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National Human Rights Institutions as National Preventive Mechanisms: Opportunities and challenges

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Introduction

The Optional Protocol to the UN Convention against Torture (OPCAT) creates a system of torture prevention based on visits to places of detention by an international body, the Subcommittee, and national organs, National Preventive Mechanisms (NPM). States are free to designate one or several existing or new institutions as NPM. Since the OPCAT came into force in 2006, a growing number of National Human Rights Institutions (NHRIs) have been designated by states as their National Preventive Mechanism under the OPCAT.

This year marks the 20th anniversary of the 'Principles relating to the status of national institutions' (the Paris Principles) - a set of standards that frame and guide the work of National Human Rights Institutions. This provides an important opportunity to reflect on the role of NHRIs, including in the prevention of torture and other ill-treatment. With this in mind, and with the benefit of seven years of experience in the operation of NPMs since the OPCAT came into force, this paper examines the opportunities and challenges that arise in practice when NHRIs are given the NPM mandate.

After setting out some key concepts, the paper considers common advantages and challenges when NHRIs are designated as NPMs. It then takes a closer look at the different types of NHRIs operating as NPMs (Ombudsmen, Human Rights Commissions, consultative bodies as well as the "Ombudsman plus" model and special NHRI model), and the implications of their distinct characteristics for fulfilling the NPM mandate.

The paper is aimed at NHRIs themselves, as well as bodies that seek to improve the effectiveness of NHRIs as NPM, including civil society, international organisations and governments. It is hoped that the paper can assist in efforts to strengthen the capacity and effectiveness of NHRIs in carrying out the NPM mandate.

1. Concepts

1.1 National Preventive Mechanisms (NPMs)

National Preventive Mechanisms are bodies designated by states under the Optional Protocol to the UN Convention against Torture (OPCAT)¹ to prevent torture and other forms of ill-treatment at the domestic level. They fulfil this mandate by conducting regular visits to places of deprivation of liberty, submitting reports and making recommendations, including on existing or draft legislation. With NPMs, an international treaty provided for the first time for national bodies to assist in its implementation. The OPCAT came into force in 2006 and to date it has 70 States Parties, 51 of which have designated their National Preventive Mechanism.

The OPCAT does not specify a form or structure for the NPM and states are free to designate one or several new or existing bodies as their NPM. It does however provide minimum requirements for NPMs,² according to which the NPM should:

- Be independent (functional, personal and institutional independence)³
- Be provided with sufficient resources (financial, human, logistical)⁴
- Have the expertise and diversity necessary to fulfil its mandate⁵
- Have powers and guarantees, in particular access to all places of deprivation of liberty, information and persons⁶
- Enjoy privileges and immunities (i.e. protection from sanctions and confidentiality of information)⁷

The OPCAT also establishes an international body within the UN, the Subcommittee on Prevention of Torture (SPT), which visits places of detention and advises on OPCAT implementation. In line with its mandate, the SPT provides guidance on the establishment and functioning of effective NPMs.⁸ It conducts advisory visits to countries focusing on NPM development and has developed guidance documents such as its 'Guidelines on NPMs'⁹ and 'Analytical self-assessment tool for NPMs'.¹⁰ The OPCAT also foresees direct contact between the SPT and NPMs.¹¹

¹ For more information on the OPCAT, see Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IHR), *Optional Protocol to the UN Convention against Torture: Implementation Manual* (revised edition 2010).

² For a detailed description of those provisions, see Association for the Prevention of Torture (APT), *Guide to the Establishment and Designation of National Preventive Mechanisms* (2006). Also, the APT paper, *National Human Rights Commissions and Ombudspersons' Offices/Ombudsmen as National Preventive Mechanisms under the OPCAT* (2008), examines each of the key requirements of NPMs under the OPCAT and issues that can arise when an NHRI is designated as NPM.

³ Article 18 (1) OPCAT

⁴ Article 18 (3) OPCAT

⁵ Article 18 (2) OPCAT

⁶ Article 20 OPCAT (a) to (f)

⁷ Article 21 OPCAT

⁸ Article 11 (b) OPCAT

⁹ UN Subcommittee on Prevention of Torture, *Guidelines on national preventive mechanisms*, 2010 (CAT/OP/12/5).

1.2 National Human Rights Institutions (NHRIs)

National Human Rights Institutions are state bodies with a constitutional and/or legislative mandate to protect and promote human rights.¹² NHRIs are funded by the state but are independent of it – they provide a “bridge” between civil societies and governments in the implementation of human rights. NHRIs are known by different names in different countries, including National Human Rights Commission, Committee or Council, Ombudsman, Public Defender, *Provedor* or *Defensor*. National Human Rights Institutions are not created under an international treaty and have existed for much longer than NPMs.

The Paris Principles are a set of international principles adopted by the UN General Assembly that frame and guide the work of NHRIs,¹³ providing for their independence, broad human rights mandate, adequate funding, and inclusive and transparent selection and appointment process.¹⁴ The principles provide a standard for assessing the legitimacy and credibility of NHRIs and form the basis of a peer review process by the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC) of NHRIs.¹⁵

The ICC Sub-Committee on Accreditation develops ‘General Observations’ on interpretative issues regarding the Paris Principles,¹⁶ which provide useful guidance on many issues to be considered when establishing an NPM (both for NPMs that involve NHRIs and those that do not).¹⁷

Today there are well over 100 NHRIs operating around the world, 69 of which are accredited by the ICC in full compliance with the Paris Principles.¹⁸ Their role in the

¹⁰ UN Subcommittee on Prevention of Torture, *Analytical self-assessment tool for National Preventive Mechanisms*, 2012 (CAT/OP/1).

¹¹ OPCAT Article 20 (f)

¹² Office of the UN High Commissioner for Human Rights (OHCHR), Professional Training Series 4, National Human Rights Institutions: History, Principles, Roles and Responsibilities (Rev. 1, 2010), p.13.

¹³ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7 - 9 October 1991), adopted by Human Rights Commission Resolution 1992/54 in 1992 and General Assembly Resolution 48/134 in 1993.

¹⁴ OHCHR, *Paris Principles: 20 years guiding the work of National Human Rights Institutions* (30 May 2013), accessed 16 December 2013

<http://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>

¹⁵ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was originally established by NHRIs at their International Conference in Tunis in 1993. It coordinates the activities of Paris Principle-compliant NHRIs internationally, including the accreditation of its members (i.e. providing official recognition that NHRIs meet or continue to comply fully with the Paris Principles). Accreditation takes place under the rules of procedure of the International Coordinating Committee’s Sub-Committee on Accreditation (SCA). The SCA can accord NHRIs with one of three statuses: “A status” denotes a voting member of the ICC that complies fully with the Paris Principles; “B status” denotes an observer member that does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination; and “C status” denotes a non-member that does not comply with the Paris Principles. See OHCHR, Professional Training Series 4, National Human Rights Institutions: History, Principles, Roles and Responsibilities (Rev. 1, 2010), pp. 44-45.

¹⁶ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation (SCA), General Observations as adopted in Geneva in May 2013, accessed 16 December 2013

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/ICC%20SCA%20General%20Observations.pdf>

¹⁷ In Tunisia, stakeholders took into account several of these observations when drafting the law to establish a new National Authority for the Prevention of Torture.

¹⁸ ICC website accessed 19 November 2013: <http://nhri.ohchr.org/EN/AboutUs/Pages/HistoryNHRIs.aspx>

promotion and protection of human rights has been recognised by the international community.¹⁹ NHRIs have also been encouraged to contribute to the prevention of torture and other ill-treatment²⁰ and there are a number of ways NHRIs can do this.²¹ This paper focuses on issues which arise when they are given a mandate for torture prevention as NPMs under the OPCAT.

1.3 National Human Rights Institutions as National Preventive Mechanisms

NHRIs have been given a significant role in implementing the OPCAT in the seven years since the treaty came into force. To date, the majority of States Parties to the OPCAT that have designated an NPM have chosen to give this mandate to a NHRI: out of a total number of 51 designated NPMs, 34 involve NHRIs, either as the sole NPM institution or with other bodies. Most of these are in Europe (24 out of the 32 NPMs in the region), with six in the Americas (out of 11) and two in both Asia and Africa (out of 3 and 4 respectively).

These include different types of NHRIs: Ombudsmen, National Human Rights Commissions and consultative bodies. In addition, some NHRIs share the NPM role with civil society (“Ombudsman plus” model) or with other institutions. In most cases, an existing NHRI was designated as NPM. But in two countries (Chile and Uruguay), the NPM mandate was given to a new NHRI at the same time as it was established.²²

Since 2011, the NHRI accreditation process has taken into account whether NHRIs that have been designated as NPMs are carrying out this function in line with the Paris Principles. According to the ICC Sub-Committee on Accreditation,²³ it focuses on the mandate of the NHRI to carry out NPM functions (legal basis and scope), the skills and expertise of staff, adequate additional resources, and whether it is effectively undertaking all relevant roles under the OPCAT. The SCA will also consider any guidelines developed by the relevant treaty body (i.e. the SPT).

The OPCAT makes reference to the Paris Principles, calling on States Parties to give due consideration to them when setting up their National Preventive Mechanisms.²⁴ However, this has been interpreted as providing a source of inspiration rather than criteria for assessment. The ICC accreditation process may be able to contribute to

¹⁹ UN General Assembly resolution: *The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*, 20 December 2012 (A/RES/67/163); UN Human Rights Council resolution: *National institutions for the promotion and protection of human rights*, twentieth session (A/HRC/RES/20/14).

²⁰ See for example Asia-Pacific Forum of National Human Rights Institutions (APF), APT & OHCHR, *Preventing Torture: an Operational Guide for National Human Rights Institutions* (2010) and The Nairobi Declaration adopted at the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights, Nairobi, Kenya, 21-24 October 2008, §§ 39-43.

²¹ APF, APT & OHCHR, *Preventing Torture: an Operational Guide for National Human Rights Institutions* (2010).

²² In Lebanon, a draft bill establishing a National Human Rights Institution (comprising a permanent committee for the prevention of torture as NPM) is currently being examined by the Parliament.

²³ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation (SCA), General Observations as adopted in Geneva in May 2013, section 2.9.

²⁴ OPCAT Article 18 (4)s

strengthening NHRIs as NPMs, but its role is also limited given that the Paris Principles are broad in nature and designed for general purpose human rights bodies. As such some principles may not be applicable to the OPCAT framework, while others will be superseded by the OPCAT's more detailed provisions.

The SPT has thus considered that "NHRI accreditation should not be used for accrediting NPMs in general, since it is for the Subcommittee to make such assessments in individual cases".²⁵

2. Advantages of designating NHRIs as NPMs

There are a number of possible advantages of designating a National Human Rights Institution as National Preventive Mechanism under the OPCAT. The fact that they are (in most cases) existing institutions with a human rights mandate means they often have attributes, expertise, methodologies and infrastructure, which are beneficial in fulfilling the NPM mandate.

Furthermore, NHRIs often enjoy independence from government, as specified by the Paris Principles. Independence is also a central requirement for NPMs and although these are not always identical, it is clear that there is significant overlap between the two²⁶. In addition, a number of NHRIs have built up a strong reputation and credibility, which the NPM can benefit from in developing constructive dialogue with the authorities on measures to protect persons deprived of their liberty. A positive public profile can also assist NPMs in making its mandate and work known to the general public and in developing cooperation with national civil society actors.²⁷

NHRIs often have expertise relevant to NPM work and many are familiar with visiting places of detention. Although in general these visits tend to have been for complaints or investigations work rather than the proactive monitoring envisaged by the OPCAT, the knowledge developed about different places of detention and key problems that lead to complaints within them, can be useful for torture prevention work.

Many NHRIs have expertise in assessing human rights standards and interacting with the international human rights system, as specified by the Paris Principles. This is useful for NPMs, which are also expected under the OPCAT to take into account UN human rights norms and have direct contact with the SPT, the UN body created under the OPCAT.²⁸ In addition, their broad human rights mandate means they may have in-house expertise which can be an asset to NPM work, for example legal experts who can analyse and comment on draft laws or communications teams who can conduct awareness-raising on torture prevention.

A number of NPMs that are part of NHRIs have been able to start playing this broader preventive role. For example in 2012, the Ombudsman of the Republic of

²⁵ SPT, Third annual report of the SPT (March 2010) (CAT/C/44/2).

²⁶ The fact that OPCAT references the Paris Principles can be seen as an indication of this.

²⁷ SPT, Analytical self-assessment tool for NPMs (2012), paras. 30, 32 & 33.

²⁸ OPCAT Articles 19 (b) and 20 (f).

Macedonia submitted an opinion, as NPM, to the Ministry of Justice recommending that the mechanisms for monitoring and protecting children in detention be strengthened within a proposed law on justice for children.²⁹ The Ombudsman has also submitted opinions to the Ministry of Interior recommending supplements and amendments to rulebooks and standard operating procedures for police, based on their findings from preventive visits.³⁰ In the Czech republic, the Public Defender of Rights is developing standards of treatment, starting in 2011 with standards of care for children in need.

Some NHRIs have been able to make use of their own in-house expertise to contribute to NPM submissions on policy and law. For example, in the Maldives, the Legal Department of the Human Rights Commission of the Maldives assists the NPM Unit through providing comments on national legislation relevant to prevention of torture.³¹ Where this is not available, others have benefited from the support of outside experts.³²

When NPMs are hosted in a NHRI, this may offer a level of protection against interference in unstable political environments. The status that NHRIs enjoy within the international community (demonstrated, for example, by the special participation rights accorded to “A status” NHRIs within the UN human rights system)³³ and the peer-group solidarity among NHRIs could add a layer of protection that a specialised NPM might not have.

By designating a NHRI as NPM, governments may be able to avoid creating multiple bodies with overlapping functions and duplicated work. However, designating a NHRI as NPM should not be chosen as an expedient or inexpensive option as the NHRI will almost always require extra resources to carry out its additional NPM functions, as discussed in the following section. The central consideration should always be how to create the most effective NPM, given the national circumstances.

²⁹ Ombudsman of the Republic of Macedonia, Information upon a submitted opinion regarding proposal for the law on justice for children submitted to the Ministry of Justice (4 September 2012), accessed 16 December 2013 <http://www.Ombudsman.mk/Ombudsman/upload/NPM-dokumenti/2012/Mislenje%20do%20Min.za%20pravda%20Ang%2004.09.2012.pdf>

³⁰ Accessed 16 December 2013 <http://www.Ombudsman.mk/Ombudsman/upload/NPM-dokumenti/2012/Informacija%20za%20dostaveno%20mislenje%20Ang%2031.08.2012.pdf> and <http://www.Ombudsman.mk/Ombudsman/upload/NPM-dokumenti/2012/Mislenje%20do%20MVR%2023.03.2012-ang.pdf>

³¹ APT's OPCAT Database, accessed 16 December 2013 http://www.apr.ch/en/opcat_pages/npm-internal-organisation-11/

³² This is the case in Denmark, where the NPM consists of the Ombudsman's office in collaboration with the NGO DIGNITY and the Danish Institute for Human Rights (DIHR), which has considerable experience in proposing legislative observations and recommendations. The principles outlining cooperation between these institutions provides that the DIHR will brief other NPM members on legal issues relevant to the NPM mandate and propose statements for the NPM to issue in this field. In case of disagreement, DIGNITY and DIHR may proceed with their own statements.

³³ See Asia Pacific Forum of National Human Rights Institutions, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions* (2012), chapters 5, 6 & 7.

3. Main challenges for NHRIs operating as NPMs

This section discusses some key common challenges which have arisen in practice as NHRIs seek to fulfil the NPM mandate and outlines, where relevant, ways in which these have been addressed. In this connection, it is relevant to note that as the Subcommittee on Prevention of Torture considers, the establishment of an effective NPM is a process that will develop over time.³⁴

3.1 Legal basis and scope of mandate

A first challenge when a National Human Rights Institution operates as NPM relates to whether the NPM mandate is established in law. While OPCAT does not specify that NPMs should be given a legal basis, the SPT recommends that both the mandate and the powers of the NPM are clearly set out in a constitutional or legislative text.³⁵ Experience suggests that this is particularly important when National Human Rights Institutions are designated as NPM, as these institutions usually already have a legal or constitutional mandate. This is required by the Paris Principles to protect their independence and autonomy.³⁶ The parliamentary work and deliberations that take place before a law is passed can also serve to raise awareness among law-makers and the government on the NPM's role, providing it with a higher status and possibly more financial resources.

A number of NHRIs have their NPM mandate enshrined in law.³⁷ In some countries legislation includes the mandate and detailed powers of the NPM, as recommended by the SPT. In the Former Yugoslav Republic (F.Y.R.) of Macedonia, for example, a legal amendment to the Ombudsman's legislation provides for specific powers to bring the institution in line with OPCAT requirements. These include that the Ombudsman will conduct regular unannounced visits to all places of detention and will be given access to all information in these places. The law also states that officials are responsible for informing the Ombudsman of how they have implemented its recommendations within 30 days of receiving its reports.

In other countries, legal provisions are limited to the designation of the institution as NPM. For example in Spain, the law relating to the Ombudsman³⁸ was amended to provide it with the NPM mandate under the OPCAT (the functions of which are delegated to the Deputy Ombudsman) and to create an Advisory Council which assists the NPM on technical and legal matters. However, no further OPCAT powers or immunities are included in legislation.

³⁴ SPT, Preliminary Guidelines on the ongoing development of NPMs, in the First Annual report of the SPT (2008) (CAT/C/40/2).

³⁵ SPT, Guidelines on national preventive mechanisms (2010), para 7.

³⁶ ICC SCA, General Observations (2013), 1.2(i).

³⁷ For example Armenia, Albania, Austria, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Luxembourg, F.Y.R. Macedonia, Montenegro, Poland, Serbia and Spain.

³⁸ Reform of the organic law 3/1081 on 15 October 2009.

In some cases, however, the NPM mandate of NHRIs has no legal basis. In these countries, the NHRI was designated as NPM either by presidential or executive decree (until recently the case in Costa Rica), or simply through a notification to the SPT (Ecuador, Chile) or by formal declaration on the occasion of ratifying the OPCAT (Slovenia). This can create challenges in terms of protecting the permanence and independence of the NPM as well as ensuring that the authorities understand and accept the NPM's mandate and powers. In addition, it is important to provide the NPM mandate with the same status as the other functions performed by the NHRI to avoid it being diluted as a priority within the institution.

Some NHRIs with an NPM mandate have therefore been vocal in calling for this mandate to be enshrined in law.³⁹ In December 2013, as this paper was being finalised, laws were passed in Costa Rica⁴⁰ and the Maldives⁴¹ giving their respective NPMs legal basis, something the NHRIs and their NPM units in both countries had long advocated for.

In Chile and Uruguay, the NPM mandate was given to a “new” NHRI at the same time that the institution was created. Although this situation provides the opportunity to clearly define the NPM’s mandate within the founding legislation of the NHRI, this was not achieved in either case. Chile, for example, ratified the OPCAT in 2008 while the creation of a new NHRI was being discussed in the country. The following year, the National Human Rights Institute was established by law and the government informed the UN Subcommittee on Prevention of Torture that it designated the NHRI as the NPM. However, the NHRI legislation does not refer to this NPM mandate.⁴² A proposal was prepared by the NHRI to officially be granted with all NPM powers and required resources, which is being considered by national authorities.

3.2 Adopting a new preventive approach

One of the main challenges for NHRIs given the NPM mandate is to adopt a new approach based on prevention. Traditionally, Human Rights Commissions and especially Ombudsmen have a mandate to handle complaints, investigate, document and resolve individual cases of human rights violations. This work on complaints and investigations is reactive and seeks to address human right violations after they have occurred. In contrast, the work of NPMs on torture prevention is holistic and proactive, and is undertaken even when no complaints have been received. The goal

³⁹ The ICC SCA has also recommended that the mandate of NPMs hosted by NHRIs be enshrined in law. For example, in October 2011, the ICC SCA encouraged the Mexican National Human Rights Commission to call for its designation and appointment as NPM through an amendment to its establishing law. See International Coordinating Committee of National Institutions, Report and Recommendations of the Session of the Subcommittee on Accreditation (SCA) Geneva, 25 – 28 October 2011, section 2.6.

⁴⁰ Law 8459 on the NPM.

⁴¹ In Maldives, the NPM powers conferred to the Human Rights Commission have been enshrined in the Anti-Torture Act.

⁴² For example, the National Human Rights Institution of Chile stated in its first [annual report](#) (2010) that although the government informed the SPT of the designation of the NHRI as NPM, the NHRI did not comply with the OPCAT requirements and was not granted with sufficient NPM powers. The NHRI argued that the NPM should be designated by law.

is to counter the need for complaints in the first place through constructive dialogue rather than naming and shaming.

Even when NHRIs already had a visiting mandate, there is the need for significant conceptual and methodological changes. The preventive visits envisaged under the OPCAT differ in their objectives, scope and methodology from other types of visits. NHRIs that receive the NPM mandate often have to shift their approach to a proactive and holistic one aimed at preventing torture. Many have done this by introducing new methodology for preventive visits and follow-up.⁴³

At the same time, NHRIs will continue their complaints-based work. This may include receiving complaints from persons deprived of their liberty and visiting places of detention to investigate cases of torture or ill-treatment or other human rights violations.

Some NHRIs have experienced that when these two (preventive and reactive) roles are not clearly distinguished in the eyes of the authorities, it has been difficult to build the sort of constructive dialogue for prevention envisaged by the OPCAT. This is often because the critical and denunciatory nature of a NHRI's complaints-based work can make governments reluctant to cooperate with them as NPM, especially when NHRIs take part in legal proceedings or can refer cases in which there are indications of criminal responsibility to a prosecutor.⁴⁴

The risk of confusion between these roles is increased when the same staff undertake both complaints and NPM work within the NHRI (e.g. in Cyprus) and where there is no specific unit created to focus on NPM work (e.g. in Estonia, Moldova). As the SPT noted in Moldova, "staff members of the Centre for Human Rights deal not only with NPM-related issues but also with a broad range of other activities under the Ombudsman Office mandate, which may undermine the preventive focus of NPM work".⁴⁵

To address these challenges, the SPT recommends that "where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget".⁴⁶ In line with this guidance, most NHRIs have created a separate NPM unit within their institution, tasked with carrying out the core of the NPM work. A separate unit can serve to cement the NPM mandate as an institutional priority within the NHRI and help to distinguish the NPM's preventive work from the NHRI's reactive activities.⁴⁷

⁴³ For example, the NPM unit of the Human Rights Commission of the Maldives has adopted new monitoring tools and methodologies for report writing and recommendations, see APT's OPCAT database accessed on 16 December 2013 http://www.apt.ch/en/opcat_pages/npm-working-methods-14/

⁴⁴ See APT, National preventive mechanisms: means of action and limits of their mandate in the face of violations against persons deprived of their liberty (August 2012).

⁴⁵ Report on the visit made by the UN Subcommittee on Prevention of Torture for the purpose of providing advisory assistance to the national preventive mechanism of Moldova, report for the national preventive mechanism (9 January 2013) (CAT/OP/MDA/R.1), §15.

⁴⁶ SPT, *Guidelines on national preventive mechanisms* (2010) (CAT/OP/12/5), §32.

⁴⁷ A number of NHRIs also ensure that visits under the NPM mandate and those conducted for investigations are not mixed. For example, in Azerbaijan, the Commissioner reportedly separates his visits to investigate complaints from NPM visits.

3.3 A separate NPM unit: Status, visibility and relationship within the institution

A practical issue that has arisen within NHRIs that have a distinct NPM unit is the question of which entity comprises the NPM: the unit/staff carrying out NPM functions, the Ombudsman or Human Rights Commission members or the NHRI itself. This is relevant because of the requirements of NPM independence, the powers and immunities the OPCAT confers on NPM members and the issue of how the NPM unit relates to other parts of the NHRI. In most cases, these details are not clarified by the laws, decrees and communications designating NPMs and NHRIs have had to work them out in practice, in some cases with guidance from the SPT.

The commonly accepted understanding is that where a NHRI is designated as NPM, it is the whole institution that takes on this role. The final decision-making power for the NPM therefore can and often does rest with the Ombudsman/deputy Ombudsman, the Human Rights Commission or a human rights commissioner. At the same time, and as recommended by the SPT, NPM units should be given functional and budgetary autonomy within NHRIs,⁴⁸ meaning they have their own budget and dedicated staff. This is important so that NPM units can decide on their programme of work and use of resources, according to the prioritisation of their needs for fulfilling their mandate under the OPCAT.

The issue of independence can become more complex when the NPM consists of a NHRI and civil society representatives (Ombudsman plus model, see Section 4.4 below). In this case, staff supporting the NPM should report to the collegial body of the NPM (rather than solely to the Ombudsman) and this collegial body should have access to its own budget.⁴⁹

Given that it is the institution that comprises the NPM, the powers and immunities conferred by the OPCAT (the right to visit places of detention, protection against sanctions and confidentiality of information gathered etc.)⁵⁰ should extend beyond the Ombudsman/members of a Human Rights Commission to include any staff taking part in visits to places of detention, particularly the staff of the NPM unit.

While the NPM unit is charged with carrying out the core of the NPM's functions, this does not preclude other departments or staff of the NHRI from contributing to this work. Indeed, this availability of broader expertise within the institution is one of the advantages of NHRIs as NPMs, in particular for making comments on (draft) legislation relating to the deprivation of liberty. Furthermore, NPM units may refer complaints received during the course of visits to the complaints/investigations department of the NHRI. The number or type of complaints received on certain issues or relating to specific places of deprivation of liberty may also inform the work of the NPM.

⁴⁸ SPT, Guidelines on national preventive mechanisms (2010) (CAT/OP/12/5), §32.

⁴⁹ See SPT, Report to the national preventive mechanism on the visit of the SPT to Moldova (2013), §§ 18-20. This case is also discussed further in the section of this paper on the "Ombudsman plus model" below.

⁵⁰ OPCAT Articles 19-21.

When the NPM unit collaborates or shares information with other NHRI departments, this necessitates a certain amount of coordination, for example in defining the role, purpose and modality of information sharing. It may be necessary to protect certain information within the NPM, for example to ensure the confidentiality of information received by members of visiting teams (unless consent is received to transmit the information) or the schedule for unannounced visits. In general, information should be shared within the institution on a need to know basis.

Finally, the SPT has noted that it is important for the credibility and efficiency of the NPM to ensure that stakeholders are aware of the NPM's work and mandate.⁵¹ This institutional visibility is necessary for developing dialogue with the authorities on the implementation of NPM recommendations. It is also important to ensure the public and detainees understand the nature of the NPM's work, to raise awareness on the need for torture prevention and to manage expectations on the NPM's role. However, when a NPM is hosted by a NHRI there is a risk that it may lack visibility as compared to specialised institutions, as the NPM's torture prevention work is subsumed into the broader activities of the NHRI.

A separate NPM unit can provide visibility in relation to other stakeholders. It is important for NHRIs with NPM mandates to strengthen the visibility of the work of the NPM unit. In line with the obligation under the OPCAT for NPMs to publish an annual report, several NHRIs publish a separate NPM annual report or at least devote a specific chapter of their annual report to the NPM mandate. Furthermore, NHRIs can enhance this visibility through small but symbolically important measures, such as having a specific NPM webpage directly accessible from the NHRI homepage (e.g. Costa Rica, Maldives, Armenia, Czech republic), a specific NPM logo and even specific NPM clothing for visits (Costa Rica, Mexico).

3.4 NPM resources: human, financial and logistical

A lack of resources – human, financial and logistical – is a challenge facing many NPMs, including those which operate within NHRIs. Conducting regular visits to all places of detention in a country, which can be numerous and dispersed throughout the territory, is a resource-intensive task. It will almost always require additional resources for NHRIs, which have not usually conducted such a broad and frequent programme of visits involving experts from different disciplines in the past.

The OPCAT specifically requires that States Parties “make available the necessary resources for the functioning of the national preventive mechanisms”.⁵² In the Nairobi Declaration, adopted at the ninth international conference of NHRIs in 2008, NHRIs also recognised that states should consider designating NHRIs as NPM only when the necessary powers and resources are made available to them.⁵³

⁵¹ See SPT, Report to the national preventive mechanism on the visit of the SPT to Moldova (2013), §21.

⁵² OPCAT Article 18 (3).

⁵³ The Nairobi Declaration (2008), §39.

A minority of NHRIs have received extra resources explicitly aimed at funding the NPM work. This is the case for example in Montenegro,⁵⁴ Georgia, Austria and Sweden. In the majority of cases however, the NPM's resources are considered part of the financial resources of the whole institution and there is no indication that additional resources have been awarded for this task.

A lack of resources is limiting the capacity of many NHRIs to carry out NPM functions, a fact that has been highlighted by a number of bodies including NPMs themselves. For example, according to its annual report in 2009, the Polish Ombudsman informed the SPT of a lack of funding and requested its intervention.⁵⁵ In relation to the Spanish NPM, in 2009 the UN Committee against Torture recommended Spain to "(...) ensure that the Ombudsman has sufficient human, material and financial resources to discharge his prevention mandate throughout the country independently and effectively". Since 2011, the ICC Sub-Committee on Accreditation has recommended that NHRIs in Poland, Georgia, Costa Rica and Macedonia be provided with adequate resources to enable them to effectively carry out their functions as NPM.

It should be noted that the question of whether the NPM is adequately resourced is also dependent on how resources are allocated within the NHRI. Sometimes the broad mandate of an NHRI can detract focus from the specialised and resource intensive NPM function. In order to protect the independence and autonomy of the NPM work, the SPT has recommended that NPM units are provided with their own budget. In some countries, such as Slovenia, the NPM receives a specific budget which is ring-fenced within the Human Rights Institution in line with this recommendation. In Lebanon, the current NHRI bill provides that a certain percentage of the future NHRI's budget must be dedicated to a permanent Committee for the Prevention of Torture attached to the NHRI which will perform NPM functions.⁵⁶

A number of NHRIs have dedicated staff members for NPM work. However, in practical terms, a lack of logistical resources still poses a major challenge in carrying out the daily NPM tasks of visiting places of detention, reporting and following up. For example, the People's Advocate in Albania was granted five additional staff for its NPM work, but has reported that a lack of logistical resources continues to be one of the main practical challenges to its work. According to its 2009 annual report, it had used the logistical resources (cars, computers, office space and furniture) from other sections of the People's Advocate to conduct NPM activities.⁵⁷

In its visit to Moldova in 2012 to advise on NPM development, the SPT found that a lack of resources was a serious impediment to the NPM's work.⁵⁸ NPM members from

⁵⁴ According to a communication sent to the SPT in February 2012, the Protector on Human Rights and Freedom (Ombudsperson's Office) was granted an additional 58,000 EUR in 2012 to perform the NPM mandate. See APT's OPCAT Database, accessed 16 December 2013 http://www.apt.ch/en/opcat_pages/npm-resources-19/

⁵⁵ APT's OPCAT Database, accessed 16 December 2013 http://www.apt.ch/en/opcat_pages/relationships-16/

⁵⁶ For more information on the on-going process of NPM designation in Lebanon and a link to the draft NHRI law, see OPCAT database: http://www.apt.ch/en/opcat_pages/npm-designation-33/

⁵⁷ See APT's OPCAT Database, accessed 16 December 2013 http://www.apt.ch/en/opcat_pages/npm-resources-2/

⁵⁸ See SPT, Report to the national preventive mechanism on the visit of the SPT to Moldova (2013), §§ 13-17.

civil society reportedly received no financial, logistical or secretarial support. According to information received by the APT, initially the Moldovan NPM had no dedicated means of transport and was required to use the car of the Ombudsman which was only available on the same day every week, undermining the unannounced nature of visits. Several UN bodies have recommended that Moldova comply with its obligation to provide the NPM with necessary resources in order to be able to effectively carry out its functions.⁵⁹

3.5 Multidisciplinary composition and expertise

In order to effectively implement the NPM mandate, NHRIs need to draw on the expertise of members from diverse professional backgrounds. The OPCAT specifically requires states to ensure that members of the National Preventive Mechanism have the required capabilities and professional knowledge.⁶⁰ The SPT has reiterated this requirement⁶¹ and elaborated that: "Prevention necessitates the examination of rights and conditions from the very outset of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach and involve, for example, the medical profession, children and gender specialists and psychologists in addition to a strict legal focus".⁶²

Some NHRIs may already have a mix of relevant professional skills and expertise. However, many NHRIs and in particular many Ombudsman's offices, are predominantly made up of lawyers and lack expertise in certain areas, especially in the medical field. During the SPT's visit to Sweden in 2008, the Swedish Parliamentary Ombudsman expressed concerns about its ability to fulfil the NPM mandate: "With regard to the expertise of the Ombudsmen and their staff, the Parliamentary Ombudsmen observed that they were all lawyers. The visits were carried out by one of the four Ombudsmen plus a team. The office does not have medical expertise itself and it does not employ outside experts. It underlined that it is mainly interested in the legal aspects".⁶³

A number of NHRIs operating as NPMs have striven to appoint teams with diverse backgrounds to carry out this work, making use of in-house human resources or changing the staffing profile either additionally or as vacancies have come up. In Slovenia, staff carrying out NPM work in the Ombudsman's office now include social workers, criminal investigators, anthropologists, psychologists, educators and an expert in political sciences. In addition, the NPM also includes civil society

⁵⁹ For example, the UN Committee against Torture in 2010, the CPT in 2011 and the SPT in 2013. The APT was informed that the Parliamentary Ombudsman was able to secure some minor financial means in 2011 for reimbursing travel costs for the Consultative Council's members. See APT's OPCAT Database, accessed 16 December 2013 http://www.apr.ch/en/opcat_pages/npm-resources/

⁶⁰ OPCAT Article 18 (2)

⁶¹ SPT, Guidelines on national preventive mechanisms (2010) (CAT/OP/12/5), §17.

⁶² SPT, Report of the visit of the SPT to Sweden (2008) (CAT/OP/SWE/1), §36.

⁶³ SPT, Report of the visit of the SPT to Sweden (2008) (CAT/OP/SWE/1), §§ 31 and 41.

representation. The NPM unit of the Mexican NHRI is comprised of a Director and an inter-disciplinary team of 23 staff and their visiting teams always include a doctor.⁶⁴

Another measure employed by NHRIs has been to contract outside experts or enter into collaboration agreements with civil society in order to gain necessary expertise for visits.⁶⁵ For example, the Albanian NPM legislation foresees that the People's Advocate can use specialists from relevant fields for NPM work. In 2009, the People's Advocate reportedly concluded cooperation agreements with three non-governmental organisations for the provision of experts in forensics, psychology and social work.⁶⁶ In Costa Rica, the NHRI has worked with the UN High Commissioner for Refugees and the International Organisation for Migration to jointly monitor the detention of migrants as NPM.⁶⁷

Contracting outside experts may entail challenges in relation to coordination and decision-making among experts and the NHRI. For example, it will be necessary to clarify whether experts have a purely advisory function or a role in deciding on the content of visit reports and recommendations. The SPT recommends that within the NPM, internal policies and procedures should address employment of ad hoc external experts, necessary qualifications and terms of reference for their work.⁶⁸

Finally, the OPCAT also requires NPMs to strive for gender balance and adequate representation of ethnic and minority groups. In practice, it should be noted that NPM teams continue to be largely composed of male staff and there are indications that ethnic and other minorities are underrepresented in some countries. In November 2012, when the Polish Human Rights Defender (HRD) was examined for ICC accreditation, the ICC Sub-Committee on Accreditation noted that the "enabling law of the HRD in Poland does not require a pluralistic composition, including representation of ethnic or minority groups, women, and persons with disabilities. The HRD reports that it does not currently have representatives of ethnic, religious or other minorities in its NPM section".⁶⁹

3.6 Broader work commenting on policy and legislation

The torture prevention work of NPMs extends beyond conducting visits to places of detention to analysing the risks and root causes of torture and other ill-treatment and seeking to bring about systemic change. This can include making observations on

⁶⁴ Staff from other departments of the NHRI may also contribute their expertise to help the NPM fulfil its mandate more effectively. In Costa Rica, the NPM unit consists of two lawyers and a political scientist, but they usually request to be accompanied by the Ombudsman's Office's medical doctor for visits.

⁶⁵ Some NPMs have the formal inclusion of civil society representatives in their founding legislation. In this case, known as the "Ombudsman plus" model, the NPM consists of both the NHRI and civil society representation. The implications of this model are discussed further below.

⁶⁶ See APT's OPCAT Database, accessed 16 December 2013 http://www.apr.ch/en/opcat_pages/npm-resources-2/

⁶⁷ See NPM of Costa Rica, Annual Report (2010), p.2, accessed 16 December 2013

http://www.apr.ch/content/files/npm/americas/Costa%20Rica_NPM_Annual%20Report%202010.pdf

⁶⁸ SPT, Analytical self-assessment tool for National Preventive Mechanisms (2012) (CAT/OP/1), §8.

⁶⁹ See International Coordinating Committee of National Institutions, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 19-23 November 2012, section 3.9.

existing or draft legislation (as specifically foreseen by the OPCAT)⁷⁰ as well as seeking to influence broader government policy affecting persons deprived of their liberty.

In many cases, however, NHRIs with an NPM mandate appear to have thus far limited their work to monitoring places of detention and making recommendations relating to these visits. Indeed these are often the most tangible and time consuming elements of the mandate. A challenge is therefore how they can broaden their work in the future to encompass a more holistic view of torture prevention.

4. Considering different types of NHRIs as NPM

There are different types of NHRIs operating as NPM. They include Ombudsmen, National Human Rights Commissions and consultative bodies. Some NHRIs have been designated as NPM along with civil society representatives (the Ombudsman plus model) and other special NPM models involving NHRIs are emerging (such as in Austria). When considering NHRIs as NPMs, it is important to understand their distinctive characteristics and implications for carrying out NPM work.

4.1 Ombudsmen

So far, Ombudsmen make up the majority of NHRIs that have been designated as NPMs (23 of 34). These are found mainly Europe, with a smaller number in Latin America. They vary in name⁷¹ but most share the characteristic that they have a single head who is the sole or main decision-maker.⁷² These institutions are based on the model that has existed in Scandinavian countries for centuries, which traditionally focused on addressing maladministration and the legality of government action by receiving complaints and seeking resolutions through non-binding recommendations. Today the mandates of Ombudsmen vary in scope and nature.

A number of Ombudsmen that have been designated as NPM have a broad human rights mandate (e.g. Azerbaijan, Croatia, Ukraine), which may include international human rights standards and/or rights in domestic law. Others focus more on maladministration in line with the traditional Ombudsman role (e.g. Denmark, Luxembourg, Norway, Sweden). In some cases, these “traditional” Ombudsmen have been designated as NPMs although there is another NHRI focused on human rights in the country. In addition there are Ombudsmen that combine work on human rights and maladministration - this is often the case in Latin America.

A common challenge for many Ombudsmen in resuming the NPM mandate relates to the plurality and expertise necessary for NPM work. Because the decision-making

⁷⁰ OPCAT Article 19(c).

⁷¹ They may be called *Defensor del Pueblo* in Spanish speaking countries or Public Defenders in parts of Central and Eastern Europe.

⁷² A minority have more than one member, for example the Austrian Ombudsman Board has three members. Others have deputy Ombudsmen with decision-making powers.

power is vested in one individual, plurality in decision-making is by definition impossible. In addition, the staff of Ombudsmen institutions are often predominantly lawyers, due to the focus on ensuring that government action is according to law. While it is possible to contract outside experts from different disciplines, the challenge of integrating a multi-disciplinary approach in all the NPM work (follow-up as well as visits) remains.

A related issue is that the priorities and direction of Ombudsmen institutions depends greatly on the vision of the Ombudsman. The fact that the priority given to NPM functions within the institution depends on the outlook of one individual means, in practice, that it is prone to being side-lined, perhaps more so than in a multi-member decision making body.

Many Ombudsmen focus on receiving and resolving complaints (especially those with a narrower human rights mandate). This can create some tension with the more constructive, proactive focus required of NPMs and mean their capacity to work on torture prevention can be limited. For example, in its visit to Sweden in 2008, the SPT noted that "The Ombudsmen also considered their institution to be driven by complaints received and mostly reactive in character and that their ability to initiate inquiries and work in a preventive way, as required by the OPCAT, was therefore limited".⁷³

On the other hand, Ombudsmen have traditionally tended to use "good offices" to get resolution of cases confidentially rather than legal recourse or public naming and shaming and some still follow this model. Developing constructive dialogue with the authorities on measures to protect detainees may be easier for these type of Ombudsmen rather than bodies that work through public denunciation or participate in legal proceedings. In addition, some Ombudsmen can conduct own motion inquiries including into systemic issues, which has similarities with the proactive NPM role.

The NPM mandate may pose more challenges for Ombudsmen that focus on maladministration and reviewing the legality of government action. These institutions will almost certainly need to change their methodology to adopt a human-rights based approach to their work. This includes applying international standards – an area in which they often have little expertise. Traditional Ombudsmen may also have less experience interacting with the international human rights system and conducting the broader policy-level work required of NPMs. These factors will be less of an impediment for Ombudsmen that have a broad human rights promotion and protection mandate.

Finally, the mandate of many Ombudsmen is limited to assessing actions of public authorities. As the OPCAT covers all places of deprivation of liberty, the mandate of some Ombudsmen may need to be extended to allow them to visit privately run places of detention.

⁷³ SPT, Report of the visit of the SPT to Sweden (2008) (CAT/OP/SWE/1), §29.

4.2 Human Rights Commissions

National Human Rights Commissions are generally headed by a number of members (typically three to five), who are the decision-makers.⁷⁴ They tend to have a broad human rights mandate which includes promotion and awareness raising activities, but their work also normally includes investigating human rights violations and many can receive individual complaints. A few “commission-style” NHRIs have been designated as NPMs, including in the Maldives and Mauritius. In New Zealand, the Human Rights Commission is one of five bodies that make up the NPM, including Ombudsmen’s offices.

National Human Rights Commissions are likely to have experience in working with international human rights standards and interacting with the UN human rights system, both a requirement for NPMs. Their often wide-ranging mandate means they can be well-equipped to carry out broader aspects of NPM work beyond detention visits, such as commenting on legislation and raising awareness about the NPM among the general public. In these institutions, the challenge is ensuring coordination between departments so that the best use is made of in-house expertise to fulfil the NPM functions.

Many commission-style NHRIs also have previous detention monitoring experience and/or knowledge of detention issues to draw on. However, as with Ombudsman’s offices, their focus is often reactive and they will therefore need to shift their methodology and consider how to separate the preventive NPM work from and complaints-based activities. In addition, while they have plural members, it is unlikely that commission-style NHRIs will have all the necessary expertise for conducting preventive visits and follow-up. They may therefore need to consider collaboration with civil society or contracting outside experts.

4.3 Consultative Commissions

Consultative human rights bodies tend to have a broad membership (over 10 members) taken from many segments of society, including sometimes government representatives, and their role is normally limited to awareness raising, conducting research and advising the state on human rights issues. A consultative body was designated as NPM in Mali and this option is also being considered in other countries including Mauritania, Morocco⁷⁵ and Togo.

The broad representation in consultative bodies can make ensuring plurality in the NPM easier, especially in terms of ethnic and gender representation. At the same time, when consultative bodies include government officials, this creates a conflict with the requirement of independence and confidentiality for NPMs under the

⁷⁴ Office of the UN High Commissioner for Human Rights (OHCHR), Professional Training Series 4, National Human Rights Institutions: History, Principles, Roles and Responsibilities (Rev. 1, 2010), p.16.

⁷⁵ The Moroccan Advisory Council for Human Rights was transformed into a National Human Rights Council in 2011.

OPCAT. In Mali, the National Human Rights Commission has 40 members, including 12 representatives of different government ministries. However, if institutional safeguards are put in place to ensure that government officials are involved in a purely advisory role, this can provide a platform for dialogue, e.g. on implementation of recommendations.⁷⁶

Consultative bodies do not normally conduct complaints-based work or investigations. As such, their working style is less likely to conflict with the proactive and constructive nature of the NPM's role in preventing torture (as opposed to other types of NHRIs whose approach tends to be more reactive). On the other hand, consultative bodies have less experience in operational human rights work. They may find it a challenge to carry out the practical hands on task of detention monitoring, which includes interviewing staff and detainees, observing the premises, registers and other documentation and cross-checking information among other things. The requirements of independence, confidentiality and operational capacity make it important that a specific unit is created within consultative bodies, to carry out NPM functions with a degree of autonomy.

4.4 NHRIs in formal cooperation with civil society: "Ombudsman plus"

Some OPCAT States Parties have chosen the so-called "Ombudsman plus" model for their NPM, in which the Ombudsman carries out the NPM functions together with civil society representatives or organisations (e.g. in Denmark, Moldova, Serbia and Slovenia). In most cases, the Ombudsman concludes agreements with civil society organisations for their formal cooperation in NPM tasks. In Moldova, civil society representatives are appointed to a body, the Consultative Council, which was established to undertake the NPM mandate together with the Ombudsman.

The main advantage of the "Ombudsman plus" model is that it can address a lack of relevant expertise in the Ombudsman's office for carrying out the NPM's torture prevention work. For example, in Denmark, according to an agreement with the Parliamentary Ombudsman, the organisations DIGNITY and the Danish Institute for Human Rights provide medical experts and staff with human rights law expertise respectively, to assist NPM work. The involvement of civil society may also assist in legitimising the credibility of the NPM and ensuring better nationwide coverage of places of detention that are visited.⁷⁷

The "Ombudsman plus" model may also entail number of challenges. First, coherence of monitoring methodology among the different organisations involved in the NPM needs to be ensured. It is also necessary to clearly define the division of roles and

⁷⁶ For example, the NHRI could create a permanent subcommittee as NPM and grant it with a certain degree of autonomy (for deciding on its programme of visits, the adoption of reports and dealing with individual cases, etc.). The role of the consultative body would be to receive NPM reports. The government officials in the NHRI could then function as focal points in their respective ministries on addressing the NPM's recommendations.

⁷⁷ APT/IIHR, *Optional Protocol to the UN Convention against Torture: Implementation Manual* (revised edition 2010), p.217.

responsibilities among the Ombudsman and civil society organisations and decision-making processes, for example on the content of visit reports (and how to proceed if there is a disagreement among organisations). In Slovenia, the Ombudsman office makes contracts with NGOs, who are invited to apply through public tender. These contracts regulate the mutual relationship between the contracting parties in more detail, including the division of specific tasks, responsibilities and decision-making between the respective organisations. In Denmark, two bodies were established to facilitate cooperation between the Ombudsman and NGOs: an OPCAT working group (comprising staff of the NPM) and an OPCAT Council (comprising the management of the three institutions).

Another challenge in the “Ombudsman plus” model relates to ensuring the sustainability of NGO engagement and maintaining a cooperative relationship between the NHRI and NGOs involved in the NPM. For example, in Moldova a number of civil society representatives reportedly resigned from the NPM following tensions with the Ombudsman, and their posts remained vacant for several years.⁷⁸ In addition, it might be a challenge to ensure that NGOs representatives always act in their capacity of NPMs members when carrying out NPM work. In particular during visits to places of detention, there is a risk for members of NGOs to follow their own agenda, sometimes even unconsciously, to the detriment of the NPM work. Finally, NGOs that work with an Ombudsman to carry out NPM functions may face conflicts of interests if they have hitherto been involved in critically appraising the Ombudsman’s work.

Ensuring the independence of the NPM may be a more complex task when it involves both an Ombudsman and civil society. For example, in Moldova, the NPM comprises a “collegial body” composed of the Centre for Human Rights (i.e. the Ombudsman) and a Consultative Council of civil society representatives chaired by the Ombudsman. In its advisory visit to Moldova on NPM development,⁷⁹ the SPT noted that the staff of the Centre for Human Rights involved in NPM work reported solely to the Ombudsman. Furthermore, the budget for the NPM was administered solely by the Centre for Human Rights and members of the Consultative Council were left without financial and logistical support. The SPT found that these factors controverted the requirement of NPM independence under the OPCAT. It called on Moldova to ensure the independence of the NPM secretariat and to allow the NPM as a “collegial body” to have access to a budget of its own.

With the “Ombudsman plus” model, it is necessary to ensure that the powers, privileges and immunities foreseen by the OPCAT for members of the NPM are extended to members of civil society. These include unrestricted access to all places, as well as protection from sanctions and confidentiality of information gathered during visits. For example, in Denmark, the DIGNITY staff members participate in visits as employees of the Parliamentary Ombudsman, but staff of Danish Institution of

⁷⁸ APT’s OPCAT Database, accessed 16 December 2013 http://www.apr.ch/en/opcat_pages/npm-resources/

⁷⁹ SPT, Report to the national preventive mechanism on the visit of the SPT to Moldova (2013).

Human Rights are already bound by confidentiality as civil servants and therefore participate as the Ombudsman's guests.

Finally, the SPT has specified that where civil society is involved in the NPM, the procedures used for appointing civil society members need to be transparent and inclusive. This means that efforts need to be made to publically announce vacancies, disseminate information and raise the visibility of the selection process.⁸⁰ Conflicts of interest in the selection panel must be avoided.

4.5 Special NHRI model: Austria

In Austria, a unique NPM model has been established by law, comprised of the Austrian Ombudsman Board (AOB) jointly with six regional monitoring commissions, appointed in July 2012. Each commission consists of 7 independent experts with diverse professional backgrounds who are not staff of the AOB but receive financial compensation for their activities, and are reimbursed for travel and accommodation costs. Staff at the AOB receive the reports of the commissions and undertake the follow up to these reports, mainly by initiating so-called "investigative proceedings". In addition, the Austrian Ombudsman Board has a coordinating role, ensuring consistency of methodology, organising joint meetings and activities, liaising with the SPT and publishing the NPM annual report. A Human Rights Advisory Council has been established to advise the NPM, composed of members delegated by government ministries, *Länder* and NGOs (their role is purely advisory and they are not involved in decision-making or the operational work of the NPM). The NPM is well-resourced: for 2013 the Austrian Ombudsman Board has been allocated an additional budget of 2.9 million Euros.

The main advantage of this model is that it allows for good coverage and frequency of visits to places of detention, as well as diversity of expertise during the visit (given the number of experts involved in monitoring). The NPM also benefits from the existing credibility and legitimacy of the Austrian Ombudsman Board. At the same time, there may be challenges in ensuring coherence in the preventive approach between the (legally trained) staff at AOB and the multidisciplinary commission members and in the monitoring methodology of different experts and commissions. In addition, dividing the monitoring role from that of follow-up, reporting and representation may create challenges on both sides (for example, if a person taking follow-up measures has not been directly involved in visiting places of detention he/she might have a limited grasp of the situation and issues). The involvement of different bodies requires effective coordination as well as a clearly defined decision making process and division of responsibilities among them.

⁸⁰ SPT, Report to the national preventive mechanism on the visit of the SPT to Moldova (2013), §§ 19 & 20.

5. Conclusion

An increasing number of NHRIs are being designated as NPMs under the OPCAT worldwide. When designating an NPM, State Parties undertake the responsibility to respect OPCAT requirements. Designating an existing NHRI as NPM should not be envisaged as a “cheap” solution, as it will require additional resources, as well as a careful review of the NHRI’s mandate, jurisdiction, independence, membership, powers and guarantees and working methods, to ensure that it fully complies with OPCAT requirements.

NHRIs, be they commissions, Ombudsmen, consultative bodies or “Ombudsman plus”, have great potential for being effective NPMs. NHRIs are often independent, recognised human rights bodies, with a strong public profile, expertise and infrastructure which are beneficial in fulfilling the NPM mandate.

However, in order to be effective, states will have to grant them additional resources and make sure that the new NPM mandate is enshrined in law.

Much will also depend on the NHRI itself and whether implementing the NPM mandate constitutes a priority for the institution. A new preventive approach has to be adopted and implemented, in order to differentiate NPM work from the NHRI’s broader mandate. This is best done through the creation of a separate NPM Unit, as recommended by the SPT. The preventive approach also requires a multidisciplinary “policy” approach to issues of deprivation of liberty, which might be challenging for NHRIs with a more “legalistic” mandate.

NHRIs’ broad human rights mandate, enshrined in the Paris Principles, enables them to be creative in implementing their NPM preventive mandate and go beyond regular visits and recommendations, by defining strategies of media outreach, conducting awareness-raising public campaigns, training of law enforcement officials, or even launching national public enquiries on torture and ill-treatment or on conditions of detention. Their recommended role in advising the government, parliament or judiciary, as well as in promoting harmonization of national legislation, regulations and practice also constitutes a powerful basis for contributing to structural changes that will improve the conditions and treatment of all persons deprived of their liberty.

In 1993, when the Paris Principles were adopted, independent NHRIs were only few in number and regular visits to places of detention a mere vision. Twenty years later, NHRIs play a crucial role in promoting and protecting human rights at the national level, including in preventing torture and other forms of ill-treatment and OPCAT implementation produces positive results in places of detention. When designated as NPM, NHRIs can be effective actors for change and contribute to build societies where the rights and dignity of all persons deprived of liberty are fully respected.



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