



National Human Rights Institutions in the OSCE area and the Optional Protocol to the UN Convention Against Torture

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Role of National Human Rights Institutions in the fight against torture

- What is a National Human Rights Institution (NHRI)?
 - National Human Rights Commissions
 - Ombudspersons institutions
- NHRIs and prevention of torture:
 - Promotion of an effective legislative framework;
 - Contributing to the implementation of the legal framework;
 - Acting as a control mechanism: the Optional Protocol to CAT and NHRIs: formal role and informal role.

The nature of obligations contained in the OPCAT

- Traditional modes of supervision of the implementation of the international human rights treaties absent in the OPCAT;
- Main obligation by states parties: designation of a National Preventive Mechanism (NPM);
- What is an appropriate NPM?
 - Article 18 of the OPCAT:
 - Functional independence;
 - Independence of personnel;
 - The necessary expertise within the NPM;
 - The necessary resources;
 - ‘due regard’ given to the Principles Relating to the Status of National Institutions, the so-called ‘Paris Principles’.

Choices made by the states parties in respect of the NPMs

Three trends around the world:

- **Designation of existing** National Human Rights Institutions: Human Rights Commissions (like Mexico and Mauritius) or Ombudsman Offices (like Denmark, Armenia, Sweden and Costa Rica);
- **Designation of a number of institutions** that together carry out NPM functions: New Zealand (5 institutions: the Human Rights Commission (as a central body), Office of the Ombudsman, the Independent Police Conduct Authority, the Office of the Children's Commissioner and the Inspector of Service Penal Establishments of the Office of the Judge Advocate General of the Armed Forces) or Slovenia and Moldova, where in both countries the mandate of the NPM is carried out by the respective Ombudsman Offices together with local NGOs;
- **Creation of an entirely new institution** for the purposes of an NPM: France- the general Inspector of Places of Deprivation of Liberty; Senegal- the office of the National Observer of Places of Deprivation of Liberty; the forthcoming National Committee for the Prevention of Torture in Paraguay.

NPMs in the OSCE region

- NHRIs and OPCAT: overlap in terms of powers and functions;
- Natural choice by the governments?
 - Powers accorded to NHRIs at times similar to those required for the NPM;
 - Existing expertise;
 - Established reputation;
 - Capacity and financial considerations.
- Ombudsman Offices designated as NPM: Estonia, Denmark, Sweden, Armenia, Azerbaijan, Georgia;
- ‘Ombudsman Plus’ model (NPM mandate carried out by the Ombudsman office together with the NGOs): Moldova, Slovenia.

Country examples: Georgia

- The Public Defender has been officially designated as an NPM (according to the amendments made to the Organic Law on Public Defender of Georgia on July 16, 2009); although civil society supported 'Ombudsman +' model;
- NPM functions are also shared by a Special Preventive Group which is to be set up at the Ombudsman's Office; some civil society experts might be invited to join the Group along with the Ombudsman's Office staff members involved in monitoring closed institutions/places of detention;
- For the past few years, the Public Defender's Office has been the sole monitoring body with access to all various places of detention.
- There used to be public monitoring commissions for prisons; psychiatric hospitals have been monitored jointly by a Public Monitoring Council consisting of civil society NGOs and the PDO

Country examples: Armenia

- Human Rights Defender of the Republic of Armenia was officially designated as an NPM (amendments introduced to the Law on Human Rights Defender as of 8 April, 2008); here also at the public debates the civil society supported 'Ombudsman +' model;
- The Law does not adequately reflect NPM functions, mandate, etc.
- According to the reports, there is a tendency that reactive rather than proactive approaches to torture and ill-treatment are taken by the Human Rights Defender;
- Public Monitoring Council for prisons as well as Public Monitoring Council at the Pre-trial Detention Facilities of the Police have been monitoring relevant institutions (since 2003 and 2006 respectively).

Country examples: Kazakhstan

- The working group consisting of the ombudsman, state officials and NGO representatives was established in 2008. The aim of the working group is to develop the best model of NPM for Kazakhstan.
- A range of public debates on the best model of NPM took place. The model which was chosen as an appropriate one is the model “Ombudsman +”.
- 15 Public Monitoring Commissions consisting of members of different NGOs established in all regions of Kazakhstan and have been monitoring the penitentiary institutions proactively and constantly.

Country examples: Kyrgyzstan

- In 2006 Public Monitoring Council on Penal System was established under the Ministry of Justice.
- The project of law on NPM was developed and in April 2009 discussed with the Government and Presidential Administration. As planned the project of law will be improved and launched for next discussion in spring of 2010.
- The chosen model is the model of Public Council consisting of the Ombudsman, MPs, representatives of NGOs. The Council will have a Center of Monitoring and Analysis which will function with the support of the Ombudsman institution. We can say that the model “NGOs + Ombudsman” is used.

Some early lessons on the challenges when designating Ombudsman Offices as NPM

- Creation of an NPM- not an easy task and many states parties to OPCAT struggle with it; adjustments may be needed later on after the NPM has become operational.
- The chosen NPM must reflect the specific geo-political, social and cultural as well as legal features of the country;
- The process of choosing an NPM must be inclusive and transparent to ensure that the best model is arrived at as well as to guarantee the legitimacy of the body.
- If Ombudsman's Office involved: careful balance between NPM work and complaints handling functions;
- Access to all places of deprivation of liberty as defined in OPCAT: thematic and geographic;
- Variety of expertise and gender and minority representation;
- System of regular visits;
- Other preventive activities;
- Need to consider the existing mechanisms as these have acquired considerable experience and expertise.

Future challenges

- The challenge of monitoring programmes:
 - The preventive mandate;
 - Meaning of ‘deprivation of liberty’ in the OPCAT;
- Coordination of work within the country:
 - Coordination to ensure regularity of visits throughout the country;
 - Coordination of work within the NPM (if various units or various entities comprise NPM)
 - Coordination of work with other actors in the field: NHRIs (if not NPM), statutory visiting bodies and NGOs.
- Coordination of work with the SPT:
 - Role of the NPM
 - Role of other actors, like NHRIs.