



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



ACJR submission to the National Preventive Mechanism

**The role of Civil Society in the work of
the NPM**

Draft Discussion Paper 2020

23 October 2020

Introduction

1. Africa Criminal Justice Reform (ACJR) is a project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape. ACJR seeks to carry out engaged research, teaching and advocacy on criminal justice reform and human rights in Africa.
2. ACJR welcomes the opportunity to make a submission on observations of the *Draft Discussion Paper* on the 'Role of civil society in the work of the National Preventive Mechanism (NPM)'.
3. Civil society organisations ('CSO's) play a critical role in the promotion and protection of human rights and can therefore make a valuable contribution to the working methods of the National Preventive Mechanism (NPM) due to knowledge, research and expertise on issues of detention and criminal justice reform. Therefore, all possibilities of collaboration and contribution should be explored whether it be formal or informal.
4. It is our overall submission that the *Draft Discussion Paper* is not clear in terms of the extensive involvement of CSOs in the NPM and the various working methods that will be available to allow the effective participatory role of CSOs in the work of the NPM. We therefore recommend that the document be expanded to depict the role of CSOs in detail and we further make the following observations.

Observations

5. Section 5 of the *Draft Discussion Paper* stipulates that there is a need to create thematic working groups where 'professionals or experts from CSOs and professional bodies can participate in their individual capacity, where such expertise is needed should be established'. However, it does not extensively stipulate the role that broader CSOs and lay visitors can play. In the absence of clear parameters of the role of CSOs and lay visitors, there is a fear that nothing will be done at all or that all members will do the same work. We submit that there is a bigger role that civil society and lay visitors can play including monitoring places of deprivation of liberty, providing advocacy on pertinent issues and concerns, disseminating research and playing an advisory role to the NPM based on findings.
6. Emanating from the above, Section 4 of the *Draft Discussion Paper* highlights that both individual experts and CSOs will be allowed to participate in the work of the NPM. This raises questions pertaining to the appointment process of CSOs or individual experts to the working groups. How will organisations or individuals who are interested in forming part of any of the five working groups identified in Section 5 of the *Draft Discussion Paper* be appointed? Do they have to apply, if so, what will the application criteria and process be?

7. Section 7 of the *Draft Discussion Paper* addresses the issue of non-disclosure and confidentiality and Section 9 indicates that working group experts will require the permission, consultation and consent of the NPM reduced in writing before independently instituting legal proceedings as a result of work undertaken under the NPM. A concern is that expert working group members who ordinarily undertake strategic litigation may not litigate serious human rights violations that are not being addressed without receiving the written permission of the NPM. The same is true for researchers or organisations who may want to provide advocacy on certain rights violations that are discovered while performing NPM work.
8. Section 8 of the *Draft Discussion Paper* relates to reporting and indicates that experts assigned specific monitoring tasks will provide interim and final reports to the NPM on the activities undertaken at specified intervals. However, it is not clear how the NPM will disseminate information gathered by working groups; neither is it clear how urgent findings or information will be escalated to relevant authorities. Furthermore, given the preventive nature of the NPM, how will CSOs be assured that their efforts are being effectively utilised in preventing torture? The *Draft Discussion Paper* needs to further expand on this.
9. Noting the voluntary basis upon which CSOs and individual experts will participate in the work of the NPM, we submit that it is important to clarify how organisations will be able to balance their critical stances of holding government institutions to account and their cooperative approach with the NPM as required by OPCAT.
10. We further note that Section 3.5 of the *Draft Discussion Paper* indicates that the NPM does not yet have a unified legislative framework. We submit that such a framework would be beneficial in providing a co-ordinated structure to the NPM and recommend that civil society be actively involved in drafting the said legislative framework.
11. We submit that the *Draft Discussion Paper* should consider the above observations and succinctly deal with issues relating to the working relationship between civil society and the NPM. ACJR appreciates the opportunity to make these brief observations and looks forward to closer cooperation with the National Preventive Mechanism.

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