

Written evidence to the Extradition Law Committee

1. This written evidence is submitted by Professors Rachel Murray,¹ Malcolm Evans² and Rod Morgan³ of the Human Rights Implementation Centre at the University of Bristol Law School. It draws upon our expertise in the area of the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the European Convention on the Prevention of Torture to which the UK is a party and in particular our expertise in the area of monitoring places of detention. Our written evidence focuses exclusively on question 10, namely:

Human Rights Bar and Assurances

Is the practice of accepting assurances from requesting states to offset human rights concerns sufficiently robust to ensure that requested people's rights are protected?

- What factors should the courts take into account when considering assurances? Do these factors receive adequate consideration at the moment?
 - To what extent is the implementation of assurances monitored? Who is or should be responsible for such monitoring? What actions should be taken in cases where assurances are not honoured?
2. In the face of defence objections that requests for extradition may involve risk of torture or inhuman or degrading treatment or punishment, it is increasingly the practice of requesting states (both European and non-European) to undertake to accommodate the extradited individual** in a particular institution or conditions to which Article 3 objections will arguably not apply. Such undertakings may be with regard to detention prior to conviction or sentence, or penal custody following conviction and sentence. The key issue that we would like to focus upon is who, if anyone, is or should be monitoring such undertakings and are extradition undertakings known to whoever is monitoring places of custody?
 3. OPCAT is an international treaty which requires States Parties to, among other things, establish a national preventive mechanism (NPM). This should be an independent body (or bodies)⁴ which have the 'required capabilities and professional knowledge' to prevent torture including visiting places where individuals may be deprived of their liberty. These NPMs should be adequately resourced and should have as a minimum the following powers:⁵
 4.
 - (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
 - (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
 - (c) To submit proposals and observations concerning existing or draft legislation.

In addition, States are required to grant to the NPM:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;

¹ Director, Human Rights Implementation Centre, University of Bristol Law School.

² OBE, Chair of the UN Subcommittee on Prevention of Torture (SPT).

³ Rod Morgan regularly provides expert court reports in extradition proceedings where the purpose is to report on the legal validity, operational feasibility and likely compliance with specific assurances regarding the custody of extraditees and the increasingly widespread use of the tactic where Article 3 objections to extradition have previously been sustained.

⁴ Articles 17 and 18 OPCAT.

⁵ Article 19 OPCAT.

- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.⁶
5. Even for those states which have yet to ratify OPCAT or designate their NPM, this list provides an authoritative benchmark against which bodies undertaking monitoring at the domestic level can be assessed.
 6. There are now 53 NPMs which have been designated and there are 73 State Parties to OPCAT.⁷ These NPMs are well placed to be able to monitor the places of detention in which individuals who are extradited are then detained. If independent and credible, these institutions provide an authoritative source of information on the conditions of places of detention and can act as an appropriate monitor of specific facilities.
 7. We are aware of cases where individuals are extradited to a state but there are limited or no possibilities to monitor what happens to that individual once they have left the UK. We understand that it is often difficult for the lawyers, family, friends and others, even if they are in the state to which the individual is extradited, to then verify if the assurances are in fact being honoured. There are examples of UK courts requesting experts to visit certain facilities and report on the conditions of detention.⁸
 8. We would argue that the use of individual experts, with due regard being taken of their expertise and credentials, does not provide a sustainable and comprehensive solution to such situations. Instead we would recommend that these NPMs or in states where none is designated, an independent national statutory or constitutional body which satisfies the requirements of OPCAT, monitor such assurances and places of detention. These institutions, in line with OPCAT requirements, will be independent, have the necessary expertise, be able to undertake regular and unannounced access to these places of detention, are more likely to have visited the particular detention facility under consideration, and therefore more likely to have the ability therefore to identify certain individuals and monitor their situations or at the very least to give an authoritative statement on the conditions of detention of a particular institution or facility. These institutions, having a broader preventive mandate, are also required to be familiar with systemic problems within a state and relevant applicable regimes. These factors are just as important as knowledge of the physical conditions of detention in particular institutions. Moreover, such mechanisms, being internationally designated as NPMs form a part of a broader international system of scrutiny which adds further levels of transparency to, and support for, the work of such bodies.
 9. Furthermore, we would recommend that assurances only be sought or accepted from those States which are a party to the OPCAT and have established an NPM in accordance with OPCAT criteria, (or in the absence of ratification, that there is a body in place which satisfies OPCAT criteria), and that arrangements have been made with the NPM to ensure that they are able to exercise, in practice, their requisite degree of scrutiny over time and the ability to report to the sending State on their observations.
 10. A list of NPMs globally can be found on the UN SPT website.⁹

For further information please contact:
Professor Rachel Murray
Director, Human Rights Implementation Centre
Bristol Law School
University of Bristol
Queens Road
Bristol BS8 1RJ
Tel: 0117 9545374
Email: Rachel.Murray@bristol.ac.uk

⁶ Article 20.

⁷ <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>. For a list of designated NPMs see <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>.

⁸ E.g. *Gomes and Goodyer v Government of Trinidad and Tobago*, [2009] UKHL 21, at para 4.

⁹ *Ibid.* See also <http://www.bristol.ac.uk/law/research/centres-themes/hric/npmdirectory/>.