



University of
BRISTOL

Human Rights Implementation Centre



**DESIGNATION OF A NATIONAL PREVENTATIVE MECHANISM
NGO ROUNDTABLE DISCUSSION**

15 March 2016

Portofino Swiss International Hotel

Kigali, Rwanda

AGENDA

9.00 – 9.30	Registration
9.30 – 10.00	Welcome and opening session <ul style="list-style-type: none">• Cyrus Nkusi, (Governance for Africa)• Debra Long (University of Bristol)• Lilly Artz (University of Cape Town)
10.00 – 11.00	Session One: Overview of the Optional Protocol Facilitators: Cyrus Nkusi, Debra Long, Lilly Artz This session will provide an overview of the preventive approach of the OPCAT and the functioning of the UN Subcommittee on the Prevention of Torture and the obligation on States Parties to put in place National Preventive Mechanisms. Q & A
<i>11.00 – 11.15</i>	<i>Coffee break</i>
11.00 – 13.00	Session Two: Overview of NPM mandate and models Facilitators: Cyrus Nkusi, Debra Long, Lilly Artz In this session we will consider different NPM models and using practical examples we will examine the options for designating an NPM for the Rwandan context. Q & A
<i>13.00 – 14.00</i>	<i>Lunch</i>
14.00 – 15.45	Session Three: Advocacy strategies Facilitators: Cyrus Nkusi, Debra Long, Lilly Artz In this session we will identify and develop advocacy strategies to assist the ongoing domestic process to designate an NPM. In particular, this session will consider the following issues: <ul style="list-style-type: none">• Possible advocacy partnerships and coalitions• Outreach and sensitisation throughout Rwanda• Upcoming events and opportunities for advocacy activities• The development of advocacy materials• Engagement with the media
15.45 – 16.00	Opportunities going forward.
<i>16.00</i>	<i>Close of workshop</i>

MINUTES: Prof Lillian Artz (ASI/University of Cape Town at Lillian.Artz@uct.ac.za)

CIVIL SOCIETY ORGANISATIONS REPRESENTED AT THE DIALOGUE:

CSOs REPRESENTED		
FESY (Friends Effort to Support Youth) Rwanda	CERURAL: Centre for the Rule of Law	HID (Health and Development Initiative)
Never Again Rwanda	MPEDH (Movement for Human Rights Education)	Association Human Rights Journalists
Great Lakes Voice	Rwanda Women’s Network	Human Rights First Rwanda
PAX-Press	Prof Alice Urusaro Karekezi, University of Rwanda	Governance for Africa
Governance for Africa (Youth Sector)	Human Rights Implementation Centre (University of Bristol)	ASI/University of Cape Town

SESSION 1: Introduction

- Welcome and opening session – round of introductions to each other and the project:

The Human Rights Implementation Centre (University of Bristol), the Article 5 Initiative and Governance for Africa is hosting this civil society roundtable discussion on the implementation of the Optional Protocol to the UN Convention against Torture or ‘OPCAT’. The Republic of Rwanda formally ratified the OPCAT in July 2015. The purpose of the discussion is to raise awareness of the OPCAT and the process for designating a National Preventative Mechanism or ‘NPMs’ in Rwanda. The roundtable brings together key Rwanda civil society organisations to consider the requirements for NPMs to carry out their protective mandate, explore options for the designation of an NPM in Rwanda and to discuss advocacy strategies to ensure the Rwandan NPM is designated and functions in conformity with the OPCAT.

- Overview of the Optional Protocol by Debbie Long (See attached presentation)

SESSION 2: Discussions on the OPCAT

The participants were asked to fill out a ‘questionnaire’ on the mandate of the SPT and the NPM. This was conducted in small groups.

But firstly: Activity about “what I like about the OPCAT” (responses from the floor):

- That it has a special fund.
- NPM the confidentiality.
- SPT establishes mechanisms for regular visits for detention and engagement with local NPM.
- It is not a ‘people-centered’ mechanism. How are the people going to own this protocol?
- Bigger picture of sending the message of human rights and the awareness about torture.
- Governments have the prerogative to retain information or to make it public.

- The people who are detained have a voice outside the borders of a certain country: exposure of conditions and human rights.
- It is not something imposed on the country but there is a process of engaging by adoption.
- It is not clear how activists (and reporters) are protected.
- Help people set out their complaint against torture but we do not see what remedies there are.
- NPMs do not need to gain permission from the state to monitor prisons but concerned about the bureaucracy once a complaint is made.
- How are our communities and families going to access this instrument?
- The target group is a vulnerable group, which is positive, but how are those who support them protected?
- Recommendations made by the NPM help improve treatment of detainees and conditions of detention. However, the establishment of the mechanism can be complicated in this national context.
- Important that the mechanism is 'educative' and awareness raising is critical for making the OPCAT work. There will be a lot of debate about the context in which the establishment of this mechanism occurs.
- "Context matters" – take more time than needed to explain the project of the OPCAT
- Pleased that it was ratified by Rwanda last year.
- The whole idea is about the protection of human rights – the protection of people – and building mechanisms to promote and support this.
- OPCAT is not enough. Concern that there will be excuses for not allowing visits (like institutional emergencies). Who holds these institutions to account?
- The government of Rwanda responded positively to this by ratifying OPCAT and has been eager to engage with Rwandan citizens. This gives CSOs permission to engage with society and monitor.
- The OPCAT is quite technical and needs to be put into accessible language and formats (pamphlets and videos) and of course local languages.
- Need to revise our national reading on 'human rights' before university – at the community level.

Questions and Discussion:

- How do you operationalize the protocol?
- Prevention or intervention? The OPCAT is similarly vague about the distinction.
- The essence of the NPM is meant to build a mechanism but how do we bring this to the ground level.
- How does it fit in with peace and security resolutions and other laws and structures that deal with other forms of violence and maltreatment/ill-treatment.
- How do we do advocacy at the ground level with the range of international human rights instruments and national laws on violence prevention? How do we *fit* the OPCAT in this loose framework.
- We already have police, the Commission for Human Rights as well as the Office of Ombudsman. Where are CSOs in this complaints and management process?
- We do not use the mechanisms we already have efficiently. We can resort to a number of bodies but we use them only for 'outrageous' cases and not more common but widespread violations.

- We have instruments but we do not use them. How do we really operationalize these instruments?
- Our advocacy is shallow.
- There is a problem with the structure: UN, then government, then HRI's/other complaints mechanisms, then NGOs, then victims. Who is this project actually about? Discussions tend to focus on procedures rather than actual support and information services.
- When government institutions are challenged by their lack of response, reporting CSOs are told that these institutions (and their personnel) are not familiar with the conventions or laws to prevent and address torture and other forms of abuse and ill-treatment and therefore cannot be held liable for not responding adequately.
- Concerns by civil society organisations that they will be accused of conspiring against the state if critical of it.
- Do we have local level policies in place to *prevent* violence and *how to deal* with it?
- The ultimate question is: who carries out torture? The same institutions that are being established to protect people. We/they therefore need to denounce the use of torture.
- Interested to see CSOs discussing engagement with the human rights laws and systems. Educating the communities is key to promoting knowledge about human rights violations and remedies.
- Tools are required that domestic key international norms to the ground (i.e. Rwanda's penal code which does prohibit torture in no uncertain terms).
- How does the public "come to know" their fundamental rights and the remedies available to them if there is a violation of their rights.

Responses and Discussion on the Questionnaire:

1. *What places of detention can the SPT and NPMs visit?*
Article 4 (where persons are deprived of their liberty). The SPT can have a roster of experts to cover the full range of places that they are mandated to visit.
2. *How many members does the SPT have?*
Article 5 (25 members). Members must serve in their independent capacity and be representative/diverse. Encourage Rwanda to put forward a nominee for the SPT.
3. *What is the deadline for States parties to designate an NPM?*
Article 17 (one year from ratification). For Rwanda this means 30 June 2016. Must ensure proper designation and adequate consultation. Nothing happens if this does not happen within a year but the process should not be unreasonably drawn out.
4. *How many NPMs can States Parties set up, designate or maintain?*
Article 17 (one or several NPMs). Can be a (i) a specialized institution; (ii) a National Human Rights Institution (NHRI); (iii) an NHRI and civil society; and (iv) several existing or new institutions.
5. *What composition must the NPMs have?*
Article 18(1) (must be independent) and **Article 18(2)** (must have the required capabilities and professional knowledge). Should also strive for a gender balance and the adequate representation of ethnic and minority groups. Also to involve experts in particular fields as needed.
6. *What is the relationship between the SPT and NPMs?*

Article 11(b) (complementary and collaborative). Including advising and assisting State Parties, maintain contact, assist with evaluation of needs to strengthen the protection of persons denied of their liberty and make recommendations and observations.

Article 20(f) (contact, information and meetings). Good practice would mean sending Annual Reports of the NPM's work/progress and have meetings during State Party visits.

7. *Does the SPT need an invitation to visit a State Party?*

Article 4(1) (No).

Article 12(a) (State parties to receive the SPT and grant it access to places of detention).

8. *When can an objection be made to a visit to a place of detention by the SPT?* No objection allowed.

Article 14(2) (under particular circumstances). On urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder the State can temporarily prevent a visit.

9. *Do NPMs need to get permission before they can visit a place of detention?* No.

Article 1 and **Article 19**. See above for explanation.

10. *What is the purpose of the SPT and NPM visits to places of detention?*

Article 4(1) (strengthening protection of persons against torture and other cruel, inhuman or degrading treatment). SPT can make practical recommendation to improve treatment and conditions.

11. *When can the SPT make their visit report public?*

Article 16(2) (whenever requested by the State Party). However not personal data can be published without the express consent of the person concerned. SPT works on the principle of confidentiality.

12. *What information must be provided to the NPMs?*

Article 20(a) (number of persons deprived of liberty and number of places and location of places of detention **and Article 20(b)** (access to all information referring to treatment of these persons)

13. *Who can the NPMs interview?*

Article 20(e) (anyone).

14. *What is the aim of the recommendations of the NPMs?*

Article 19(b) (improving treatment and conditions of persons deprived of their liberty).

15. *What must the authorities do when they receive recommendations from NPMs?*

Article 22 (examine recommendations and enter into a dialogue on possible implementation measures).

16. *As well as carrying out visits to places of detention and making recommendations what else can NPMs do?*

Article 19(c) (at minimum to submit proposals and observations concerning existing or draft legislation).

17. *What must NPMs do with confidential information?*

Article 21 (no personal data shall be published without the express consent of the person concerned).

18. *What privileges and immunities must be given to the SPT and NPMs?*
Article 35 (immunities are considered necessary). See UN Convention on Privileges and Immunities which refers to immunity from personal arrest, detention, seizure of personal baggage, seizure or surveillance of papers and documents and protection from legal actions in the course of carrying out duties.
19. *What must States Parties do to ensure NPMs function effectively?*
Article 18 (guarantee of functional independence), **Article 19** (granted minimum powers) and **Article 20** (access to information and places)
20. *What must States Parties do with the annual reports of the NPMs?*
Article 23 (State Parties to publish and disseminate Annual Reports of the NPMs)

Elements that CSOs should consider taking forward in advocacy work relating to the NPM/OPCAT:

1. Ensuring that the NPM is designated in a reasonable period of time.
2. Ensuring that it not only conforms with OPCAT but also that it is *relevant* to local Rwandan issues (including reporting of complaints, the role of CSOs and how existing complaints systems have responded) in its mandate.
3. Ensuring that the NPM engages with a lot of different actors on the NPM (especially those not conventionally engaged in issues of torture and 'justice', such as those responsible for other places of detention and institutional facilities such as refugee camps and rehabilitation centres).
4. Ensuring that the NPM has as a key part of their mandate, public knowledge and awareness of the NPM as well as the contents/rights therein of UNCAT and OPCAT.
5. Encouraging Rwanda to put forward a nominee for the SPT.
6. Promoting the appropriate composition of the NPM in order to address Article 18(1) and 18(2) regarding having required capabilities and professional knowledge.
7. Creating ways in which NGOs and CBOs get information about OPCAT, the NPM and other protective mechanisms across to communities. These civil society organizations must work *together* to get the *same* message across in an understandable way, into accessible language and formats (pamphlets and videos) and in local languages.
8. NGOs and CBOs to work together in *promoting and supporting* the formulation of the NPM.
9. NGOs and CBOs to work together in a *collective and a constructive manner* to monitor the NPM (and other protective and complaints mechanisms).
10. Ensure that civil society organisations are both a *part of* and can *engage with* the NPM (and other protective and complaints mechanisms). Promote inclusiveness and participation.
11. Discussing the development of *tools and strategies* to take this forward. Particularly in relation to who these strategies are targeted at, including the NPM, the Rwanda Human Rights Commission as well as participate in reporting to the UN.

12. NGOs and CBOs produce their own monitoring and research reports *to complement* State Party reports.
13. Community dialogues before engaging government institutions. Advocacy strategies are about knowing your own contexts and understanding what you want to change.
14. Taking cognizance of the fact that we often assume that international norms/instruments are easily understood in this context or that one is engaging with people and institutions that are 'on the same page' of understanding. The dialogue *needs* to be based on common assumptions and built from there. From the local, to the national, to the international. It needs to start from the basis of this context and not from the basis of international norms.