

What are NPM recommendations?

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Recommendations are proposals about the best course of action that an institution (or multiple institutions) should take in order to achieve a positive change in laws, practices or policies. NPMs are given this mandate under [Article 19](#) of the OPCAT. Making recommendations are one of the core elements of their work.

Recommendations made by NPMs are often different from those made by other oversight bodies. Their aim is to deal with the risk factors and root causes that lead to torture, ill-treatment and other human rights violations, in order to prevent them from occurring (or reoccurring in the future). This includes focusing on systemic issues rather than only individual cases. They are based on evidence and analysis and usually follow a visit (or a series of visits) to a place of deprivation of liberty. They are one element of a constructive and dialogue-based process that seeks to resolve problems so that they do not occur again in the future. As such, recommendations are one of the key tools available to NPMs in seeking to effect change.

A strength of NPM recommendations is that the OPCAT places an obligation on the authorities (in Article 22) to “examine the recommendations of the NPM and enter into a dialogue with it on possible implementation measures.” Some NPM laws also place an obligation on the state to reply to NPM recommendations within a certain timeframe.

What types of recommendations are made by NPMs?

NPM recommendations may relate to all aspects of deprivation of liberty, including: places of detention, their management and functioning; public policies relating to detention; the relevant legal framework; and the broader institutional frameworks (such as the police force as a whole).

The form and content of recommendations depends on their audience, their objectives and the type of situation to which they relate. Recommendations may relate to problems that can be solved in the short, medium and long-term.

Recommendations may also deal with both complex, systemic issues and specific topics. NPMs may decide to focus their recommendations on specific priorities or thematic areas, such as: material conditions, procedures and policies, laws and regulations, as well as specific situations and groups at risk.. A problem does not have to reach a specific level of severity before an NPM decides to make it the subject of a recommendation; indeed, recommendations may often be aimed at resolving seemingly small issues before they escalate into larger problems. In general, NPMs often make the following type of recommendations:

Recommendations following a visit. This type of recommendation relates to the key findings following a visit to a particular place and is usually included in the visit report. Such recommendations usually relate to only one establishment.

Thematic recommendations. They usually follow a series of visits relating to either a particular theme (such as use of restraints) or to a series of similar facilities (for example, recommendations could be the result of a series of visits to immigration detention facilities). As such, they usually concern laws, practices and policies that are relevant for a number of places of deprivation of liberty. Usually such recommendations will be contained in a specific thematic report and/or in the annual report.

Urgent recommendations. They usually relate to a serious infringement of fundamental rights and are a way for an NPM to quickly notify the authorities and give them a defined period in which to rectify the situation.

Recommendations in the annual report. This type of recommendation is often more general than those made in visit reports and will usually relate to broad, systemic issues of particular importance. Because of the higher publicity surrounding the annual report, as well as the fact that national authorities have an obligation to consider the implementation of recommendations therein, NPMs often use these reports as a platform to bring attention to recommendations that are a particular priority.

In addition to including recommendations in their reports, NPMs may also make written “preliminary observations” to the authorities, usually at the end of a visit during the final meeting with the director of the establishment. These are a useful way of highlighting the most pressing or urgent issues found during a visit, which can then be more properly addressed following a full analysis of the information gathered during the visit and the writing of the report.

What makes a good recommendation?

Good recommendations are drawn from reports, which are themselves based on credible evidence, triangulated among several sources, and solid analysis. Recommendations are thus part of a process, requiring significant time and resources, which includes both the visit, report and the follow-up. Engaging in this process enables NPMs to identify risk factors and the root causes of the problems they identify (which often lie outside the specific place of detention being visited). It also enables them to make recommendations that address the laws, practices and policies that will best improve the situation. As with reports it is important that those who write recommendations are also part of the visiting team.

The APT has developed a so-call “Double-SMART” model for drafting recommendations. This model, presented below, defines criteria that can be systematically applied in order to make recommendations as effective and useful as possible.

The “Double-SMART” criteria are:

- Specific
 - Measurable
 - Achievable
 - Results-oriented
 - Time-bound
- +
- Solution-suggestive
 - Mindful of prioritisation, sequencing & risks
 - Argued
 - Root-cause responsive
 - Targeted

In practice, it may not be necessary to draft recommendations that comply with all ten criteria. Nevertheless they serve as an important guide for collective or individual analysis and review of draft recommendations prior to publication, as well as discussion with the authorities. Well-drafted recommendations make the task of the authorities easier when it comes to implementing them, and it also makes follow-up easier because they do not require additional indicators for progress to be measured.

Why is it important to have a follow-up strategy for NPM recommendations?

Recommendations are one of the most important tools that NPMs have to effect change but recommendations alone often aren't enough to make the desired change happen, in particular because the recommendations made by NPMs are not binding on the authorities. This is why recommendations need to be part of an overall monitoring cycle that includes: planning, information gathering and analysis (usually through [visits](#)), reporting and recommendations, and follow-up, including through dialogue with the authorities.

This is also closely linked to the need for NPMs to think strategically about the changes that they wish to see and the different strategies and actions that they can take to make sure these changes occur.

Follow-up also helps NPMs to measure progress over time, both within specific institutions and in related laws, policies, and practices. If recommendations are well drafted their implementation is also more easily [measured and indicators developed](#) to track progress, allowing NPMs to more easily see if the requested changes have occurred.

Keeping track of recommendations is also important for the planning process of NPMs. Analysis of which recommendations were implemented and the strategies that were used can help NPMs to identify future priorities, as well as the approaches that led to the most success.

How can NPMs follow-up on recommendations?

Objectivity, accuracy and good analysis are the foundation of a good relationship with the authorities. While the authorities are unlikely to always agree with the content of recommendations, they should never be able to question their accuracy or their factual or normative basis.

Effective follow-up is based on dialogue with the authorities. This dialogue takes place at several different stages. During the drafting phase, many NPMs send draft reports and recommendations to the authorities, in order to receive feedback, allow for corrections (to factual errors only), and ensure the authorities are prepared for implementation.

Some NPMs also organise face-to-face discussions with the authorities on their draft recommendations, in order to ensure buy-in at an early stage, including among the heads of specific institutions. Closed-door roundtables to discuss thematic issues (including reports and recommendations) with the authorities can make them better and more specific, as well as making it more likely that they will be implemented. Either during these discussions, or following publication, some NPMs ask the authorities to propose a timeline for implementation, which can then form the basis for follow-up. In some contexts timelines for responses by the authorities are enshrined in law.

Following publication of reports and recommendations, some NPMs also return to the places to which they relate, in order to present them to the management and staff of the establishment, to make sure they understand them and to answer any questions they might have about specific recommendations.

Many NPMs also ask the authorities to report to them on the progress of implementation of different recommendations and some also agree with the authorities on an action plan for implementation. It is also important, however, that NPMs conduct follow-up visits to check implementation in practice. This is to ensure that recommendations have been implemented correctly as well as to make sure that they are having the desired effect on conditions or treatment of those deprived of their liberty. Formal meetings and exchanges are also complemented by many NPMs with regular exchanges between the NPM and focal points within the different authorities and other stakeholders. Some NPMs have called the ideal level for this kind of relationship “close but not too close”. In other words, close enough to have a good working relationship, while not infringing on the independence of the NPM.

Some NPMs also use other government monitoring bodies and inspectorates (whether they are called external or internal) in follow up of recommendations. By targeting such bodies as part of their follow-up to recommendations, some NPMs have helped them to adjust their own inspections and methodology to cover the risks of ill-treatment or even in relation to a specific recommendation made to an institution or across a whole sector.

What can NPMs do to overcome obstacles in the implementation of their recommendations?

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NPMs mostly do not issue binding recommendations. Some of them – usually [human rights commissions or ombuds institutions](#) – do have this power but, even when they do, they use it rarely, if at all. This is because dialogue and persuasion are almost always more effective – in part because, while it may be possible to force a reluctant authority to implement the letter of a recommendation, it is far less likely to achieve the desired change than if they understand and are invested in the outcome.

NPMs thus have several options if their recommendations are not implemented. First is to find out why, something that will depend very much on whether the recommendation relates to short, medium or long term problems; to systemic or specific issues; and to the topic of the recommendation. It will be much easier for an NPM to understand why a specific recommendation on a simple procedure, with a short time frame for implementation has not been implemented than it will be in relation to a complex, systemic issue that requires action over a long timeframe to solve. Key questions to ask, however, may include: do the authorities fully understand the recommendation and what it is trying to achieve? Is there a budget issue that is preventing implementation? Or is there resistance from a specific individual or institution that is preventing implementation? Once an NPM has understood why a recommendation has not been implemented, an appropriate strategy can be developed. This might include explaining or reformulating recommendations that aren't clear, conducting advocacy with specific authorities, including parliament, or meeting with key individuals and institutions to understand and overcome their resistance. Some NPMs also use the media to help exert pressure on authorities, particularly when other methods of persuasion have failed.

Systematically analysing all of the different organisations and individuals who might be relevant to the implementation of a recommendation is also a useful way to overcome obstacles. A key element of this kind of “stakeholder analysis” is to think about the different levels of power and interest that different institutions and individuals may have in relation to a specific recommendation or priority. This can help NPMs to identify which actors might need further persuasion (for example, those that have power but little interest in the topic – maybe including parliamentarians, relevant ministers or the media) as well as which actors might form good coalition or advocacy partners in pressing for change (for example, those that have a lot of interest but, little power when they act alone – maybe including NGOs or families of victims).

How to systematise and keep track of recommendations over time?

Many NPMs use tools to track the recommendations they have made and their degree of implementation. Practice among NPMs varies, with some using databases and others simple spreadsheets. Whatever tool is chosen, however, it needs to be adapted to the NPM's needs and capacities. Prior to developing such a tool, NPMs should consider the type of information they need to track and the overall purpose of the tool. When developing a tool for recording their recommendations and tracking their implementation, NPMs may want to record some or all of the following factual and analytical information:

Factual details

- The date the recommendations made (and whether it is a repeated recommendation)
- The place to which they relate
- The type of place
- The authority to whom they were made
- The specific report in which they were made, with a link to the full document
- The overall theme or problem area
- Whether they relate to a specific vulnerable group or detention practice
- Any responses from the authorities and/or the agreed timeframe for implementation
- Staff members involved in the visit/drafting of the recommendation

Analytical information

- Whether a recommendation has been accepted by the authorities
- Whether a recommendation has been implemented (and checked by the NPM)
- Whether a recommendation has not been implemented (and why)

Information on themes and keywords linking recommendations to cross-cutting issues and groups may allow NPMs to analyse their (often very large) databases of recommendations and identify themes and trends that change over time or relate to more than one institution. This can be useful for institutional memory as well as in an NPM's regular strategic and operational planning processes.

Systematising and keeping track of recommendations is also important for NPMs in that it allows them to measure their own progress, helping them to understand where and when they have been effective and helping staff to stay motivated over time.