



**Report of a Stakeholder Consultation on the Designation of a  
National Preventive Mechanism in Rwanda  
30 November – 1 December 2015  
Kigali, Rwanda.**

## **1. Background**

Rwanda formally ratified the OPCAT on July 2015 when it deposited its instrument of ratification at the UN.<sup>1</sup> In accordance with the terms of the OPCAT the Government of Rwanda must designate a National Preventive Mechanism (NPM) within one year of this date i.e. July 2016.

To assist this designation process a stakeholder consultation was organised by the Human Rights Implementation Centre of the University of Bristol, UK, and the Rwandan National Commission on Human Rights on 30 November and 1 December 2015. This workshop was part of a project funded by the UK Foreign and Commonwealth Office to support and facilitate national discussions on the designation of an NPM in Rwanda. This workshop brought together key stakeholders including representatives from the government, law enforcement and correctional services, the National Commission on Human Rights, and civil society organisations, along with experts from the UN Subcommittee on Prevention of Torture (SPT), the Association for the Prevention of Torture (APT), and the 'Article 5 Initiative'. The aim of the workshop was to raise awareness of the OPCAT and the preventive mandate of NPMs; to facilitate discussions on identifying a workable structure for an NPM in Rwanda; and to start the process of developing terms of reference for the NPM.

## **2. Overview of discussions**

### **2.1. Overview of the OPCAT and the preventive mandate**

The purpose of the OPCAT is to assist States to implement their existing obligations to prohibit and prevent torture and other forms of ill-treatment. It was noted that the OPCAT is innovative because it aims to address the root causes as to why torture and other ill-treatment occur and to unite international and national efforts to prevent these forms of abuse.

---

<sup>1</sup> The national process for ratification was completed earlier in 2014 with the passages of but the official ratification date is July 2015.

It was stressed that the approach of preventive visits is different from other types of visits to places of detention that may occur, for example to investigate complaints. Unlike visits undertaken to respond to specific allegations or reports of human rights violations, 'preventive visits' are to be regular and proactive, their focus is not on individuals as such but on conditions and the treatment of persons deprived of their liberty. The methodology for preventive visits differs also in that they are to be undertaken regardless as to whether there has been a complaint or not, they are to be frequent and repeated in order to provide ongoing monitoring of the treatment of persons deprived of their liberty and conditions of detention.<sup>2</sup>

Furthermore, the preventive approach of NPMs is not just focused on making recommendations following a visit to address particular problems observed within specific institutions; NPMs are mandated to look at broader, system-wide issues. Therefore the preventive mandate of NPMs also extends to making recommendations to address systemic problems that impact on the treatment of persons deprived of their liberty and conditions of detention; to review existing or draft legislation; and to recommend or undertake training and awareness raising activities.

In addition, it was stressed that the focus of NPMs is not only on preventing torture but also "other forms of cruel, inhuman or degrading treatment or punishment". Thus NPMs are to monitor the humane treatment of persons deprived of their liberty and identify any acts, omissions or conditions that if left unchecked could amount to torture or other forms of ill-treatment.

Accordingly, when considering what structure the NPM will take it is important to bear in the mind this broad preventive mandate and how this can be implemented effectively in practice and the expertise and resources required.

## **2.2. Current status of the designation process**

The Ministry of Justice (Minijust) has instigated the process for designating an NPM and in September 2015 a roadmap was adopted following training organised by Minijust. This roadmap sets out a timeline for the adoption process to be completed by July 2016 as follows:

- a) **Concept note to NPM** : initiated by MINIJUST ( **mid- October 2015**)
- b) **Preliminary consultations**:
  - Budget planning: **October 2015** ( Director of cabinet in the office of the president, PM, MINICOFIN)
  - Technical meeting : **Early November 2015**
  - High level consultative meeting include Parliament : **mid-January 2015**
  - Bilateral-international **End Nov 2015**

---

<sup>2</sup> Based on the presentation made by Mrs Marija Definis-Gojanović member of the UN Subcommittee on Prevention of Torture.

### c) TBR quarterly meeting

- Draft law (MINIJUST, RLRC, TBR)
- Prepare draft: **End January**( Minijust in consultation TBR)
- Consultations : **End February 2016**
- Submission cabinet approval (**End March 2016**)
- Parliament ( **End May 2016**)
- Promulgation (**End June 2016**)
- Appointment (**End July 2016**)

As of 30 November 2015 the designation process was still at the preliminary consultation stage, and although it was acknowledged that the timeline was tight to complete the designation process, it was agreed that the roadmap should not be revised at this stage and that it was feasible to anticipate a decision on the designation of an NPM by July 2016, as well as a draft law for discussion by that deadline.

### 2.3. Mapping the existing visiting framework against OPCAT

An exercise to identify existing bodies who undertake visits to places of detention and mapping their visiting mandates against the minimum guarantees and powers for NPMs as state in the OPCAT<sup>3</sup> revealed that there is already a framework in place for visits to a broad range of places of detention.

The Rwandan National Commission on Human Rights (NCHR) has the broadest powers to visit places of detention. In accordance with Article 6 of Law No. 19/2013 of 25/03.2013 the NCHR has a mandate to carry out visits to custodial places with the purpose of inspecting whether the rights of detainees are respected. In addition Article 7 of that Law provides that the NCHR has the power to access any place where human rights violations are alleged or reported including places of detention for the purpose of investigations.

The mapping exercise demonstrated that in practice the NCHR carries out visits twice a year to all prisons and police stations and also carries out additional visits to these places in order to respond to complaints or reports of human rights violations. The aim of these visits would appear to be a combination of ongoing monitoring of the treatment of detainees and investigating complaints. The NCHR's visiting mandate also, in principle, extends to other types of places of detention that exist in the country, even if there is no established practice of regular monitoring of these places.

In addition other organisations were identified that carry out visits to places of detention to review the treatment of detainees and whether safeguards and procedures are being followed such as the National Public Prosecutor Association (NPPA); the Ombudsman; the Investigative section of the Police; the National Children's Council; the ICRC; and a range of civil society organisations.

During discussions it was noted that people may be held in 'unofficial' places of detention. It was recalled that Article 4(1) of the OPCAT states that visits must be allowed "to any place

---

<sup>3</sup> See Articles 18 and 19 of the OPCAT.

under its jurisdiction and control where persons are or *may be* deprived of their liberty” (emphasis added. Thus the mandate of the NPM, as well as the SPT, extends to unofficial places of detention.

#### **2.4. NPM models for Rwanda**

The OPCAT does not set out any particular structure for an NPM, thus each State has to decide on the best format for its particular country context. It was noted that four general NPM models have emerged from practice to date, namely:

- a) The existing national human rights institution is designated
- b) The national human rights institution plus civil society organisations are designated
- c) Multiple existing bodies are designated
- d) A new specialised body is established.<sup>4</sup>

In groups the particular advantages and disadvantages of these models for the Rwandan context were considered (note for this exercise the ‘NHRI + CSO’ model and the ‘multiple existing bodies’ model were considered together). From these discussions the following primary views emerged:

##### *1. If the National Commission on Human Rights was designated as the NPM:*

###### *Advantages:*

- It already has a broad visiting mandate and experience in visiting places of detention
- It already has the mandate to address, monitor and report on human rights conditions and violations of human rights.

###### *Disadvantages:*

- More staff and resources would be required
- The NCHR law would need to be amended
- There could be confusion between the mandate and reports of the NCHR and the NPM.

###### *Areas where there lacked agreement on this model:*

- The independence and credibility of the NCHR was questioned by some participants
- It was considered by some that having one institution as the NPM would limit the scope and potential for advocacy
- It was felt by some that having an independent unit within the NCHR would be the most efficient way of designating an NPM and avoid duplication of or competing mandates.

##### *2. If multiple bodies (i.e. the National Human Rights Commission and other bodies e.g. CSOs) were designated as the NPM:*

###### *Advantages:*

- These bodies could bring greater diversity and expertise within the NPM membership
- This could provide a useful linkage between CSOs and public institutions.

---

<sup>4</sup> Based on presentation by Mr Jean-Baptiste Niyizurugero, Africa Programme Officer for the APT.

*Disadvantages:*

- Coordination could be a problem
- Additional staff and other resources would be required
- It could be difficult to obtain agreement on which organisations should be involved.

3. *If a new body was to be established:*

*Advantages:*

- This could be tailored made to suit the OPCAT
- It would not be hindered by existing perceptions as to its independence
- It could be clearly distinguished from existing bodies.

*Disadvantages:*

- It would need to build credibility
- It could take a while to establish and appoint members and staff
- Budgeting for a new institution will be an issue
- The members could lack experience.

Although consensus around a particular NPM model was not achieved among the workshop participants, nevertheless two of these models emerged as having broader support among the group namely i) a separate NPM unit is established within the NHRC and ii) a new body is established. However, it was acknowledged that more information was needed on how in practice each of these models could function, i.e. what are the specific local factors that could impact on the functioning of a particular model and need to be considered.

It was also stressed that regardless as to which NPM model is decided upon, all models will require a specific NPM budget to be prepared and sufficient resources to be provided to enable the NPM to function effectively and in conformity with the OPCAT.

### 3. Core principles

During the discussions agreement was obtained on a set of core principles and concepts that would form the basis of the functioning of the NPM and provide an outline for a draft law as follows:

- a) **Definitions:** the following terms and concepts need to be defined in the NPM legislation:
  - ‘Torture and other ill-treatment’: should be as defined in Article 1 of the UNCAT
  - ‘Places of detention’ and ‘deprivation of liberty’: should be defined in conformity with Article 4 of the OPCAT
- b) **Mandate of the NPM:** the law should ensure that the powers and guarantees of the NPM as set out in the Articles 18 and 19 of the OPCAT are incorporated fully.
- c) **Functional independence:** this needs to be guaranteed in the NPM legislation. In particular the following issues need to be considered:
  - The legislation needs to state expressly that the NPM is to be a permanent body

- If the NPM is under the 'umbrella' of NCHR, then the relationship and accountability between the NPM and the NHRC needs to be clearly set out
  - The financial and administrative independence of the NPM needs to be expressly guaranteed in the law.
  - The NPM members must be responsible for preparing their own rules and procedures.
  - The NPM members must be able to appoint and dismiss their own staff.
  - The NPM members must be able to decide on how to spend their budget.
- d) Appointment procedure:** the following issues need to be considered for the appointment of members to the NPM:
- Diversity within the membership (i.e. providence and profession; gender and other social diversities)
  - Inclusivity of actors in the process for appointing members to the NPM, as well as in the mechanism itself
  - Who appoints (what body or collection of bodies are responsible for appointing members? Should there be a 'selection committee'?)
  - What is the appointment process?
  - What is the tenure of members/duration of appointment?
  - The recruitment process needs to be transparent and autonomous.
- e) Reporting:** the following issues need to be considered:
- Who does the NPM report to?
  - How often?
  - What is reported?
  - How is it reported?
  - How are recommendations to be used and when are responses by the state party are required? In this respect Article 22 of the OPCAT obligates the authorities to examine recommendations and engage with the NPM in discussions on the implementation of the recommendations, and it is recommended that this is expressly included in the NPM law.
- f) Access to information:** it is important to make express reference to the guarantee for the NPM to have access to all relevant information in accordance with Article 20 of the OPCAT.
- g) Principles of non-discrimination and impartiality:** these should be set out in the NPM legislation.
- h) Privileges and immunities:** these should be expressly stated in the NPM law in order to prevent any interference with the NPM mandate. In particular:
- Article 35 of the OPCAT states that NPMs shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions, to prevent hindrance of functions.
- i) Protection against reprisals:** Articles 15 and 21 of OPCAT provide guarantees against reprisals against persons in contact with the SPT and NPM.
- j) Collaboration with other bodies:**
- The OPCAT envisages collaboration between the NPM and the UN SPT and this should be guaranteed within the NPM law

- The law should also state that the NPM is to collaborate with other relevant national bodies.

#### **4. Outcomes and next steps**

In order to move the discussions forward on the designation of an NPM the following recommendations were presented and next steps identified:

- Countrywide sensitization campaigns about NPM should be continued because it is a new concept. In particular training on the OPCAT and the functioning of NPMs needs to be given to decision-makers within the various government ministries, as well as other key stakeholders such as officials from the law enforcement and correctional services, and CSOs.
- Discussions with all stakeholders involved in the establishment and implementation of the NPM should also be continued.
- Other countries that have set up NPMs should be consulted in order to obtain information and identify good practice towards creating effective and credible NPMs. For example a 'study visit' to a country with an NPM should be organized and conducted.
- A document showing existing NPM models and how they can 'fit' the Rwandan context should be drafted/distributed.
- The outcome of this workshop should be presented to relevant decision-making organs to take action.
- The process of elaborating the law establishing the NPM should be expedited. Among other things, this law should focus on independence, diversity of members, reporting process and impartiality.

**December 2015**