maintain. If the Protocol contains a series of guarantees and powers for the National Preventive Mechanism, it leaves a large margin of appreciation regarding its form. The Association for the Prevention of Torture (APT) recommends that the process of defining the National Preventive Mechanism be open and participative, involving all relevant actors.

The present checklist is intended for national and international actors involved in designating or creating National Preventive Mechanisms under the OPCAT. It is a practical tool which should help them in this process by identifying a number of concrete issues to take into consideration in their reflection.

This tool aims at supporting them in

- assessing if a potential NPM meets minimal standards under the OPCAT
- understanding its strength and weaknesses
- improving the effectiveness of existing mechanisms

It consists of a list of 46 criteria for guiding the assessment of existing or planned National Preventive Mechanisms based on OPCAT standards and best practices in monitoring places of detention. The checklist is composed of the following four parts:

- I. Background information
- II. Minimal standards of the OPCAT
- III. Effective monitoring in practice
- IV. Additional criteria in case of potential multiple mechanisms

In Part I, necessary background information about the mechanism and the country should be provided to help in the global assessment process. Part II deals with the formal requirements of the OPCAT itself. It could be used independently, for assessing whether an existing or a planned mechanism would fulfil these requirements for becoming a National Preventive Mechanism. The criteria in Part III are applicable mainly for existing mechanisms and help assess their effectiveness in practice. However, the criteria could also serve as useful concrete elements to take into account when setting up a new mechanism. Therefore, the criteria are complemented by some explanations and recommendations. Finally, Part IV is only useful when, in a single country, it is envisaged to designate several national visiting bodies as NPM.

In order for the tool to be practical, the APT had to make certain choices in the selection of criteria. It is therefore important to note that while the criteria are clearly laid out in international law and practice, the selection is not set in stone.

The application of this list of criteria, to a certain mechanism in a country, **will be most effective if it is conducted as a joint exercise involving all relevant stakeholders.**

**PART I. BACKGROUND INFORMATION**

**About the Mechanism**

Name of the mechanism: .....

Date of creation:..... Annual budget:.....

Mandate:.....

Legal basis .....

Number of members (male/female):.....

Number of staff (male/female) .....

Are there other bodies carrying out visits to places of detention in the country?

.....

**About the national context**

Size of the country:.....

Population:.....

Prison population:.....

Number of prisons .....Number of pre-trial detention centres.....

Number of psychiatric institutions.....

Number of homes for juveniles.....

Number of detention facilities for migrants:.....

Number of military barracks.....

## PART II. OPCAT MINIMAL CRITERIA

### MANDATE AND VISITING POWER

1. Is the mechanism specifically mandated to conduct preventive visits? Are these visits regular? Unannounced?

2. Does the mechanism have access to all places of deprivation of liberty, as defined by the OPCAT<sup>1</sup>? (Art. 20c of the OPCAT)

For example: police stations, prisons, pre-trial detention centres, psychiatric institutions, migrants holding facilities, centres for juveniles, military barracks...

3. Does the mechanism have access to all facilities and installations within all places it can visit? (Art. 20c of the OPCAT)

4. When visiting these places of detention, is the mechanism allowed to conduct interviews in private with any detainee they want in any location they want? (Art.20 d and e of the OPCAT)

5. Does the mechanism have access to all information concerning the number of detainees and places of detention, the treatment of detainees and their conditions of detention? (Art. 20 a and b of the OPCAT)

6. Is there any guarantee that persons in contact with the mechanism will not be sanctioned? (Art 21.1 of the OPCAT)

7. Do the authorities have an obligation to consider the recommendations made by the mechanism? (Art. 22 of the OPCAT)

**ASSESSMENT: Does the mechanism have as a minimum the visiting powers and guarantees as laid down in the OPCAT? If not, what is missing and how could this be rectified? Would the mandate as NPM integrate well into the general mandate of the institution?**

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<sup>1</sup> “For the purposes of the present Protocol, deprivation of liberty 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”. Art. 4.2 of the OPCAT.

**PART II OPCAT MINIMAL CRITERIA**

<b>MANDATE AND VISITING POWER</b>
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<b>ASSESSMENT:</b>

## **FUNCTIONAL INDEPENDENCE<sup>2</sup>**

8. Are the human and financial resources sufficient to allow the mechanism to conduct effective monitoring? (Art. 18.3 of the OPCAT)  
(what part of the annual budget is devoted to monitoring? What would be an ideal budget?)

9. Does the mechanism have financial autonomy and control over its own budget?

10. What is the legal basis founding the mechanism? Is it sufficiently high up in the hierarchy to guarantee independence?

11. Do any members of the mechanism have links with the executive branch? Does this jeopardize their independence? Who appoints and dismisses the members and is the procedure open and transparent?

12. Does the mechanism hire its own staff and is it located in premises other than those occupied by the executive or judicial branch?

**ASSESSMENT: Is the mechanism formally and functionally independent? Is it seen as independent? If not, what would need to be changed in order to make it fully independent?**

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<sup>2</sup> Art. 18.1 of the OPCAT

**FUNCTIONAL INDEPENDENCE**

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**ASSESSMENT:**

### COMPOSITION<sup>3</sup>

13. What is the professional background of the members? Do they have the necessary capabilities and knowledge for monitoring? Are the visiting team also composed of professionals from different disciplines (in particular: medical and human rights)?

14. Is the mechanism gender balanced? Does it have an adequate representation of ethnic, linguistic and minority groups? Are these also respected in the teams that conduct the visits?

15. Do the members and staff receive training (initial/on-going) on detention monitoring or other relevant professional training?

**ASSESSMENT: Does the mechanism have the needed human resources to conduct visits according to the OPCAT, respecting the principles of capabilities, multidisciplinary and diversity? If not, how could this be rectified?**

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<sup>3</sup> ART. 18. 2 of the OPCAT.

**COMPOSITION**

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**ASSESSMENT:**

### PART III: EFFECTIVE MONITORING IN PRACTICE

#### PREPARING AND CONDUCTING THE VISITS

16. What is the total number of visits conducted in a year, by categories of places of detention? Are remote places also visited? What is the *average frequency* of the visits, by categories of places?

*Visits should be both regular and frequent. Frequency can vary according to the type of place (monthly, quarterly, annual visits). It is recommended that the most important or most problematic places be visited more than once a year.*

17. Do the visits have to be *announced* in advance? If yes, how long before and to whom?

*In order to have an effective preventive effect, mechanisms should be able to have access to any place at any time, without prior notice. For practical reasons however, a mechanism could decide to announce specific visits in advance. The mechanism should be able to visit immediately in cases of specific problems or incidents (for example prison riot).*

18. Is the mechanism *selecting the places* to be visited? If, yes how? According to information received, to a clear strategy or randomly?

*According to Art. 20 e) OPCAT, the mechanism must have the liberty to choose the place it wants to visit. When a selection has to be made it can be based on different criterias: information available, regions, types of places, vulnerability of detainees, gravity of the problems...*

19. Are the visits *prepared* beforehand? How (by checking previous internal reports, collecting information from other sources, making contacts with the director or with other actors)?

*Preparation is very important for a visit to take place in the best conditions and should at least include a summary of all available information regarding the place of detention.*

20. Does the visiting team conduct an *initial and a final talk* with the director, treating substantive issues (as opposed to pure courtesy meetings)?

*The initial talk enables the visiting team to introduce the members, explain the objectives and the conduct of the visit, as well as collect recent information on the place. During the final talk, the team can summarise the facts found and raise specific issues. The team must be able to meet briefly before this final talk in order to prepare.*

21. Does the visiting team conduct a *general tour* and/or inspect specific premises within the prison (like punishment cells, hospital, cells)?

*A short general tour should be done with all the team, at least during the first visit to a place. Some premises should absolutely be visited: arrival area, disciplinary cells, cells and dormitories, sanitary installations.*

**PART III: EFFECTIVE MONITORING IN PRACTICE**

<b>PREPARING AND CONDUCTING THE VISIT</b>	
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22. Does the mechanism consult *registers*? What type? (entry/release; medical registers; registers of incidents, use of force; registers concerning activities, work, education)?

*The visiting team should be able to consult all types of registers. The most important are the entry registers and the ones concerning the incidents and use of force.*

23. How do visitors *choose the detainees* with whom to conduct private interviews? Where do these interviews take place (is it out of hearing and out of sight of the guards)?

*According to Art. 20 e) OPCAT, the mechanism should be able to choose the persons it wants to interview. It is important not to talk only to those who seek contact and to select persons as representative as possible of the different categories of detainees in order to get accurate information and protect the detainees. The interview should not take place in administrative offices but in any other place where the detainees feel confident, which is out of hearing and possibly out of sight of the guards.*

24. How is the *interview* conducted? (how many persons, use of questionnaire, is information registered?)

*Interviews in private lie at the heart of an effective monitoring process. It should be based on confidence, empathy and good use of time and avoid by all means taking the form of an interrogation. The interview should be conducted by no more than 2 persons, one of which can take notes. If the detainee agrees, a questionnaire can be useful tool if not used in a too rigid manner.*

25. How does the mechanism deal with *allegations of torture* (transmission with express consent) and how does the mechanism try to protect the persons in contact with it?

*It is crucial to ask the detainee whether allegation can be transmitted to the authorities and whether his/her name can be mentioned.*

26. Does the mechanism pay special attention to *vulnerable groups* (women, children, perpetrators of certain crimes, mentally ill, extreme poor, HIV positive)?

*It is important for the mechanism to be aware of the specific problems and needs of vulnerable groups.*

**ASSESSMENT: Do the visiting teams conduct their visits according to international best practices outlined in the criteria above? If not, what is the potential for change?**

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**ASSESSMENT:**

## FOLLOW-UP TO VISITS

27. What type of *reporting* takes place following visits?

*The follow-up is as important (if not more) than the visit itself. Reporting can include internal reports, reports to authorities for each visit, global report covering several visits (for example: annual or thematic reports).*

28. Do the reports include *recommendations* to different levels of authorities? Are these specific

*According to Art. 19 b) of the OPCAT, the NPM should have the power to “make recommendations to the relevant authorities”. For these to be effective, they should be addressed to the relevant level of authority (with powers to implement them), be concrete and specific, with a priority ranking and a time factor.*

29. Does the mechanism *identify root causes* of the problems and address them at the appropriate level?

*Identifying root causes enables the mechanism to formulate more substantial and pragmatic recommendations.*

30. Are the *reports made public*? Sent to media?

*According to Art. 23 of the OPCAT, States should publish and disseminate the NPM’s annual reports. The mechanisms can also make their visit reports public. In the future reports can also be sent to the UN Sub-Committee to be established by the OPCAT.*

31. Does the mechanism conduct *follow-up visits* during which the implementation of recommendations is verified?

*When visits are frequent they necessarily include a certain follow-up. Mechanisms can also decide to conduct follow-up visit specifically to look at the degree of implementation of previous recommendations.*

32. Does the mechanism use other complementary actions (work on legislation, litigation, training, etc..)?

*Visits can constitute only one element of a more global strategy to prevent torture and ill-treatment and can usefully be complemented by other follow-up actions, according to the mandate of the mechanism. Art. 19 c of the OPCAT confers NPM with the power to comment on existing or draft legislation.*

**ASSESSMENT: Does the mechanism transmit clearly formulated recommendations on the prevention of torture and the improvement of conditions of detention to the appropriate level of authorities? Does it following-up on their implementation?**

**FOLLOW-UP TO VISITS**

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**ASSESSMENT:**

## IMPACT / RESULTS

33. Do the authorities have to take position, comment or reply to the reports and recommendations? Are they doing it in practice?

*According to Art. 22 of the OPCAT, the authorities shall examine the recommendations and enter into dialogue on their implementation. Authorities should answer the reports and take position on the recommendations.*

34. What is the level of cooperation with the authorities?

*Monitoring process is based on cooperation. The authorities should cooperate with the mechanism at all stages: before, during and after the visit and in the implementation of recommendations. The degree of cooperation can however vary.*

35. Does the mechanism actively push for the *implementation of its recommendations*? Does it have a good track record of implemented recommendations? Are obstacles outside its control?

*Formulating recommendations is usually not sufficient to bring changes and needs a more proactive strategy for them to be implemented: follow-up actions, awareness raising, contacts with other actors etc...*

36. Are there any examples of *improvements* following implementation of recommendations? At what level? (For specific detainees? in the places visited: material conditions, regime, etc.? Legislative changes?)

*The final aim of monitoring activities is to improve the treatment of persons deprived of their liberty and their conditions of detention. The mechanism should be able to show concrete positive results of this process.*

37. Is the mechanism cooperating with other actors involved directly or indirectly in monitoring places of detention? How?

*Other actors at the national level are also interested and monitoring places of detention and it is important for the mechanism to have contacts with them, establish certain cooperation and possibly coordinate their work for an increased impact.*

**ASSESSMENT: Does the mechanism have an established track record of striving to achieve concrete results in terms of the prevention of torture and ill treatment?**

**IMPACT / RESULTS**

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**ASSESSMENT:**

## **INDEPENDENCE AND EFFECTIVENESS IN PRACTICE**

38. Are there any examples of when the mechanism insisted to use its powers in spite of resistance from the authorities?

*Monitoring is usually based on cooperation and dialogue with the authorities but on some occasions it can be necessary for the mechanism to be more confrontational in order to be able to exert fully and effectively its power and mandate.*

39. Is the mechanism credible and *perceived* to be independent by the detainees, by the media, by the civil society?

*To be independent is as important as being perceived to be independent, especially by all interested actors involved.*

40. Is the mechanism respected and considered to be effective by the authorities, the detainees, the media and civil society?

41. Is the mechanism composed of people of high morale standing showing commitment and willingness to bring changes?

*In the end, the effectiveness and the impact of the mechanism will depend on the personality of its members and their personal commitment.*

**ASSESSMENT: Is the mechanism independent and effective in practice?**

**INDEPENDENCE AND EFFECTIVENESS IN PRACTICE**

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**ASSESSMENT:**

## PART IV: POTENTIAL MULTIPLE NATIONAL PREVENTIVE MECHANISMS

42. What other mechanisms carry out visits and which type of places do they visit? Is there overlap or gaps?

43. Is there a system of consultation and coordination in place between the different mechanisms?

44. Are there any plans regarding the coordination for the contacts between the multiple NPM and the future UN Sub-Committee?

45. Is there a way of ensuring that the methodology and standards applied by the different mechanisms are coherent?

46. Are there examples of inconsistency or contradiction between different mechanisms? Are there examples of synergies and mutual reinforcement between the mechanisms?

**ASSESSMENT:**

**PART IV: POTENTIAL MULTIPLE NATIONAL PREVENTIVE MECHANISMS**

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**ASSESSMENT:**

**ANY OTHER REMARKS**

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