

# OPCAT – National Preventive Mechanism

The Optional Protocol to the Convention against Torture (OPCAT) obliges each State party to “maintain, designate or establish ... one or several independent national preventive mechanisms for the prevention of torture at the domestic level”.

## What is the national preventive mechanism?

The Optional Protocol creates special mechanisms to prevent torture and other ill-treatment taking place in countries that have agreed to be bound by it. It does this by establishing mechanisms at two levels: the international level and the national level. At the *international level*, a **Sub-Committee on Prevention** (SCP) has already been established in Geneva, composed of independent experts elected by States parties and mandated to undertake regular visits to places of detention inside those countries that have become States parties. The **national preventive mechanism** is the counterpart of the SCP at the *national level*. Each State party is obliged to set one up to work alongside the SCP by undertaking its own regular visits to places of detention in order to prevent torture and other ill treatment taking place.

## What are the basic requirements for the national preventive mechanism?

The Optional Protocol sets out four basic requirements in article 18 which must be met when the NPM is established by the Government:

- The NPM must be **independent of the Government**. Independence includes functional independence, which means that the NPM must not be under authority of any government ministry or other institution and should be established by its own organic law or constitutional provision. The personnel employed by the NPM should be independent, that is to say they cannot also work for government ministries or other institutions.
- The NPM’s **membership** must include: (i) **professionally competent experts**; (ii) both men and women (**gender balance**); (iii) representatives of **ethnic and minority groups**.
- The NPM must be **adequately funded**.
- The NPM should be established in conformity with the **Paris Principles**—the United Nations principles relating to the status of national institutions for the promotion and protection of human rights. The Paris Principles are explained in detail in a separate note.

## Can members of the Government also be members of the national preventive mechanism?

No. There are three reasons why it would be inappropriate for members of the Government to also be members of the NPM. Firstly, it would undermine the independence of the NPM in the eyes of the public. Secondly, the Optional Protocol requires the NPM to engage in a constructive dialogue with the Government on ways to improve conditions in detention facilities in the country. If members of the Government were members of the NPM, the Government would be talking to itself and the dialogue would not be real. Thirdly, the NPM will have access to confidential information through interviews with detainees which the Optional Protocol guarantees must be kept confidential from the Government.

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## **Can members of NGOs also be members of the national preventive mechanism?**

Yes. There is no conflict of interest between being working for a non-governmental organization and being a member of the NPM. Indeed, NGOs are an important source of the professional expertise required to be an effective member as they have experience in independent monitoring.

## **Who decides whether Cambodia's NPM has been established in accordance with these requirements?**

The NPM is supposed to work as a national counterpart to the international SCP based in Geneva. In order for the SCP to work with any national institution, it will have to assess whether that institution has met the requirements to be recognized as the NPM. If the NPM fails to meet the standard, the Government may be asked to make amendments to ensure that it does.

## **What will the national preventive mechanism do?**

The main purpose of the NPM is to establish a system of regular visits to places of detention in order to ensure that torture and other ill-treatment does not occur and that people being detained are treated well. On the basis of information obtained during these preventive visits, the NPM will make recommendations for further strengthening the protections given to detainees in accordance with international standards. These recommendations will form the basis of a continuous constructive dialogue with the Government.

## **What kind of places can the national preventive mechanism visit?**

Article 4 states that visits must be allowed to any place under the jurisdiction and control of the State party 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. Deprivation of liberty is defined as any form of detention or imprisonment or placement of a person in a public or private custodial setting from which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

This means that Optional Protocol does not apply solely to prisons; it applies to all places in the country where people may be detained, whether legally or illegally. The NPM must be allowed unfettered access to all of these locations. Places of detention may therefore include the following:

- Prisons and correctional centres for both remand and convicted prisoners
- Juvenile detention centres
- Police stations and court detention facilities
- Immigration centres and border police facilities
- Psychiatric hospitals and mental health institutions
- Social rehabilitation centres
- Military compounds
- Any other unofficial detention facility where it is suspected that people are being detained.

## **When must the national preventive mechanism be established?**

The Optional Protocol states that the NPM must be established within one year of the country becoming a State party. Cambodia became a full party to the Optional Protocol on 29 April 2007. Therefore Cambodia's NPM ought to be in place **before the end of April 2008**.