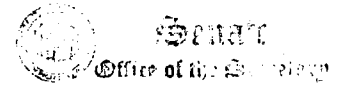


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



24 JAN 23 AIO :44

SENATE

S. No. 2522

RECEIVED AT

**Introduced by SENATOR FRANCIS "TOL" N. TOLENTINO and SENATOR
RONALD "BATO" DELA ROSA**

AN ACT

**ESTABLISHING NATIONAL PREVENTIVE MECHANISM (NPM) IN
COMPLIANCE WITH THE OPTIONAL PROTOCOL TO THE CONVENTION
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT (OPCAT) AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

It is a state policy, as declared under Article II, Section 11 of the 1987 Constitution, to value the dignity of every human person and to guarantee full respect for human rights. In fact, the Philippines has adopted several international human rights conventions and instruments in response to this policy which include: the Universal Declaration of Human Rights (UDHR) (10 December 1948), International Covenant on Civil and Political Rights (23 October 1986); International Covenant on Economic, Social, and Cultural Rights (7 June 1974); International Convention on the Elimination of All Forms of Racial Discrimination (15 September 1976); International Convention on the Elimination of All Forms of Discrimination against Women (5 August 1981); Convention on the Rights of the Child (21 August 1990); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (30 April 1986); International Convention on the Protection of the Rights of All Migrant Workers

and their Families (13 November 1993); and International Convention on the Rights of Persons with Disabilities (15 April 2008).¹

In connection with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Philippines acceded to the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on April 17, 2012. Furthermore, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) was established which has a preventive mandate focused on a proactive approach in preventing torture and ill treatment.

States that ratify the OPCAT give the SPT the right to visit their places of detention and examine the treatment of people held there. The OPCAT also obliges States to set up independent National Preventive Mechanisms (NPMs) to examine the treatment of people in detention, make recommendations to government authorities to strengthen protection against torture and comment on existing or proposed legislation.² However, for more than a decade the Philippines still lacks the National Preventive Mechanism (NPM) mandated under Articles 17 to 23 of the OPCAT.

This bill therefore seeks to establish a National Preventive Mechanism which will be an attached agency of the Commission on Human Rights having its own budget and personnel. The NPM shall serve as the domestic version of the UN SPT tasked to carry out visits to places of detention; monitor the treatment of and conditions of detainees; and make recommendations regarding the prevention of ill- treatment.

Currently, the CHR has been conducting unannounced visits to jails and detention facilities to ensure the welfare of persons-deprived-of liberty (PDLs). The NPM shall therefore enhance and complement the CHR's mandate as it looks into the preventive aspect against torture and other cruel, inhuman or degrading treatment or punishment, in places of detention or deprivation of liberty. Torture prevention involves a holistic approach involving legal reforms, safeguards in detention facilities,

¹[http://phrcs.gov.ph/human-rights-a-primer/#:~:text=In%20addition%2C%20the%20Philippines%20is,\)%3B%20International%20Convention%20on%20the](http://phrcs.gov.ph/human-rights-a-primer/#:~:text=In%20addition%2C%20the%20Philippines%20is,)%3B%20International%20Convention%20on%20the)

² <https://www.ohchr.org/en/treaty-bodies/spt>

fighting against impunity, and ensuring criminal responsibility, remedies and reparations.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



FRANCIS "POL" N. TOLENTINO

Senator



RONALD "BATO" DELA ROSA

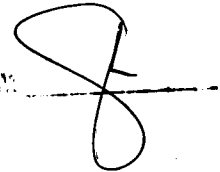
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AN ACT

ESTABLISHING NATIONAL PREVENTIVE MECHANISM (NPM) IN
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TREATMENT OR PUNISHMENT (OPCAT) AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

1 **Section 1. Short Title.** - This Act shall be known as the "*National Preventive*
2 *Mechanism (NPM) Act of 2023.*"

3 **Section 2. Statement of Policy.** - It is hereby declared the policy of the State to:

4 a. Adopt the generally accepted principles of international law, which
5 include the prohibition of torture and other cruel, inhumane degrading
6 treatment or punishment, as part of the law of the land;

7 b. Uphold the dignity of every individual, ensuring full respect for human
8 rights; especially persons deprived of liberty, prohibiting any form of
9 physical, psychological, or mental harm, force, violence, threat,
10 intimidation, or any act that impairs his/her free will or in any manner
11 demeans or degrades human dignity;

12 c. Fully adhere to absolute condemnation and prohibition of torture outlined
13 in the 1987 Constitution, Republic Act (RA) No. 9745 (the Anti-Torture

1 Act of 2009) or other relevant laws, and human rights conventions to
2 which the Philippines is a State Party to or voted in favor of , but not
3 limited to, the Universal Declaration on Human Rights (UDHR), the
4 International Covenant on Civil and Political Rights (ICCPR), the
5 Convention on the Rights of the Child (CRC), the Convention on the Rights
6 of Persons with Disabilities (CRPD), the United Nations Convention
7 Against Torture and Other Cruel, Inhuman or Degrading Treatment or
8 Punishment (UNCAT), and the Optional Protocol to the Convention
9 Against Torture and Other Cruel, Inhuman or Degrading Treatment or
10 Punishment (OPCAT).

11 **Section 3. Definition of Terms.** - For the purposes of this Act, the following terms
12 shall mean:

- 13 a. **Deprivation of liberty** refers to any form of detention or imprisonment
14 or the placement of a person in a public or private custodial setting which
15 that person is not permitted to leave at will by order of any judicial,
16 administrative, or other authority;
- 17 b. **Other cruel, inhuman, or degrading treatment or punishment**
18 refers to a deliberate or aggravated treatment or punishment inflicted by
19 a person in authority or agent of a person in authority against a person
20 under his/her custody which attains a level of severity causing suffering,
21 gross humiliation or debasement to the latter;
- 22 c. **Person deprived of liberty (PDL)** refers to any person placed in any
23 form of detention or imprisonment or in a public or private custodial
24 setting where the said person is not permitted to leave at will by order of
25 any judicial, administrative, or other authority;
- 26 d. **Place of deprivation of liberty** refers to any place of detention,
27 imprisonment, or the placement of a person in a public or private
28 custodial setting under or within the jurisdiction and control of the
29 Philippines, where persons are or may be deprived of their liberty by
30 virtue of an order given by a public authority, at his/her instigation, or
31 with his/her consent or acquiescence. The term shall also encompass
32 traditional and non-traditional physical spaces of detention, whether
33 moving or stationary, temporary or permanent, formally or informally
34 used as detention facilities, or maintained or managed by public or private
35 authorities under regulation by the Government.

1 e. **Reprisal** refers to an act or omission attributable to authorities or
2 officials of a State who order, carry out, permit or tolerate any sanction
3 against any person or organization for having communicated with the
4 NPM or for having provided the NPM with any information, irrespective of
5 its accuracy;

6 f. **Subcommittee on the Prevention of Torture (SPT)** refers to the
7 United Nations Subcommittee on the Prevention of Torture and Other
8 Cruel, Inhuman, or Degrading Treatment or Punishment established
9 under the Optional protocol to Convention against Torture and Other
10 Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It has
11 a preventive mandate focused on a proactive approach to preventing
12 torture and ill treatment.

13 g. **Torture** refers to an act by which severe pain or suffering, whether
14 physical or mental, is intentionally inflicted on a person for such purposes
15 as obtaining from him/her or a third person information or a confession,
16 punishing him/her for an act he/she or a third person has committed or
17 is suspected of having committed, or intimidating or coercing him/her or
18 a third person, or for any reason based on discrimination of any kind,
19 when such pain or suffering is inflicted by or at the instigation of or with
20 the consent or acquiescence of a person in authority or agent of a person
21 in authority. It does not include pain or suffering arising only from,
22 inherent in, or incidental to lawful sanctions;

23 h. **Unrestricted access** refers to free access to any place of detention,
24 imprisonment, or the placement of a person in a public or private
25 custodial setting under or within the jurisdiction and control of the
26 Philippines, where persons are or may be deprived of their liberty.

27 All persons deprived of their liberty, with the opportunity to have private
28 unrestricted access includes the liberty on the part of the NPM to choose
29 the places that it may want to visit and the persons that it may wish to
30 interview.

31 **Section 4. National Preventive Mechanism.** - A Special Committee on National
32 Preventive Mechanism (NPM) is hereby created to give effect to the Philippines'
33 obligations under the OPCAT, for the purpose of preventing torture and other cruel,
34 inhuman or degrading treatment or punishment. The NPM shall be an attached
35 agency of the Commission on Human Rights (CHR) whose functions shall be separate
36 and independent from the operations of the CHR.

1 The NPM shall be composed of the Chairperson of the Commission on Human
2 Rights or his/her representative Commissioner, sitting as ex-officio member, and ten
3 (10) other members composed of:

- 4 1. Five (5) experts each representing one of the following professions or
5 other related fields such as Criminal Law, Medicine, Psychiatry,
6 Psychology, Social Work, Religious, Architecture, and Engineering;
- 7 2. Four (4) representatives from non-governmental organizations (NGOs)
8 operating in the Philippines for at least five (5) years and advocating
9 for human rights, preferably focusing on anti-torture work and/or
10 upholding the rights of persons deprived of liberty; and
- 11 3. One (1) person with prior professional experience of at least five (5)
12 years concerning the administration of places of deprivation of liberty.

13 The NPM shall, as much as practicable, have balanced gender
14 representation and have adequate representation of ethnic, religious and
15 minority groups in its membership on the basis of the principles of equality
16 and non-discrimination.

17 The NPM shall organize itself within thirty (30) days from the
18 completion of the appointment of all ten (10) members.

19 **Section 5. Qualifications of the members of the NPM.** - Except for the
20 Chairperson or his/her representative Commissioner, all members of the NPM shall
21 have the following qualifications:

- 22 a. Must be a Filipino citizen with high moral character, recognized probity,
23 competence, and integrity;
- 24 b. Have been practicing their respective professions for at least five (5)
25 years and have been recognized members of their respective
26 professional organizations ;
- 27 c. Be defenders and promoters of human rights in both their professional
28 and personal capacities with no record of any human rights
29 violations(s).

30 Preference will be given to members of the aforementioned professions who
31 are knowledgeable about matters related to the Paris Principles, the Bangkok Rules,
32 the Beijing Rules, deprivation of liberty, detention and the administration of justice.

1 **Section 6. Term of Office, Appointment, Dismissal** - The Chairperson of the
2 Commission on Human Rights or his/her representative Commissioner, sitting as ex
3 officio member of the NPM, shall serve as a member of the NPM for the entirety of
4 his/her respective tenure in the CHR.

5 The ten (10) members shall be appointed by the CHR Commission En Banc.
6 The selection and appointment process shall be open and transparent, ensuring
7 participative engagements with all relevant stakeholders. To ensure that the NPM is
8 a continuing body, the appointments shall serve for a period of five (5) years with
9 the possibility of one (1) reappointment.

10 Appointment or designation to any vacancy shall be only for the unexpired
11 term of the predecessor.

12 Any member who has been directly or indirectly involved in any case of human
13 rights violation, corruption, fraud, or any case involving moral turpitude shall be
14 dismissed after the conduct of an administrative hearing finding such member guilty
15 of the said actions.

16 **Section 7. Salaries, Emoluments, and Benefits.** - The members of the NPM
17 shall have the rank, salary, emoluments, and allowances equivalent to that of a
18 Commissioner of the CHR.

19 **Section 8. Organization and Staffing.** - The NPM is hereby authorized to
20 prepare and adopt the organizational structure and staffing pattern for the national
21 and regional offices of the NPM in such manner or form as they may deem most
22 suited and responsive to national and regional administration, subject, however, to
23 existing laws and regulations prescribing position classification, rankings and pay
24 ranges for national departments and offices.

25 The NPM shall establish a satellite office in Luzon, Visayas, and Mindanao with
26 the corresponding staff complement that will be responsible for implementing the
27 NPM functions in their areas of jurisdiction.

28 **Section 9. Powers and Functions of the NPM.** - The NPM, whose visiting
29 mandate is specifically aimed at the prevention of torture and other cruel, inhuman,
30 or degrading treatment or punishment, and proactive and non-adversarial in its
31 approach, shall have the following powers and functions:

- 1 a. To conduct regular and unannounced visits to places of deprivation of
2 liberty in order to prevent torture and other cruel, inhuman, or
3 degrading treatment or punishment.
- 4 In conducting such visits, the NPM may consider requests for visits by
5 civil society groups or any other entities or individuals recommending
6 policy, procedural, or practical reforms in places of deprivation of
7 liberty;
- 8 b. To undertake preventive monitoring visits and coordinate with relevant
9 authorities to examine and assess the custodial policies, procedures,
10 practices, and all other aspects relevant to the treatment and living
11 conditions of persons deprived of liberty in order to identify the risks
12 that give rise to torture and other cruel, inhuman, or degrading
13 treatment or punishment in accordance with the UN Standard
14 Minimum Rules on the Treatment of Prisoners (SMRTP) and existing
15 international principles, obligations, and standards;
- 16 c. To examine and review national laws, policies, and procedures that
17 relate to the treatment, well-being, and rights of persons deprived of
18 liberty;
- 19 d. To submit to Congress and to the President its annual NPM report
20 which shall contain its observations, advisories and other policy
21 recommendations, and proposals relating to the rights and protection
22 of persons deprived of their liberty and provide other relevant
23 authorities. The NPM report, which shall include a report to Congress
24 its annual budget and expenditures, shall be published and
25 disseminated to all stakeholders;
- 26 e. To refer any factual incident of torture and other cruel, inhuman, or
27 degrading treatment or punishment or other human rights violations
28 or abuses it may discover during its visits to appropriate authorities
29 within places of deprivation of liberty.
- 30 f. To work, where appropriate, in cooperation or consultation with any
31 person or entity, whether public or private, in connection with the
32 discharge of any of its functions under this Act and the OPCAT;
- 33 g. To publish information relative to its preventive monitoring functions,
34 specifically on matters mentioned in Paragraphs (a), (b), (c), (d), and
35 (e) of this Section, when circumstances so warrant and with due

1 prudence: **Provided**, That the NPM, having high regard for its rules
2 and regulations relative to confidentiality and informed consent, may
3 determine what information shall be considered confidential; *Provided*
4 *further*, That the NPM shall not publish or make known any sensitive
5 personal data relating to any person without that person's express
6 consent.

7 h. To submit independent reports to the SPT regarding the
8 implementation of the Republic of the Philippines' obligations under
9 the UNCAT and the OPCAT;

10 i. To promote public awareness, through the publication and
11 dissemination of information, and education materials, on its work as
12 the NPM;

13 j. To train and capacitate the relevant authorities charged with the
14 treatment of persons deprived of liberty and management of places of
15 deprivation of liberty

16 k. To ensure the protection and uphold the principle of non refoulement
17 for persons deprived of liberty in the performance of its mandate in
18 coordination with relevant agencies; and

19 l. To establish its own rules and procedures in carrying out its mandate
20 and to create line offices necessary and relevant for the execution of
21 its functions.

22 **Section 10. Guarantees for the NPM.** - All branches, subdivisions, departments,
23 and agencies or instrumentalities of the Government and relevant private institutions
24 shall guarantee the NPM the following:

25 a. Full and unrestricted access to all information concerning the number
26 of persons deprived of liberty in places of deprivation of liberty, as well
27 as the number of such places and their respective locations;

28 b. Full and unrestricted access to all information referring to the
29 treatment and conditions of persons deprived of liberty;

30 c. Full and unrestricted access to all places of deprivation of liberty and
31 their installations and facilities;

- 1 d. Liberty to conduct private interviews with persons deprived of liberty
2 without recording or monitoring by the persons in authority, or agents
3 thereof;
- 4 e. Liberty to choose the places to visit and persons to interview and when
5 these should take place;
- 6 f. Liberty for NPM officers and duly- authorized personnel to visit all
7 places of deprivation of liberty;
- 8 g. Freedom to determine its own rules and procedures, including its
9 program of visits;
- 10 h. That the relevant authorities shall be required to examine its
11 recommendations as the NPM and to enter into dialogues with the
12 same to discuss and agree on possible implementation and the
13 corresponding reporting measures;
- 14 i. That the relevant authorities shall enter into appropriate agreements
15 with the NPM to address the recommendations of the latter. Should
16 the authorities fail to act upon the recommendation, the NPM shall
17 forward its findings to the Department of Justice and other concerned
18 government agencies for appropriate actions;
- 19 j. That the relevant authorities shall immediately file and pursue the
20 appropriate administrative, civil, and/or criminal cases against
21 individuals and/or authorities who refuse to cooperate with the NPM
22 as it undertakes its mandate under both this Act and the OPCAT;
- 23 k. That the NPM shall enjoy complete financial and operational autonomy
24 and independence when carrying out its functions under both this Act
25 and the OPCAT; and
- 26 l. The NPM shall be allowed to receive foreign grants for the
27 establishment of NPM premises and implementation of its functions
28 specified in this Act.

29 **Section 11. Independence of Members of the NPM.** - All members of the NPM
30 shall act independently and impartially. With the exception of the CHR Chairperson
31 or his/her representative Commissioner, all other members of the NPM shall serve
32 in their personal capacity. They shall conduct themselves in accordance with the
33 following guidelines:

- 1 1) No member of the NPM shall participate in activities which may imply,
2 or may seem to imply, a conflict of interest with his/her capacity as an
3 independent and impartial member; and
- 4 2) Members of the NPM shall avoid any action which might give the
5 impression that any given agency or facility is receiving more or less
6 favorable treatment than that accorded to others; and
- 7 3) If for any reason a member of the NPM considers that he/she is in a
8 situation involving a potential conflict of interest, he/she shall promptly
9 inform the Executive Director, who shall then advise the rest of the
10 members of the NPM on the potential conflict of interest. Ultimately,
11 the NPM shall take all measures necessary to safeguard the
12 requirements of independence and impartiality of its respective
13 members.

14 **Section 12. Confidentiality.** - All documentation and information collected by the
15 NPM shall be kept strictly confidential, unless the NPM decides otherwise in relation
16 to a particular documents and information: Provided, That no sensitive information,
17 whether personal or otherwise, shall be published without the express consent of
18 the individual or authority concerned: Provided further, that this provision shall be
19 in accordance with all existing laws on confidentiality and security of sensitive
20 personal information and data, such as but not limited to the Data Privacy Act of
21 2012.

22 **Section 13. Relationship and Cooperation with Government Agencies,**
23 **Civil Society Organizations (CSOs) and Other Groups.** - The NPM shall
24 maintain direct regular contact with and encourage open dialogues with the relevant
25 UN agencies working against torture, including the Committee Against Torture, SPT,
26 and the Office of the High Commissioner for Human Rights (OHCHR). It shall also
27 encourage and maintain participation and coordination with the CSOs, media
28 organizations, and other regional, national, and international human rights
29 mechanisms for the effective and full implementation of this Act.

30 Government authorities and private organizations or entities mandated to
31 protect and promote the rights of persons deprived of liberty shall cooperate with
32 and promptly respond to and monitor the implementation of the recommendations,
33 proposals, and other requests of the NPM in the performance of its mandate.

34 The competent authorities shall take into consideration the recommendations
35 of the NPM and enter into a dialogue with it, on possible implementation measures.

1 **Section 14. Information Sheets on Persons Deprived of Liberty and Places**
2 **of Deprivation of Liberty.** - The NPM shall be entitled to receive copies of the
3 lists as provided under Sec. 7 of Republic Act No. 9745 otherwise known as the
4 "Anti-Torture Act of 2009" and as provided under Sec. 10 of Republic Act No. 10353
5 otherwise known as the "Anti- Enforced or Involuntary Disappearance Act of 2012".

6 **Section 15. Public Education, Information, and Awareness Campaign.** The
7 NPM, in partnership with departments/agencies with jurisdiction, control and/or
8 oversight of places of deprivation of liberty, CSOs, and such other concerned parties
9 and entities in both the public and private sectors, shall inform the public, as well
10 as persons in authority and their agents, of the existence of the NPM, the rights of
11 persons deprived of liberty, the importance of preventive visits, the need for
12 cooperation during such visits, and for implementing measures based on
13 recommendations of the NPM.

14 **Section 16. Periodic Review.** - Within five (5) years after the effectivity of this
15 Act, and every five (5) years thereafter or as the need arises, the NPM shall conduct
16 a comprehensive review of its implementation and a systematic evaluation of its
17 performance and functioning in order to highlight its accomplishments and impact
18 on the protection of the rights of persons deprived of their liberty.

19 To carry out this task, the NPM shall ensure participative and multi-sectoral
20 dialogues with stakeholders, the CSOs, survivors of torture and their families, and
21 the relevant government authorities involved in the treatment of persons deprived
22 of their liberty and the administration of places of deprivation of liberty.

23 The NPM shall submit its review and evaluation report to both the Senate
24 Committees on Justice and Human Rights and the House Committee on Human
25 Rights for their consideration.

26 **Section 17. Appropriations.** - The amount necessary for the implementation of
27 this Act shall be initially charged against the current year's appropriations of the
28 CHR. Thereafter, the amount necessary for the continuous implementation of this
29 Act shall be included in the annual General Appropriations Act (GAA).

30 **Section 18. Implementing Rules and Regulations (IRR).** - The CHR shall
31 formulate the IRR of this Act within ninety (90) days from its effectivity, in
32 consultation with the relevant government agencies and CSOs working in various
33 fields relevant to the treatment of persons deprived of liberty. The IRR of this Act
34 shall be effective within fifteen (15) days following its publication in two (2)
35 newspapers of general circulation.

1 **Section 19. Separability Clause.** - If any provision of this Act is declared invalid
2 or unconstitutional, the other provisions not affected thereby shall remain valid and
3 subsisting.

4 **Section 20. Repealing Clause.** - All laws, decrees, executive orders, rules and
5 regulations, memorandum orders, memorandum circulars, administrative orders,
6 ordinances, and other issuances, or any part thereof, which are inconsistent with
7 this Act, are hereby revoked, amended, or modified accordingly.

8 **Section 21. Effectivity.** - This Act shall take effect fifteen (15) days after its
9 publication in at least two (2) newspapers of general circulation.

Approved,