



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to United Kingdom of Great Britain and Northern
Ireland undertaken from 9 to 18 September 2019:
recommendations and observations addressed to the national
preventive mechanism**

Report of the Subcommittee*

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 26 February 2020.

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Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment carried out its first visit to the United Kingdom of Great Britain and Northern Ireland (UK or United Kingdom) from 9 to 18 September 2019.

2. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 December 1988 and the Optional Protocol on 10 December 2003. In 2014, the State Party extended the ratification of the OPCAT to the territory of the Isle of Man¹. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment applies to the UK as a member of the Council of Europe².

3. The Subcommittee was represented by Mr. Daniel Fink (Head of Delegation), Mr. Satyabhooshun Gupt Domah, Ms. Susanne Jabbour, Mr. Kosta Mitrovic, Ms. June Caridad Pagaduan Lopez and Ms. Zdenka Perovic. The Subcommittee was assisted by three human rights officers and two security officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR).

4. The objectives of the visit were to:

a) Provide advice and technical assistance³ to the national preventive mechanism (NPM) taking into account the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5); and

b) Visit a range of places of deprivation of liberty in order to assist the State Party in discharging effectively its obligations under the Optional Protocol and to reinforce the protection of persons deprived of their liberty from the risk of torture and ill-treatment.

5. This visit takes into consideration the Memorandum of Understanding reached in June 2018 between the SPT and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴. In order to reinforce complementarity of both bodies, and bearing in mind the CPT's visits to UK in 2018-2019⁵, the SPT visit focused primarily on the assessment of the functioning of the NPM and visits to places of deprivation of liberty not covered by CPT in its recent visits.

6. The Subcommittee held meetings with the relevant authorities, the Equality and Human Rights Commission and members of civil society. The Subcommittee also held meetings with different entities comprising the NPM. This enabled the Subcommittee to understand the mechanism's working methods, as well as its achievements and challenges. Moreover, to observe the NPM work in practice, the Subcommittee conducted joint visits to several places of deprivation of liberty chosen by the mechanism (see annex I). Those visits were led by the national preventive mechanism, with the members of the Subcommittee acting as observers.

7. This report sets out a series of recommendations for the UK NPM. These recommendations are made pursuant to the SPT mandate to advise and assist the NPMs, in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol.

8. The Subcommittee requests that the NPM reply within six months of the date of transmission of this report, giving an account of the actions taken and a roadmap for full implementation of its recommendations.

9. The report remains confidential unless the NPM decides to request the Subcommittee to make it public, in accordance with article 16 (2) of the Optional Protocol. The

¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=en#5.

² United Kingdom became member of the Council of Europe on 5 May 1949. It is a founder member of this Organization.

³ OPCAT, article 11.1 c)

⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23407&LangID=E>

⁵ <https://www.coe.int/en/web/cpt/united-kingdom>

Subcommittee firmly believes that the publication of the present report would contribute to the prevention of torture and ill-treatment in the State Party.

10. **Therefore, the SPT recommends that the NPM request the publication of the present report in accordance with article 16 (2) of the Optional Protocol.**

11. Moreover, the Subcommittee draws the NPM's attention to the Special Fund established in accordance with Article 26 of the OPCAT. Only recommendations contained in those Subcommittee visit reports that have been made public can form the basis of applications to the Fund, in accordance with its published criteria.

12. The SPT will send a separate confidential report to the UK authorities, which will include recommendations to the State Party on its obligations regarding the effective functioning of the NPM, as well recommendations concerning the protection of persons deprived of their liberty against torture and ill-treatment.⁶

13. The SPT wishes to express its gratitude to the national preventive mechanism of the UK for its cooperation and the facilitation of the visit.

II. The national preventive mechanism

a) Description of the setting of the NPM

14. On 31 March 2009, the United Kingdom designated, through a ministerial statement to the Parliament, 18 existing oversight bodies as the NPM. In the statement, the Minister of State indicated that the requirements of OPCAT would be fulfilled in the UK by the collective action of existing inspection bodies. In December 2013 and January 2017, three other institutions were added to the NPM, bringing the membership to a total of 21 individual bodies.

15. The current composition of the NPM is the following:

a) For England and Wales

- Care Inspectorate Wales
- Care Quality Commission (CQC)
- The Children's Commissioner for England (CCE)
- Her Majesty's Inspectorate of Prisons (HMIP)
- Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services
- Healthcare Inspectorate Wales
- Independent Monitoring Boards
- Independent Custody Visiting Association
- Lay Observers
- Office for Standards in Education
- Children's Service and Skills (Ofsted)

b) For Northern Ireland

- Criminal Justice Inspection Northern Ireland;
- Independent Monitoring Boards (Northern Ireland);
- Northern Ireland Policing Board Independent Custody Visiting Scheme;
- The Regulation and Quality Improvement Authority (RQIA).

⁶ OPCAT, Article 11.1 a)

- c) For Scotland
- Care Inspectorate
 - Her Majesty’s Inspectorate of Constabulary in Scotland
 - Her Majesty’s Inspectorate of Prisons for Scotland
 - Independent Custody Visiting Scotland
 - Mental Welfare Commission for Scotland
 - Scottish Human Rights Commission; United Kingdom; and
- d) Independent Reviewer of Terrorism Legislation with responsibility in the whole of the United Kingdom.

16. Through designation of numerous pre-existing bodies to form the NPM, the UK Government wished to put to good use and continue an old tradition of independent inspection of places of detention. As a result, this multi-body mechanism composed of 21 institutions turns out to be a unique and complex NPM. Characterized by a great diversity of entities, the UK NPM comprises bodies with explicit mandates in different detention settings, as well as those with a broad mandate but only in specific territorial jurisdictions of the UK. Another particularity of the UK NPM is that it comprises lay and professional bodies.

17. Furthermore, some NPM members monitor places of detention as just one part of a much wider regulatory role, while other members are dedicated to inspection functions only. For example, RQIA and CQC regulate and inspect the quality of all health and social care services in England and Northern Ireland respectively. This includes patients detained under mental health legislation, as well as the health services provided in prisons and police stations. Ofsted inspects and regulates all services providing education and skills (e.g. schools and colleges, and education provision in prisons) as well as services that care for children and young people, including secure children’s centres and secure training centres. On the other hand, the key role of HMIP, ICVA, IMB, HMIPS and Lay Observers is to provide independent scrutiny of the conditions and treatment of persons deprived of liberty in a variety of detention settings.

18. The inevitable consequence of the government decision that the functions of the NPM were to be fulfilled collectively by 21 individual bodies is that one place of deprivation of liberty can be visited by several NPM bodies. For instance, at least three bodies (IMB, CQC and HMIP) have the mandate of monitoring prisons, but their methodologies are not harmonized in that regard. Lay monitoring bodies perform day-to-day visiting functions, and have a more continuous presence in places of detention, while inspectorates perform their functions periodically, using risk-based criteria.

19. The UK government designated Her Majesty’s Inspectorate of Prisons - HMIP (England and Wales) to coordinate the NPM’s members. The NPM’s annual report is presented to Parliament by the Lord Chancellor and Secretary of State for Justice.

b) Legal basis, budget and roles

20. Albeit all 21 institutions have a legal basis of their own,⁷ the NPM as a collective entity does not have a separate legal basis in the UK. Indeed, no legislation or other formal document or process was created or enacted to establish the NPM, and, to date, Ministerial statements to Parliament constitute the only basis for the NPM designation.⁸ Furthermore,

⁷ <https://www.nationalpreventivemechanism.org.uk/members/>

⁸ The SPT takes note of the Protocol between HMIP and the Ministry of Justice, approved on 10 October 2019, which indicates in article 3.1 that HMIP was designated as one of the NPMs of the UK, in accordance with the OPCAT. The text of the Protocol is available at <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/10/Updated-MOJ-Protocol-October-2019.pdf>

only two of the 21 members of the NPM have a specific reference to their OPCAT mandate written into legislation that created them.⁹

21. The SPT has raised on several occasions the issue of lack of legislation that sets out both the mandate of the NPM itself and that of its constituent bodies. Since 2009, the NPM has been also raising similar concerns. Likewise, the Committee against Torture has recommended that the UK set out in legislation the mandate and powers of the secretariat and members of the NPM and guarantee their operational independence.¹⁰

22. With regard to its financial independence, the UK NPM's coordination is funded in part by the Ministry of Justice, via HMIP, and in part by its members who make an annual contribution. For the year 2017–2018, HMIP received a nominal income of £61,155 for NPM coordination from the Ministry of Justice and £19,500 from NPM members. In 2019, the NPM budget from the Ministry of Justice amounted to £135,000.

23. Given the complexity of the multi-body NPM working across the four nations of the UK, the NPM established a working relationship with the other bodies through an NPM Secretariat, a Chair; a Steering Group holding NPM business meetings.

24. The NPM Secretariat was created within the HMIP, taking into account its coordinating function. The Secretariat aims at promoting and developing cohesion and a shared understanding of OPCAT among NPM members. Given the scale and complexity of the UK NPM's multi-body structure, coordination function is essential to the implementation of OPCAT. The NPM Secretariat also supports the Chair and the Steering Group.

25. In 2016, NPM members appointed by agreement an independent Chair from outside the NPM membership to advise and support the NPM in fulfilling its OPCAT mandate. The term in office of the NPM Chair was renewed in October 2017 for a period of four years. The Chair reports to the NPM Steering Group and NPM members, and works closely with the NPM Secretariat. However, lack of NPM legislation means that the Chair has no official legal status, job description, powers or immunities and is thereby inhibited in fully discharging its OPCAT obligations.

26. The Steering Group facilitates decision-making and joint work, as well as representing the interests of the NPM as a whole. The Steering Group is made up of five members, elected by NPM members.¹¹ Members of the Steering Group are appointed for an initial term of two years and are limited to two two-year terms.

27. The NPM's twice-yearly business meetings are its main forum for members to share their findings, best practices, experiences and lessons from monitoring different types of detention in each jurisdiction. The NPM business plan is agreed and monitored at these meetings and other decisions that require the input from all members are taken.

28. The Subcommittee is concerned that the current set-up regarding the NPM and its members does not fully comply with the OPCAT. The SPT further addresses this issue below and supports, as a matter of priority, the NPM efforts and initiative to bring about the necessary legislative changes to bring the United Kingdom in full compliance with the OPCAT.

c) Activities

29. The SPT notes the extent of the work being done by the 21 members across the four nations of the UK. According to the figures provided by the NPM¹², dedicated volunteers conduct at least 66,000 monitoring visits per year to prisons, young offender institutions,

⁹ The Police and Fire Reform (Scotland) Act 2012 refers explicitly to the SPT and OPCAT (s. 93-96). The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 also introduces a reference to the SPT and OPCAT into the Prisons (Scotland) Act 1989.

¹⁰ CAT/C/GBR/CO/6, para 17

¹¹ The current members of the Steering Group are: Peter Clarke, Chief Inspector of Prisons (England and Wales); John Powell (Healthcare Inspectorate Wales); Colin McKay (Chief Executive, Mental Welfare Commission Scotland); Katie Kempen (Chief Executive, Independent Custody Visiting Association); Rachel Lindsay (Criminal Justice Inspection Northern Ireland).

¹² Ninth Annual Report of the UK's NPM, 1 April 2017 – 31 March 2018, page 35, available at <https://www.nationalpreventivemechanism.org.uk/>

immigration detention facilities, police custody, court custody and to observe escorts; and inspectors carry out 1,500 inspections across the UK.

30. In addition to the monitoring visits to places of deprivation of liberty, the NPM does coordination and promotion activities of its OPCAT mandate. For example, all members complete an annual self-assessment of their OPCAT compliance, using the SPT's questionnaire¹³.

31. The NPM has established four subgroups to provide forums for sharing information, strengthening monitoring approaches, and coordinating responses to government policy developments. There are three thematic subgroups (children and young people; police; mental health) and one that manages NPM members in Scotland.

32. In accordance with article 19 (c) of the OPCAT, the NPM submits proposals and observations concerning existing or draft legislation. Moreover, it has published data showing the number of people detained in different settings and in different jurisdictions, with a view to addressing the absence of readily available or comparable data. In 2017, after conducting joint research, the NPM published comprehensive guidance on monitoring isolation in detention. The NPM has contributed to numerous policy discussions, government consultations and parliamentary inquiries relevant to the prevention of ill-treatment.

33. The UK NPM cooperates closely with many NPMs and NPM networks in the region. It also maintains regular contacts and ongoing dialogue with the SPT, in accordance with paragraph 40 of the SPT Guidelines (CAT/OP/12/5).

34. In accordance with the SPT guidelines on NPMs, the Subcommittee recommends the NPM to continue using its resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the NPM is encouraged to continue making proposals and observations to the relevant State authorities regarding existing and draft policy or legislation relevant to its mandate. In doing so, the NPM should ensure that it speaks in one voice as the preventive body of the UK, in accordance with the OPCAT.

III. Recommendations addressed to the national preventive mechanism

A. Institutional framework and mandate

35. The NPM has no separate legal identity. This lack of a formal legislative text which establishes the UK NPM has long been a matter of concern to the Subcommittee, a concern shared with both the NPM and the State Party. The SPT's considered view is that the situation of the UK NPM has a complexity which impairs its effectiveness and the lack of a proper legislation has a major part to play in its inadequacy. For that reason, the SPT urges the State Party to give an appropriate formal legislative basis to the UK NPM with a clear definition of its powers and its functions, its roles and responsibilities so that the State Party may effectively discharge its obligations and preventive mandate under OPCAT.

36. In this connection, the SPT appreciates the NPM's self-awareness and proactive advocacy and pursuit of legislative changes. The SPT concurs with NPM's view that the lack of legislation has significant consequences not only in terms of NPM's formal compliance with the OPCAT, but also for its credibility and effectiveness. The SPT also shares the NPM's concern that the powers and duties of the Chair of the NPM and the coordinating role of HMIP are yet to be recognized in legislation.

37. Furthermore, there is also a need to amend the statutes of the individual bodies entrusted with NPM work, as the specific NPM-related activities are not necessarily given the importance they deserve when members are working within their statutory mandate.

¹³ Matrix of self-evaluation, available at <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

38. The Subcommittee welcomes the dialogue between the Ministry of Justice and the NPM on the draft protocol regarding regulations about the NPM and notes that this protocol include provisions for the NPM to “issue statutory guidance” with regard to amendments of the statutes of the member organisations. Nevertheless, the Subcommittee considers that the elaboration of the Protocol is no substitute for a proper legislative text for the UK NPM. The SPT is concerned that the procrastination in the enactment of a proper legislation could have a negative impact on all aspects of the functions of the NPM, including its independence.

39. The Subcommittee considers that adoption of legislation regarding the NPM and its members is necessary in order for the UK to fully comply with its international obligations under OPCAT. The duties and powers of the NPM, led by an independent Chair and with formal recognition of the NPM’s coordinating role, shall be embedded in a legislative text, and explicit references to NPM and OPCAT responsibilities should be incorporated in the members’ own statutes. The SPT fully supports the NPM efforts in that regard and will continue to raise these concerns with the State Party.

Access to military detention and independent oversight in oversea territories and Crown dependencies.

40. The SPT notes that, since its creation, the NPM has made efforts to identify areas of detention that were not subject to the independent scrutiny of its members. Currently, the NPM monitoring covers a wide range of places of deprivation of liberty, including court cells, and transportation, deportations and detention facilities under the Terrorism Act.

41. The SPT was informed that HMIP inspects military facilities in the UK every two to three years. This includes the Military Corrective Training Centre and service custody facilities, which are cells where Navy, Air Force and Army police hold military personnel who have been arrested. However, the visits take place only upon agreement and by invitation from the armed forces, which is incompatible with the OPCAT’s purpose and objectives¹⁴.

42. Moreover, no member of the UK NPM has explicit powers to visit extraterritorial places of detention, including temporary detention facilities set up by the UK military abroad¹⁵, the Overseas Territories and Crown Dependencies of the UK, which leaves a significant territorial gap in the State Party’s obligation to protect persons deprived of their liberty from torture and ill-treatment.

43. The Subcommittee notes the CPT’s recommendations regarding the role of the UK NPM in Overseas Territories, ensuing from its visits to the Sovereign Base Areas (SBA) of Cyprus and Gibraltar. The CPT called on the UK authorities to “*adopt specific legislative powers for the mandate of the NPM, which should include the automatic right to visit all places of deprivation in the United Kingdom, as well as in British Overseas Territories and the SBA.*”¹⁶

44. The Subcommittee emphasizes that, in order to meet the requirements of the OPCAT, an NPM must have the ability to conduct unannounced visits to all places of detention, as well as to have access to all information referring to the treatment of detainees and the conditions of their detention. In that regard, the SPT fully supports the NPM in its effort to communicate its concerns about the limitations of access to military detention facilities, as well as lack of independent monitoring of places of deprivation of liberty across all the UK’s Overseas Territories and Crown Dependencies.

45. The Subcommittee recommends the NPM to continue actively engaging with the State Party to gain unhindered and immediate access to all places of deprivation of liberty, defined in article 4 of the OPCAT. In this connection, the Subcommittee emphasises that the State shall allow visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue or with its

¹⁴ OPCAT; article 20

¹⁵ In its concluding observations, and in reference to the State Party’s military interventions in Afghanistan and Iraq, the Committee against Torture was concerned at the findings contained in the 2018 reports of the Intelligence and Security Committee of Parliament, following its inquiry into the actions of the UK security and intelligence agencies in relation to the handling of detainees overseas. See CAT/C/GBR/CO/6, paras 32-35.

¹⁶ CPT/Inf (2017) 37, page 10 (<https://rm.coe.int/pdf/168076e130>)

consent or acquiescence. Therefore, any place in which a person is deprived of liberty or where a person might be deprived of liberty, should fall within the scope of the NPM.

46. The SPT would welcome the NPM's views on workable solutions to ensure appropriate preventive oversight across the UK's Overseas Territories and Crown Dependencies. The SPT will raise these concerns in its report to the State Party.

B. Independence

47. The independence of the NPM and its members is a fundamental principle that enables NPMs to effectively prevent torture and ill-treatment. In this connection, the OPCAT requirements refer specifically to the NPM's functional independence, independence of its personnel, and financial autonomy.

Functional independence

48. In order to guarantee functional independence, the NPM must have a clear legislative basis that guarantees its structural autonomy from all government branches. While the choice of an NPM model is the prerogative of a State Party, depending on the political and socio-cultural characteristics of the country, independence constitutes the key feature that every NPM, irrespective of its form, must possess.

49. The Subcommittee appreciates that the UK NPM has been engaging in a self-critical and reflective exercise and echoes its concern that guarantees of independence remain one of the key challenges of the NPM of UK. The SPT notes that, in January 2017, the NPM Chair wrote to the Ministry of Justice highlighting lack of statutory guarantees of independence for the NPM or its members. In its Ninth Annual Report, the NPM indicated that *"lack of a clear legislative basis of the NPM in the UK results in the lack of statutory guarantee of independence."*

50. As already mentioned in paragraph 36, the SPT unequivocally supports the NPM views. It is worth mentioning that, in its letter to the UK NPM, dated 29 January 2018, the SPT stated the following: *"The experience of the SPT is that the situation of an NPM remains precarious without its being underpinned by a clear legislative basis. We have seen, unfortunately, too many examples of cases in which States have put pressure on NPMs, directly or indirectly, which they have not been able to challenge for the want of a clear basis on which to do so. Practical effectiveness is dependent on functional independence, and the independence is threatened when the NPM is vulnerable to political pressure or political exigencies. The role of the SPT in relation to NPMs includes ensuring that they are protected from such pressures."*

51. The functional independence of an NPM supposes that an NPM cannot be subject to any orders or instructions by any State authorities. The SPT recommends the NPM to continue proactively raising with the UK authorities the need for robust legislation as an essential safeguard for the NPM independence, effectiveness and credibility, both nationally and internationally.

Independence of NPM personnel

52. In addition to the lack of general NPM legislation, the Subcommittee was informed that two NPM members – the Independent Monitoring Boards and the Lay Observers – raised their concerns with the UK authorities regarding lack of statutory underpinning for the proper discharge of their NPM mandate in line with principles of independence and good governance. In addition, in January 2017, the NPM Chair set out his concerns that the IMB secretariat continues to be *"line managed by civil servants of the Ministry of Justice, which also has operational responsibility for most of the places IMBs monitor"*¹⁷.

53. The Subcommittee reiterates that the independence of the NPM, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position which could raise questions of

¹⁷ Eighth Annual Report of the UK's NPM, 1 April 2016 – 31 March 2017, page 58, available at <https://www.nationalpreventivemechanism.org.uk/>

conflict of interest.¹⁸ In that regard, the SPT notes that HMIP's Chief Inspector is appointed by the Secretary of State upon recommendation for the Ministry of Justice. Given that HMIP functions as the coordinating body of the NPM, the perceptions of state involvement could be detrimental to the credibility of the whole NPM and undermine public confidence.

54. Furthermore, the Subcommittee also wishes to bring attention to the question of secondments within the members of the NPM. The SPT takes note of the NPM guidance "Ensuring the independence of NPM personnel", which sets out members' intention to work progressively towards a reduction in reliance on seconded staff for NPM work. This guidance addresses the 2013 recommendation of the UN Committee against Torture, which called on the UK to "end the practice of seconding individuals working in places of deprivation of liberty to NPM bodies".¹⁹ However, the SPT is of the view that more needs to be done by the staff members of the NPM to ensure that they do not hold or acquire positions which could potentially raise questions of conflict of interest or dual loyalty.

55. The Subcommittee recommends that the UK NPM continue striving for achieving functional independence, raising awareness of the Optional Protocol's obligation of independence, as well as advocating for a robust legislative basis, which ensures statutory guarantees of NPM independence.

56. The Subcommittee exhorts the NPM to continue taking internal measures to ensure that the independence of its personnel is rigorously safeguarded and constantly reinforced, inter alia, by reducing NPM members' reliance on staff seconded from places of deprivation of liberty, and enhancing transparency of the selection process of the NPM personnel.

C. Human and financial resources

57. The Subcommittee observes that the NPM of the UK with its 21 members cover a vast variety of places of deprivation of liberty, and that it can count on the financial and human resources of the member organisations to carry out coupling activities.

58. Nevertheless, the Subcommittee was informed that some NPM members face challenges with the budgets necessary to carry out their NPM functions. This is due to a range of factors including recent budget cuts, and budgets for NPM work within the 21 bodies not being ring-fenced to carry out NPM preventive work and thus being allocated alongside competing priorities. The Subcommittee is concerned at the information contained in the NPM annual report 2017-2018 that "several members of the NPM reported that they would be required by the UK Government to make cuts to their budgets".

59. In addition, and while noting that the NPM Secretariat staffing recently increased from two part-time roles to a part time Head of Secretariat and a full time Assistant Coordinator, the Subcommittee believes that resources provided to the NPM secretariat remain insufficient, the more so considering the complex institutional structure of the mechanism. In this respect, the Subcommittee notes that in its annual report 2017-2018 the NPM stated that lack of additional resources to the NPM Secretariat impedes the realization of a full potential of joined-up work across member organizations, four nations and the different detention settings.

60. The Subcommittee considers that budget cuts to NPM members may jeopardize their preventive work and, as a result, weaken their execution of OPCAT-mandated functions. The SPT also believes that the insufficient resources available for the NPM secretariat, to coordinate work of a highly complex multi-body mechanism and ensure their activities are focused on prevention, represents a serious constraint.

61. The Subcommittee recommends that the NPM continue to engage in a proactive discussion with relevant authorities, in particular the Parliament and the Ministry of Justice, requesting an increase of financial and personnel resources, in particular for the NPM Secretariat.

¹⁸ CAT/OP/12/5, paras. 16 and 18

¹⁹ CAT/C/GBR/CO/5, para 14

62. **Bearing in mind that the OPCAT is unequivocal on the need for the State Party to allocate specific resources to NPM²⁰, so as to guarantee the operational independence of the mechanism²¹, and that the Subcommittee guidelines on NPMs indicate explicitly that the mechanism should enjoy complete financial and operational autonomy²², the Subcommittee recommends that the NPM as a whole, as well as 21 bodies composing the NPM, advocate for a specific earmarked allocation of funds to the functioning of the NPM.**

D. Visibility

Collective identity of the NPM

63. The UK NPM is a unique model, comprising 21 diverse entities that seek to implement collectively the OPCAT-mandated role of prevention of torture. While the designation of pre-existing institutions as NPM is a valid option and, ultimately, the prerogative of the State Party, the OPCAT's pioneering nature is such that it requires profound changes in the work of the pre-existing entities to ensure that NPM work becomes an integral part of their activities, uplifted from their "business as usual" pattern.

64. The NPM work executed by 21 different bodies has its strengths and challenges. For example, it minimizes gaps in protection from torture by ensuring that places of detention are regularly visited by more than one monitoring mechanism. However, this "layered" structure of monitoring may present a risk of duplication and a risk of discrepancy in findings. Therefore, the multi-body NPM requires a strong coordination and a well-articulated strategic direction of the NPM as a whole, in order to achieve results in terms of prevention of torture.

65. The Subcommittee appreciates the information provided by the NPM about collaboration between different NPM bodies and examples of how this collaboration works in practice. For instance, in Northern Ireland, CJINI and HMIP elaborated in 2009 a specific protocol for collaboration in joint prison inspections.²³ Similarly, the Independent Custody Visiting Association (ICVA) and the Independent Reviewer of Terrorism Legislation (IRTL) have built stronger linkages between their respective tasks related to those detained under the Terrorism Act. The SPT also notes with appreciation the NPM webpage and a Twitter account.

66. However, a number of stakeholders mentioned to the SPT in the course of its visit that preventive focus is not always prioritized in the work of the NPM individual bodies. Moreover, the SPT observed that the authorities in charge of places of deprivation of liberty, persons deprived of liberty and civil society often perceive the work of HMIP, IMB, RQIA, IRTL, and other NPM components, as unrelated and not as parts of the same collegial body.

67. The SPT is conscious that the visibility of the UK NPM is a complex matter that also requires action from the State Party, as the lack of the NPM role specifically incorporated into members' statutory requirements affects the delivery of the NPM's overall mandate in practice. At the same time, the SPT believes that more needs to be done by the NPM itself to strengthen its collective identity.

68. The SPT invites the NPM to reflect on manners in which it could build the identity of a collegial body, made up of individual entities with different backgrounds and expertise. For example, during monitoring visits, the NPM could use a standard presentation to persons deprived of liberty and authorities in charge of custodial settings emphasizing the collective implementation of OPCAT mandate. In addition, the NPM could consider developing its "brand", through an emblem, distinctive dress code or designing a strategic communication campaign.

69. **In light of the above, the SPT recommends that the NPM increase its institutional visibility as a collegial body, design a strategy for public sensitization of its OPCAT-**

²⁰ OPCAT, article 18 (1)

²¹ CAT/OP/12/5, para. 8

²² Ibid, para. 12

²³ HMIP's role in inspecting prisons with CJINI ensures parity between the way prisons are inspected in Northern Ireland with those in England and Wales, as CJINI use the same expectations and methodology as HMIP.

mandated tasks and continue striving for a stronger coordination and a more cohesive work through strategic measures. These measures should reinforce the NPM's common values, in order to build the collective identity as one NPM of UK, through a proper legal framework.

Annual report

70. The Subcommittee notes with appreciation that NPM of UK contributes to crucial detention-related issues, and submits proposals and observations on existing or draft legislation.²⁴ It also welcomes annual reports prepared by NPM bodies and NPM as a collective body.

71. However, on the issue of the NPM's collective annual reports, the Subcommittee notes that the Lord Chancellor and Secretary of State for Justice present those to Parliament. In this connection, the SPT shares the NPM's view that NPM itself should be accountable to Parliament. In that sense, presentation of NPM findings to Parliament by representatives of the Executive is contrary to the NPM's line of public accountability, which is to assess independently and impartially how the government complies with its domestic and international human rights obligation to prevent torture. This would also help to strengthen the visibility, as mentioned in the paragraphs above.

72. The Subcommittee recommends that NPM continue to advocate for the adoption of legislation that will enable it to present its annual report in Parliament directly and to be accountable to Parliament for the implementation of its NPM mandate.

E. Cooperation

73. The Subcommittee notes over ten years of exchanges between the SPT and the NPM, in form of correspondence, Annual Reports and meetings. The SPT hopes that the visit to UK and the present report will further contribute to the cooperation between the SPT and the NPM of UK in the spirit of constructive dialogue. The SPT also notes with appreciation that the NPM's business plan foresees as an objective to increase the number of references to OPCAT/NPM role in core documents of NPM bodies.

Relationship between NPM and Civil Society Organizations

74. Communication and collaboration between NPMs and civil society organizations (CSOs) is crucial in torture prevention. Bearing this in mind, the SPT recommended that NPMs "establish sustainable lines of communication" with CSOs.²⁵ Similarly, through the reference to the Paris Principles in Article 18 of OPCAT, NPMs are to maintain good relationships with other bodies, including NGOs.

75. The Subcommittee is concerned that at the meetings held with CSOs some representatives expressed dissatisfaction at the current level of cooperation with the NPM. Moreover, HMIP and CCE in the meeting of SPT with NPMs alluded at the need to keep distance to ensure "*NPM's work does not follow the civil society's agenda.*" The NPM Secretariat, however, admitted that collaboration of NPM with NGOs could be improved, but argued that current level of collaboration is a reflection of a lack of funds.

76. The SPT emphasizes the knowledge of CSOs of places of deprivation of liberty. CSOs also comprise victims' associations, academic institutions, medical and bar associations, in addition to NGOs. CSOs also fulfil an important role to scrutinise the ways in which a NPM conducts its work.

77. The Subcommittee recommends that NPM of UK take steps to enhance its cooperation and channels of communication with CSOs, for example through an annual forum or other avenues, and strive to maintain a proactive dialogue with the civil society. Regarding concerns expressed by the NPM, the Subcommittee recommends that the

²⁴ Article 19 (c) OPCAT and CAT/OP/12/5, para. 35

²⁵ Analytical assessment tool, para. 30

NPM involve NGOs in its work in a transparent manner and strictly from the perspective of prevention of torture.²⁶

F. Methodology

78. The SPT observed that the NPM's professional inspectorates and the volunteer bodies are well regarded and influential. Their work is well structured and evidence-based, grounded in protocols, surveys and interviews with persons deprived of liberty as well as with staff in charge of custodial settings.

79. The SPT also wishes to acknowledge the comprehensive monitoring carried out by the NPM as a whole. The SPT recognizes that unannounced, frequent and unhindered visits to places of deprivation of liberty by a large number of institutions composing the UK NPM do have a positive and durable impact on preventing torture and other cruel, inhuman or degrading treatment or punishment.

Preventive focus of NPM work

80. The SPT considers that monitoring visits carried out by NPM bodies are being largely geared towards needs' assessments of persons deprived of liberty, and aimed at ensuring that places of deprivation of liberty, including psychiatric facilities, comply with the existing national standards. In this connection, the Subcommittee believes that the preventive focus of visits conducted by NPM to places of deprivation of liberty must be strengthened. This is particularly relevant for those NPM bodies that combine preventive and regulatory mandates (CQC, Ofsted).

81. In this connection, the SPT brings to the attention of the relevant authorities its paper "The approach of the SPT to the concept of prevention of torture".²⁷ This document explains that the purpose of NPM work is not only to bring about compliance with international obligations and standards, but also to offer proposals, further to monitoring visits conducted, as to how to reduce the likelihood or risk of torture or ill-treatment. In this connection, Secretariat should provide guidance to all NPM members as to concrete ways to strengthen their preventive role, *inter alia*, through training and publishing of advisory guidance.

82. The Subcommittee recommends the NPM to reinforce the preventive focus and to integrate human rights-based approach in its monitoring work, in order to contribute to systemic changes for the protection of persons from torture and ill-treatment.

Comments on methodology of visits conducted by NPM and observed by SPT

83. In the course of its visit, the SPT observed the methodology of work of HMIP, Lay Observers, Independent Monitoring Board (IMB), Independent Custody Visiting Association (ICVA) and Her Majesty's Inspectorate of Constabulary (in Scotland). Remarks and recommendations below are limited to the visits observed by SPT while accompanying these NPM bodies.

84. Due to the history of individual NPM bodies and absence of legislation on the NPM, the methodologies of monitoring and the outcomes of these activities vary from one member to the other. There are members with highly structured and detailed, evidence-based reporting, containing recommendations leading to follow-up visits and a continuous dialogue with the respective authorities, whereas other members produce brief informative notes, fed into databases, discussed at the level of units; there are further ones with long and comprehensive surveys on a case by case basis and others developing sequential rather than continuous monitoring work. Whereas some monitoring bodies carry out coordinated joint activities, building on each other's mandates and competences, others work mostly on their own.

²⁶ Article 18 (1) and (3) of OPCAT/visi

²⁷ CAT/OP/12/6, available at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en

Her Majesty's Inspectorate of Prisons (HMIP)

85. The Subcommittee observed work of HMIP conducting an inspection at Her Majesty Young Offenders Institution Cookham Wood. The Subcommittee wishes to commend the HMIP for the following:

- a) The visit under observation was carried out by a knowledgeable and professional team;
- b) There was a good rapport established by the interviewers with persons deprived of liberty and staff in charge; particular vulnerabilities and best interest of juvenile offenders were duly taken into account;
- c) There was a strong and well-established visit methodology, with systematic data gathering, protocols, with clear definition of roles and functions;
- d) the visits lasted two weeks after in-depth preparation, and there ensued a follow up on key findings and recommendations from previous visits;
- e) There was a multidisciplinary staff at HMIP; and
- f) There was close coordination with IMB, and participation of CQC and Ofsted in the inspection, which reinforces the findings and reduces burden on administration of prisons, that otherwise would have to accommodate three separate inspections.

86. The SPT commends, in particular, the ability of HMIP team to analyse the implementation of managing and minimizing physical restraint (MMPR) policy through random selection of CCTV and body-worn camera footages.

87. However, and with the caveat that the Subcommittee accompanied only a small portion of the HMIP visit to Cookham Wood, the Subcommittee notes that prohibition of reprisals was not explicitly mentioned in the interviews conducted by HMIP staff. While concurring with HMIP's assessment that the risk of reprisals was quite low, the Subcommittee emphasizes that prevention of reprisals should be a standard procedure.

Independent Monitoring Boards (IMB)

88. The Subcommittee accompanied three IMB members and the IMB National Chair, Dame Anne Owers, during a one-day visit to Heathrow Immigration Removal Centre (IRC).

89. The Subcommittee notes with great appreciation the dedication and commitment of IMB members, who are unpaid members of the community. Moreover, the Subcommittee welcomes:

- a) Continued presence of the IMB in the IRC and unhindered access to all premises and persons; and
- b) Solid findings contained in the IMB Annual Report 2018 on Heathrow IRC28 and recommendations directed to Home Office and Contractor in charge of the services that point at the systemic issues such as the indefinite immigration detention, inappropriate use of detention for persons with acute mental health issues, and concerns regarding training of staff employed by the Contractor.

90. However, the Subcommittee notes that the IMB was often regarded as a body inspecting material conditions of the day-to-day life in the removal center, rather than an interlocutor working for human rights of persons deprived of their liberty. During the visit to the IRC, the SPT noted that some persons deprived of liberty perceived IMB members as insensitive to their concrete allegations (a person alleging recent beatings and presenting injuries in his head, a man reporting risk of *refoulement*, etc.) and some went as far as alleging that IMB is part of IRC administration.

91. While acknowledging that the IMB members are not in the position to deal with individual complaints, and while noting the levels of anxiety and frustration of persons awaiting a removal, the SPT suggests that a referral system be envisaged, so that to preserve

²⁸ <https://www.nationalpreventivemechanism.org.uk>

the reputation of the IMB of an impartial advocate for human rights of persons deprived of their liberty.

92. The SPT appreciates the continuing presence of the IMB in places of detention that results in a close (often daily) monitoring of a place of deprivation of liberty. However, given that only one or two persons carry out visits, it is challenging for the visiting teams to comply with the OPCAT requirement of multidisciplinary.

Lay Observers

93. Lay Observers play a crucial role by monitoring the treatment and conditions of detention of people held in court custody and those in vehicles while being brought to and from the court.

94. The SPT observed the visit of two Lay Observers to the Westminster Magistrates Court. It commends the professionalism, dedication and empathy demonstrated the Lay Observers in the course of that visit. In particular, the Subcommittee notes with appreciation that Lay Observers verified thoroughly records of persons deprived of liberty at the Court. Inaccuracies detected were immediately brought to the attention of the custodial staff and explained why those might represent a risk of ill-treatment for detainees. Moreover, Lay Observers raised appropriately the issue of a minor that was being transferred from the court handcuffed and escorted by three police officers. When police officers assured that this was a routine procedure, Lay Observers emphasized the need of an individualized assessment and the vulnerability and best interest of the child. The Subcommittee notes that, on that occasion, Lay Observers had a very clear understanding of their preventive role, beyond a mere compliance-check.

95. The Subcommittee notes, however, that a two-person visiting team lacks a multidisciplinary capacity, in particular regarding medical expertise. Furthermore, it is unclear if all Lay Observers received training on preventive methodology and have the same high standards as those observed by SPT.

Independent Custody Visiting Association (ICVA)

96. The SPT observed the work of ICVA during its visit to Charing Cross police station in London. The ICVA is a Home Office and Police and Crime Commissioner (PCC) funded organisation which leads, supports and represents PCC-led visitor schemes designed to check on the rights, entitlements, wellbeing and dignity of detainees and which work to hold Chief Constables to account.²⁹

97. The NPM role of the ICVA is to look at the skills of independent custody visitors, who are volunteers, and to ensure that they conduct visits effectively. The custody visitors have the power to access police stations, examine records relating to detention, interview detainees for the purpose of discussing their treatment and conditions, and inspect facilities, including cells, washing and toilet facilities, and facilities for the provision of food.

98. While the professionalism of the visiting team of ICVA is highly commendable, the SPT notes that training and multidisciplinary work of volunteers in NPM lay bodies represents a challenge, in addition to broader issues regarding the NPM legislation, financial and institutional independence and preventive focus of its work.

Her Majesty's Inspectorate of Constabulary (Scotland)

99. The SPT exchanged views about visits to police stations in Scotland with the representatives of Her Majesty's Inspectorate of Constabulary of Scotland while visiting the facility of Saint Leonard's Police Station in Edinburgh.

100. The role of HM's Inspectorate of Constabulary is to monitor the state, efficiency and effectiveness of the Police Service of Scotland; thus, it carries out inspections of police custody facilities, monitoring the treatment and conditions for detainees. Visits are unannounced and, depending on the size of the facility, a team is composed of two to four persons.

²⁹ <https://icva.org.uk/media-centre/>

101. The SPT was provided with information about the planning of the visits, the methodology of visiting and recent findings. There were 40 cells in this facility, which typically receives about 10,500 detainees a year. The Inspectorate have visited it twice in the last two years. The SPT notes with appreciation the inspector's knowledge of the OPCAT and the meticulous and competent work the Inspectorate carried out, including by reviewing video surveillance coverage, belongings room, records, and tools used for restraint such as spit hoods.

102. The Inspectorate representative told the SPT that while the health care of detainees is of concern, the Inspectorate does not count with the necessary expertise to monitor the medical aspects of detention and would need to engage with external experts in future.

103. **While noting that harmonising a great variety of methodologies across 21 bodies of the NPM would be difficult to achieve, even in a long term, the Subcommittee recommends that the NPM strive to ensure that all its members incorporate the requirements of the OPCAT into their working methods.**

104. **The Subcommittee also recommends that the NPM conduct a lessons learned exercise to take stalk of the existing methodology, and continue adjusting and reviewing the working methods and practices of NPM members as it endeavours to harmonize the methodology and to fulfil its mandate in the most efficient manner.**

105. **In light of the above, the Subcommittee recommends that the NPM of the UK to:**

a) ensure that their working practices are consistent with standards for preventive monitoring;

b) in case of Lay NPM entities, conduct training to ensure consistency in the methodology of volunteers and lay observers from the moment of selection;

c) realize cross-institutions trainings and exchanges across different NPM bodies;

d) establish and use the referral system for individual complaints, which should not be handled by the NPM; and

e) enhance multidisciplinary through improved composition of the visiting teams, as well as coordination and joint inspections across NPM bodies;

106. The Subcommittee notes with appreciation that HMIP, the IMB and the Prisons and Probation Ombudsman (PPO) developed a protocol to address any alleged sanctions that come about as a result of their work. However, during the visits carried out jointly with the NPM bodies, the Subcommittee noted that neither in the interviews with persons deprived of liberty (in case of the HMIP) nor at the final debriefings with the staff (IMB and Lay Observers), the NPM did not mention prohibition of intimidation or reprisal against persons deprived of their liberty.

107. **The Subcommittee recommends that the national preventive mechanism always consider that there is a risk of intimidation, sanctions or reprisals, and therefore take steps to address that risk. In addition to the precautions mentioned above, the mechanism should clearly inform the authorities that reprisal of any kind is impermissible, will be reported to respective authorities and will be followed up by the mechanism. The manner in which the Subcommittee addresses the issue of reprisals and sanctions is set out in CAT/OP/6/Rev.1.**

IV. Next steps

108. **The Subcommittee hopes that its visit to the UK serves as an opportunity to strengthen the role of the NPM, its work and its impact in prevention of torture and ill-treatment.**

109. **Despite the inherited complex nature of the NPM, the SPT recommends that the NPM take proactive steps aiming at transforming itself into a more cohesive preventive body.**

110. **The Subcommittee requests a reply to the present report be provided within six months from the date of its transmission. The reply should respond directly to all the recommendations and requests for further information made in the report, giving a full**

account of action that has already been taken or is planned in order to implement the recommendations. It should include details concerning the implementation of institution-specific recommendations and concerning general policy and practice.

111. The Subcommittee considers both its visit and the present report to form part of an ongoing process of dialogue. The Subcommittee looks forward to assisting the NPM of the UK in fulfilling its obligations under the Optional Protocol by providing further advice and technical assistance, in order to achieve the common goal of prevention of torture and ill-treatment in places of deprivation of liberty.

Annex I

List of places of detention jointly visited by the national preventive mechanism and the Subcommittee on Prevention of Torture

- Visit with Independent Custody Visiting Association (ICVA), Charing Cross police station, Agar St, Charing Cross, London WC2N 4JP
- Visit with the Lay Observers to Westminster Magistrates Court, 181 Marylebone Rd, Marylebone, London NW1 5BR
- Visit with Mental Health Act reviewers' visit to the multi-ward hospital Bracton Centre, Leyton Cross Road Dartford, Kent DA2 7AF
- Visit with Independent Monitoring Board (IMB) members and National Chair of IMB to Heathrow
- Visit with Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) to St. Leonard's police station, 14 St. Leonard's St, Edinburgh EH8 9QW
- Visit with Her Majesty's Inspectorate of Prisons (HMIP) to a center for juvenile offenders Cookham Wood, Sir Evelyn Road, Rochester ME1 3LU