Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights in the countries of the Commonwealth

RWANDA UNDER REVIEW BY UNITED NATIONS UNIVERSAL PERIODIC REVIEW:

RECOMMENDATIONS REGARDING JUSTICE MATTERS

Introduction to this document

The purpose of this document is to explain the United Nations Universal Periodic Review process, and set out the **recommendations** made to Rwanda regarding **criminal justice related matters**. By this, we mean recommendations regarding the judiciary, police, prison service, access to legal services and the criminal justice system as a whole. This includes accountability for acts such as torture, disappearances and extrajudicial executions. We have also included recommendations regarding freedom of assembly, expression and the media, as these recommendations often relate to criminal justice related matters. The document refers **only** to recommendations regarding these areas and does not refer to recommendations on other human rights areas.

CHRI hopes that this document will assist in advocacy regarding criminal justice related matters in Rwanda. Organisations can lobby the government to implement the recommendations.

What is the Universal Periodic Review?

The United Nations Universal Periodic Review ("UPR") is a process in which each member nation of the UN has its human rights record examined by other UN member states to assess compliance with human rights obligations and commitments. Each country is reviewed every four and a half years.

The UPR is a new mechanism that began in 2008. Rwanda was reviewed for the first time **in January 2011**.

There are three stages in the UPR process: before, during and after the review.

1. Before the review

Reports are provided to the UN Human Rights Council before the actual review, explaining the status of human rights in the country. Three reports are provided: one from the government; one prepared by the UN Office of the High Commissioner for Human Rights (OHCHR) summarising submissions from civil society organisations; and one which is a compilation of UN information, observations and recommendations on the country.[1]

What role can civil society play in this stage of the process?

Governments are encouraged to hold broad consultations with all stakeholders including civil society when preparing their report. Civil society can lobby the government to hold consultations involving all stakeholders. Civil society can also hold its own consultation and choose to invite the government – for the entire consultation or parts of it. It's often better to work in consultation with other civil society groups at this stage and involve the National Human Rights Institution.

[1] Reports are available at http://www.ohchr.org/EN/HRBodies/UPR/PAGES/RWSession10.aspx

2. The review

The government of the country appears at the United Nations to discuss its own human rights situation and its adherence with international human rights obligations. During this process, other UN member states can raise concerns about human rights matters within the country – and make recommendations for improvement.

With each recommendation made by another country, the government of the country can either:

- **Accept** the recommendation: this means that the government agrees to implement or address the recommendation.
- **Reject** the recommendation: this means that the government rejects the recommendation, and will not implement it.
- **Make general responses** on the recommendation: this is often used by states as a way to neither accept nor reject recommendations. In such cases a government may for example say that a recommendation is irrelevant or that it has already been implemented.

At the time of the review, the government can take some time to **consider** whether they will adopt or reject recommendations. The government is expected to report back on whether they have decided to adopt or reject the recommendation at or before the next sitting of the UN Human Rights Council after its UPR review, where it is adopted. This is recorded in an addendum.

What role can civil society play in this stage of the process?

Civil society does not have a formal role to play during the actual review. Civil society groups can observe the review but cannot take the floor or make statements at the Council. However it is important for civil society to engage with diplomatic missions of other countries either in Kigali or in Geneva and encourage them to ask questions about key human rights matters. Civil society can make statements at the Human Right Council after the final recommendations are adopted.

3. After the Review

The government has an obligation to implement recommendations accepted before they appear before the UPR again. When the country does get reviewed again, the government is expected to report back on the progress made on implementing the recommendations. Countries are also encouraged to make voluntary midterm updates on the progress of implementation.

What role can civil society play in this stage of the process?

Civil society can:

- ✓ Lobby the government to implement the recommendations – this could include advocating for an Action Plan to outline how the recommendations will be implemented
- ✓ Work with other civil society organisations, journalists, parliamentarians, NHRIs and, in some cases, even the judiciary to advocate for implementation of recommendations
- ✓ Partner with the government to implement recommendations
- ✓ Monitor and report on the implementation of the recommendations – this can include reporting to donor governments who fund government projects related to UPR recommendations
- ✓ Lobby the government to hold meetings to report on the implementation of recommendations
- ✓ Give an update on the implementation of recommendations at the Human Rights Council in Geneva
- ✓ Prepare and submit a submission before the next UPR review of Rwanda

Recommendations accepted by Rwanda

The following recommendations regarding criminal justice related matters were accepted by Rwanda and must be implemented by the government[2]:

Human rights defenders and general human rights

- Ensure all human rights activists operating in the country, including individuals cooperating with United Nations human rights mechanisms, are spared harassment and intimidation (Slovakia)
- Continue its efforts towards the protection and promotion of human rights (Chad)

[2] See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review; Rwanda,* A/HRC/17/4, 14 March 2011, under "Outcome of the Review" at http://www.ohchr.org/EN/HRBodies/UPR/PAGES/RWSession10.aspx

- Further cooperate with the international community in holding accountable those responsible for violations against human rights and humanitarian law (Brazil)

Special procedures (UN Special Rapporteur; UN country mission)

- Extend a standing invitation to the United Nations human rights special procedures so that they can visit the country and assist the Government with its human rights reforms (Maldives); extend an open and permanent invitation to special procedures (Spain)
- Consider issuing a standing invitation to all special procedure mandate holders (Brazil); reinforce its collaboration with the treaty bodies (Republic of Korea)
- Invite the Special Rapporteur on the independence of judges and lawyers to visit Rwanda (Canada)
- Favourably consider issuing a standing invitation to the special procedures, which would help to strengthen the relationship between Rwanda and the Council (Republic of Korea)

Freedom of the media

- Re-strengthen the guarantees of independence of the High Media Council and clarify its mandate so as to distinguish protection of freedom of the press from its functions as media regulator (Canada)

Recommendations enjoying the support of Rwanda, which considers that they have already been implemented[3]

General

- Provide the National Commission for Human Rights with human and material resources (Algeria) to enable the Commission to carry out its mandate more effectively (Malaysia)

Law reform: discrimination laws and corporeal punishment

- Continue and even accelerate its law review process (Slovenia, Morocco) and ensure that all gender and discriminatory provisions in the legislation are repealed (Slovenia, Morocco)
- Continue its efforts to improve the guarantees on the rights of women through the revision of all discriminatory laws (Burkina Faso)
- Introduce legislation explicitly prohibiting corporal punishment and promote alternative, non-violent forms of discipline (Azerbaijan)

Prisons

[3] See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review; Rwanda,* A/HRC/17/4, 14 March 2011, under "Outcome of the Review" at http://www.ohchr.org/EN/HRBodies/UPR/PAGES/RWSession10.aspx

- End solitary confinement sentences and ensure that those sentenced to life imprisonment benefit from the United Nations Standard Minimum Rules for the Treatment of Prisoners (United Kingdom, Italy)
- Adopt urgent measures against overcrowding (United Kingdom)

Recommendations enjoying the support of Rwanda, which considers that are in the process of being implemented[4]

General

- Ratify ICCPR-OP 1 (Hungary, Spain) (*this optional protocol is about establishing a mechanism for individuals to complain about violations of the ICCPR)*
- Sign and ratify the Optional Protocol to ICESCR (Spain) (*this optional protocol is about establishing a mechanism for individuals to complain about violations of the ICCPR)*
- Ratify and implement in national law the outstanding core international human rights treaties (Netherlands, Sweden, South Africa), in particular OP-ICESCR (Netherland), CED (Netherlands, Sweden) and ICCPR-OP 1 (Sweden)
- Ensure free legal assistance for underprivileged citizens (Slovakia)

Law reform

- Accelerate the legal reform process in order to ensure that all discriminatory provisions in the legislation are abolished (Moldova)
- Continue the legal reform process, including the incorporation of a plan of action to ensure access to justice by poor people and vulnerable groups, women and children (Cambodia)

General judiciary and court system

- End the *gagaca* court system as soon as possible, noting the stated deadline of February 2010 (United Kingdom)
- Address alleged miscarriages of justice in *gacaca* trials through the formal court system (Australia)
- Strive to further enhance and share its experiences regarding the role of traditional institutions in dispensing justice and reconciliation (Ethiopia)
- Pursue justice-system reforms, in particular with regard to strengthening the independence of the judiciary (Australia, Slovakia, United States, Switzerland) with focus on eliminating corruption and political interference (Slovakia) and guard against corruption and political interference (United States)

[4] Ibid.

- Continue reforms of the justice system, in particular measures to reinforce witness protection (Switzerland, Austria, Australia)

Human rights defenders, freedom of the media and freedom of association

- Ensure freedom of expression, including by protecting journalists and human rights defenders from intimidation and aggression (Brazil)
- Ensure that journalists are not harassed or intimidated (Austria)
- Conduct impartial investigations into the cases of harassment and intimidation of journalists (Italy) (Netherlands) and undertake prosecution (Netherlands)
- Ensure the law relating to the punishment of the crime of "genocide ideology" is not manipulated or interpreted in a manner that restricts the responsible exercise of the freedom of opinion, expression or association (Australia); specify the definition and legal scope of the term "divisionism" and revise Law 18/2008 punishing the crime of "genocide ideology" in order to prevent its abuse for political or partisan purposes (Canada)
- Continue efforts to guarantee freedom of expression, while safeguarding against its abuse (Singapore); review existing restrictions on freedom of expression, participation in the political process and the media, and amend or abolish any undue or excessive restrictions which may exist (Japan); examine the media regulation system and eliminate all provisions that may hinder the freedom of expression (Chile)
- Take effective steps to review and improve the laws unduly restricting freedom of expression, press and association, and prevent authorities from violating these rights (Sweden); take all necessary measures to ensure freedom of expression and the right to participate in political and public affairs by journalists, based on the provisions of the ICCPR (Belgium)
- Review and possibly amend media legislation, in particular the 2009 Media Law, in order to lift undue restrictions on journalists (Austria); review the 2009 Media Law in conformity with international standards, reform the High Media Council in order to strengthen its credibility and independence
- Amend the 2009 Media Law (Netherlands) to comply with its international obligations, with particular focus on removing unjustified interference with the right to freedom of expression (Slovakia)
- Continue the open and critical dialogue initiated immediately following the presidential election in August 2010, which addresses the opening up of the "political space", progress in human rights, and freedom of the media and press (Germany)

Enforced disappearances, extrajudicial executions

- Respond effectively to the request for information by the Human Rights Committee in 2009 regarding the follow-up given to the recommendations related to forced disappearances,

assassinations, summary and extrajudicial executions, and life sentences in isolation cells (Spain)

- Ratify the International Convention for the Protection of All Persons from the Enforced Disappearance (CED) (Spain)

Torture

- Ratify and implement in national law the OP-CAT (Sweden) (*this optional protocol relates to establishing an inspection system for places of detention*)
- Ratify the Optional Protocol to the Convention against Torture (OP-CAT) (Hungary, Spain, Germany, Maldives) and thereby allow country visits (Germany), establish an official national preventive mechanism (Maldives)
- Consider ratifying OP-CAT (Azerbaijan)

Prisons

- Adopt new measures to find a solution to the problem of overcrowding in prisons (Algeria)
- Strengthen measures taken within the reform policies to make the prison system more humane, in particular through training of personnel and improved prison administration (Morocco)
- Separate convicted offenders from pre-trial detainees (Austria)

Recommendations being considered by Rwanda

Rwanda had to confirm if they will adopt or reject the following recommendations no later than the seventeenth session of the UN Human Rights Council in June 2011. However, to date, they still have not reported back on whether they will accept or reject the recommendations below.

Human rights defenders, freedom of the media

- Take immediate action to allow journalists, political activists and human rights defenders, including those critical of the Government, to exercise their right to freedom of expression and opinion without threats and harassment, and urgently investigate all reports of human rights abuses, and ensure that those responsible are held accountable (Sweden)
- Remove restrictions related to the activities of journalists, in particular the obligation to register and the high level of qualification required to establish a newspaper, and ensure journalists, in particular those known for their critical position vis-à-vis the Government, the liberty to practice their profession, carry out investigations, and publish the results thereof, without reprisals (Switzerland)
- Conduct investigations into the acts of intimidation or aggression towards journalists who criticize the Government, and guarantee that any restriction to the exercise of their Profession is compatible with the provisions of ICCPR (Poland)

- Ensure that allegations of harassment of journalists are investigated, that perpetrators are punished, and the independent media are free from unjustified restrictions (United Kingdom)
- Decriminalize press offenses, and reform or repeal the Media Law, which limits the freedom of press (United States)
- Give more freedom to the Rwandan media and human rights activists to operate and engage constructively with decision makers (Indonesia)

Arbitrary arrest and detention, enforced disappearances

- Urgently investigate cases of arbitrary arrest and detention, including those which may constitute enforced disappearances (Sweden)

Freedom of association, operation NGOs

- Ensure full respect for freedom of association, by lifting restrictions that limit the free exercise thereof
- Remove all obstacles to the registration and freedom of operation of all political parties and NGOs

Recommendations rejected by Rwanda

The recommendations rejected by Rwanda did not relate to access to justice.

Next steps

The government of Rwanda has a duty to implement the recommendations it accepted before it is reviewed again, in **October 2015**.

Civil society should work to make sure the recommendations are implemented – as outlined in the text box above (page 3).

Need more information?

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