
SOUTH AFRICAN NATIONAL PREVENTIVE MECHANISM RESPONSE TO LIST OF ISSUES PRIOR TO SUBMISSION OF THE THIRD PERIODIC REPORT OF SOUTH AFRICA TO THE UN COMMITTEE AGAINST TORTURE

POWERS AND FUNCTIONS OF THE NPM

1. On 20 September 2006, the Republic of South Africa signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT or Optional Protocol).¹ Meanwhile, on 28 February 2019, the cabinet referred the OPCAT to Parliament for ratification.² The National Assembly and the National Council of Provinces approved the Optional Protocol on 18 and 28 March 2019, respectively. Thereafter, the Republic of South Africa deposited its instrument of ratification of the OPCAT with the Secretary-General of the United Nations in New York on 20 June 2019. In accordance with Article 28 (2), the OPCAT came into effect for South Africa on 20 July 2019.
2. Under the OPCAT, states parties must designate, maintain or establish a National Preventive Mechanism (NPM) to strengthen the protection of persons who are or may be deprived of liberty. The [South African National Preventive Mechanism](#) (SA NPM or Mechanism) was launched in June 2019 at the Castle of Good Hope, Cape Town.
3. Noting that each state party to the OPCAT has adopted an NPM tailored to its context, the Republic of South Africa adopted a multi-body mechanism where pre-existing constitutional and statutory institutions were designated as NPM bodies. The rationale being that designating multiple bodies as NPM benefits from existing monitoring infrastructure, increased footprint and cooperation through dialogue and division of tasks between institutions with an existing monitoring role. With the division of tasks, NPM institutions focus on their thematic fields of expertise.

¹ Adopted on 18 December 2002 at the Fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. Entered into force on 22 June 2006.

² Section 231 (2) of the Constitution of the Republic of South Africa, 1996.

4. The Mechanism is constituted by the following institutions:
 - South African Human Rights Commission (SAHRC or Commission).
 - Judicial Inspectorate for Correctional Services (JICS or Judicial Inspectorate).
 - the Office of the Military Ombud (OMO).
 - the Health Ombud (HO).
 - the Independent Police Investigative Directorate (IPID).

5. In addition to a monitoring function, the SAHRC coordinates the mechanism. The SAHRC is an independent state institution supporting constitutional democracy. As a national human rights institution (NHRI), the SAHRC is additionally guided by the Principles Relating to the Status of National Institutions (the Paris Principles) as adopted by the UN General Assembly in Resolution 48/134 of 1993. The NHRI is mandated by section 184 of the Constitution of the Republic of South Africa, 1996 (the Constitution) to is mandated to promote respect for and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in South Africa. The South African Human Rights Commission Act, 40 of 2013 (SAHRC Act) gives effect to the SAHRC's constitutional mandate.

6. The Judicial Inspectorate is a statutory institution established in accordance with section 85 of the Correctional Services Act 111 of 1998. The Judicial Inspectorate has a duty to investigate complaints, monitor and report on the treatment of inmates or offenders and the conditions in correctional centres. Independent Correctional Centre Visitors (ICCVs) regularly monitor correctional centres and record interviews with inmates; report complaints to Heads of correctional centres, who are responsible for ensuring their resolution; and participate in quarterly Visitors' Committees to discuss unresolved complaints. The Judicial Inspectorate aims to visit each correctional services facility at least once every two years. Large and problematic centres are visited at least annually. The Judicial Inspectorate also conducts and reports on investigations into serious incidents such as unnatural deaths, use of force, torture, inhuman treatment, assault and allegations of corrupt or dishonest practices in correctional facilities.

7. The OMO is established in terms of the Military Ombud Act No 4 of 2012 and was intended to be a mechanism independent of the Military command structure of the South African National Defence Force (SANDF), exercising oversight over the defence sector

and assisting it with adhering to the principles and practices of good governance. The objective of the Office is to investigate and ensure that complaints are resolved in a fair, economical and expeditious manner. The Military Ombud can make recommendations to the Minister of Defence and Military Veterans (the Minister) for implementation. The Minister usually indicates whether he or she accepts or rejects the recommendations and if accepted the Chief of the SANDF is instructed to implement such recommendations. The Act, however, is silent on the instances where the Minister does not respond to the recommendations nor for the timeframes within which the Minister should respond.

8. The Health Ombud was appointed in 2016 by the Minister of Health in accordance with section 81 of the National Health Act.³ The Health Ombud's functions are outlined in section 81 A of the National Health Act and are integrated into the strategic objectives and indicators of the Office of the Health Standards Compliance (OHSC). The HO uses staff of the OHSC (NHAA S81 (3)(c) for investigation of complaints in the national health system.
9. The Independent Police Investigative Directorate is established in terms of the Independent Police Investigative Directorate Act 1 of 2011 (the IPID Act) to give effect to section 206 (6) of the Constitution. The IPID has a statutory duty to conduct independent, impartial and quality investigations of identified criminal offences allegedly committed by members of the South African Police Service (SAPS) and Municipal Police Services (MPS). In addition to investigating such matters, the IPID is obliged to make recommendations for administrative action to the SAPS or refer matters to the National Prosecuting Authority (NPA) for prosecution. However, before the NPM designation, IPID was not required by law to conduct preventive visits to police stations.

RESOURCES

10. NPM institutions each receive resources and budgets from the fiscus based on individual mandates, business and funding model and operational scope. For the NPM coordination start-up and operational costs, the SAHRC received a ring-fenced budget of R1.6 million, R2.4 million and R2.6 million for three fiscal years until the end of 2021/22 fiscal year (31 March 2022). The functional role of the SAHRC was subsidised

³ 61 of 2003.

by the SAHRC budget and is performed by the nine provincial offices of the SAHRC. A sub-unit within the office of the SAHRC chief executive officer has been established to mostly focus on the coordination and functional aspects. This sub-unit is led by a Head of Programme – on secondment – who acts as the NPM coordinator and is supported by two researchers and an administrative assistant (on secondment). A Commissioner of the SAHRC has oversight over the NPM.

11. JICS's expenditure for the fiscal year 2019/2020 was R67 158 313 from an allocated budget of R77 244 000. On 31 March 2021, there were 86 permanent approved and funded positions on the fixed establishment – 84 filled posts and two (2.33%) vacancies. There were 270 contracts for ICCV positions – 222 posts filled and 48 vacancies (17%).
12. For the 2019/20 fiscal year, the IPID had a budget of R 336 653 000. Its overall actual expenditure was R 336 610 000 which translates to 99.99% against the target of 100%.

ACTIVITIES AND ACHIEVEMENTS DURING 2019-2022

13. To facilitate coordination and decision-making, an NPM Steering Committee has been established. Under the leadership of the NHRI Commissioner responsible for the NPM, the steering committee is supported by the NPM unit. The Committee includes all NPM institutions as well as officials from the National Prosecuting Authority. The establishment of thematic working groups and the integration of civil society is being considered. Noting the absence of legislation governing the NPM, agreements have been concluded with the JICS, IPID and the Military Ombud to provide interim mechanisms for reporting within the framework of the OPCAT. However, efforts are being explored to address the need for legislation.
14. Two NPM annual reports have been finalised. The first report presented the baseline assessment observations focusing on institutional building and identified shortcomings to be addressed by the NPM institutions as well as the state. In the first year of the NPM designation, the SAHRC undertook a baseline assessment of the South African detention architecture through announced visits to places of deprivation of liberty including police stations, correctional centres (prisons), psychiatric institutions, the immigration detention facility in Johannesburg, and secure care centres for children in conflict with the law. This assessment gave the NPM the opportunity to engage with stakeholders managing the facilities to make them aware of the NPM mandate but also understand the opportunities and challenges of the different stakeholders and the related places of

deprivation of liberty. The second annual report assessed the progress made in the full implementation of the OPCAT since ratification.

15. During the 2020/21 fiscal year the coronavirus pandemic reached South Africa and the national state of disaster commenced with an initial 21-day hard lockdown. The restrictions imposed by the state also affected the way NPM institutions conducted their operations. Visits to state institutions such as correctional centres and other places of deprivation of liberty were restricted over hard lockdown. However, the SAHRC was exempted from the travel restrictions and deemed as an essential service. In this regard, the SAHRC could still monitor but limited in terms of time and distance. These restrictions to NPM institutions were then revised. Below are some of the notable activities and achievements:

- Agreements were concluded with key NPM institutions to provide an interim framework for cooperation and reporting within the spirit of the OPCAT.
- To build an NPM corporate identity, a logo and webpage have been developed. A fact sheet on the NPM was also produced and translated into various official languages to promote awareness of the NPM.
- On behalf of the NPM, the SAHRC has been leading dialogues with various state departments such as correctional services, police and social development to raise awareness of its mandate and observations.
- An international conference to mark the OPCAT ratification and the international day in support for victims of torture was convened.
- First official contact with the Subcommittee on Prevention of Torture was initiated. Thereafter, the NPM has formally and informally dialogued with the Subcommittee on several occasions and subjects.
- The first two years of the NPM's existence and operations have also provided a space for learning and exposed the level of complexity of the environment, especially in the absence of an overarching legislative or policy framework defining the governance and institutional structure of the NPM, or the coordination and functional arrangements between the NPM institutions. A study was then Commissioned to conduct a review of the institutional structure of the NPM, and to develop a pragmatic governance model, draft strategic and human capacity plan, to strengthen the functioning and capacity of the NPM.

- The NPM is currently assessing the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules') in South Africa and the SADC region.
- A discussion paper on the legislative changes required to strengthen the mandate of the NPM was developed to also inform the current NPM draft legislation.
- Another discussion paper on working with civil society was developed.

VISITS TO PLACES OF DEPRIVATION OF LIBERTY

Secure care centres

16. During the period under review, the SAHRC has managed to visit all child and youth care centres officially designated as secure care for children in conflict with the law. Some of the visits were done as a follow-up to the UN Global Study on Children Deprived of Liberty. Visit reports identifying urgent issues have been shared with centre managers. The main report of these visits will be finalised in the fourth quarter. A noteworthy development is that the various provincial departments of social development are positively responding to the recommendations of the NPM. However, more awareness is still needed to popularise the mandate of the NPM to officials and children in the care of the state.

Police stations

17. The IPID has developed an inspection tool used by the provincial offices to collect data when conducting visits to police stations. During these visits, IPID has found the detention facilities in acceptable condition, however as most facilities do not have beds due to the short-term detention nature of police stations. In this regard, detainees are provided with carpets and mattresses which IPID found was not as clean as it is supposed to be. IPID has also noted that most of the cells had not been maintained for a very long-time as evidenced by water leakages and some facilities without running water. Notably, IPID also found detained undocumented foreign nationals who complained of prolonged detention due to delays in processing and deportation through the Department of Home Affairs (DHA). Some of the complaints were brought to the attention of station management.
18. At the same time, the SAHRC has also conducted visits to police stations across the country. A report covering the period 2019-2021 was finalised and shared with police management.

Immigration detention facilities

19. The SAHRC also visited the Lindela Repatriation Centre, managed by the DHA, the facility detains and facilitates the process of deportation of undocumented foreign national. The centre was found to be in good condition. Developmental issues were identified and addressed with the relevant officials, including that the centre must consider an internal complaints mechanism allowing detainees to lodge complaints, regarding inter alia any allegations of ill-treatment, inadequate provision of services such as food and health care as well as detention periods. The complaints system is important owing to the migratory nature of the detainees at Lindela. In the absence of an internal complaints mechanism, endemic rights violations have room to persist without recourse.
20. However, concern was raised over the prolonged accommodation (since they are not detained) of asylum seekers and refugees at the centre as most of them had refused community reintegration. The refugees and asylum seekers were not in detention but accommodated at Lindela. Some of the occupants have since been reintegrated or repatriated.

Correctional Centres (prisons)

21. The NPM has conducted visits to various correctional centres in the country in all the provinces. Visits have also been conducted primarily through JICS. The SAHRC human rights monitors in the provinces have also visited various correctional centres. Such visits are detailed in the published annual reports. Furthermore, each year, JICS aims to conduct 136 announced inspections of identified correctional centres and, in general, has meet this target. Additionally, JICS has recently begun conducting unannounced inspections and 56 were conducted over the reporting period. In all instances, JICS inspectors were granted access to the correctional centres and allowed to speak privately with inmates.
22. After JICS had concluded that the Standard Operating Procedures of South Africa's super-maximum correctional centres keep inmates in solitary confinement for years at a time, contrary to domestic and international law, recommendations have been issued to end what JICS believes is a cruel, inhuman or degrading practice, suggested

amendments to the Standard Operating Procedures, and conducted a joint visit to a super-max facility with the Minister of Justice and Correctional Services as well as the Deputy Minister of Correctional Services. The Department of Correctional Services (DCS) has indicated its willingness to engage with JICS on this topic, though no major reforms have been adopted and the practice of extended solitary confinement persists.

Psychiatric Institutions

23. In its NPM mandate, the SAHRC visited psychiatric institutions in the Northern Cape, Mpumalanga, Western Cape, Limpopo and KZN. The focus was on mental health care users under forensic psychiatry in terms of chapter 13 of the Criminal Procedure Act, 51 of 1977.

Military Detention Barracks

24. The SANDF has two military detention barracks (MDB) in the Free State and Western Cape provinces. The first inspection visit was conducted on 5 and 6 October 2021 respectively for the 20/21 fiscal year. The second visit to these MDBs took place on 25 and 26 June 2022 in the 21/22 fiscal year and was intended as a follow-up visit to establish the progress made to address the observations and recommendations contained in the report of the first MDB inspection. All visits were announced and conducted by members of the OMO and SAHRC's NPM unit. The OMO appreciated the level of co-operation including the degree of transparency of the MDB command line including their appreciation of accountability for the administration of the MDBs.
25. Some of the observations made at both MDBs were:
 - The MDBs are classified as a short-term, medium-term, and long-term detention facility.
 - The detainees were convicted of offenses that ranged from AWOL to unlawful discharging of a firearm and the sentences ranged from 60 days detention to 400 days detention with remission days classifying them as long term, medium term and short-term inmates.
 - Other offences would include theft, disobeying a lawful command, common assault and the use of threatening or insubordinate language. Again, the sentences here ranged from 60 days to 120 days to 480 days depending on the seriousness of the offence.

- The overall conditions of the facilities were found to be good on the first visit. However, during the second visit the facilities were found to have deteriorated to a certain extent and this was attributed to a lack of financial resources.
 - Upon inspection of the inmate cells, it was noted that the condition of the cells also seemed to have deteriorated since the first inspection. There were broken windows, rising damp and plumbing problems. The conditions of the mattresses have also deteriorated as they were torn, cracked and damaged and the cells were extremely cold.
 - One of the MDB facilities continued to experience a problem with the rising damp and lack of bird proofing. The overall condition of the facilities needed repair and maintenance.
 - The Western Cape MDB still used the bucket system inside the cells and this is degrading. However, due to the old architecture of the building individual cells here were not equipped with toilets.
 - Regarding rehabilitation programmes at the facility, the provision of the social worker, chaplain, psychiatrist (when required), a lawyer (when required) and various fitness activities continued, however, were sometimes problematic due to their irregular visitations.
26. Steps were taken by the MDB command to address the observations made during the inspection as contained in the inspection report. Including, *inter alia*, to address issues relating to the absence of a policy to deal with members of the LGBTQI community, the condition of the facilities, the issues relating to the bucket system inside individual cells and the minimal availability of rehabilitation programmes.
27. The first MDB inspection report was submitted to the Minister of Defence in March of 2022 and the Office has not received a response thereto. However, as indicated above, steps were taken by the MDB command to address the contents of the report. The second inspection report is due to be submitted to the Minister of Defence at the end of August 2022.

Dialogue and public awareness platforms such as online seminars

28. Online seminars provided a platform for sustained dialogue with various stakeholders at the height of the coronavirus pandemic restrictions. Amongst other events, the SA NPM organised a women's month webinar, an online seminar on persons with psychosocial and mental health challenges in the criminal justice system and specifically in places of

deprivation of liberty. Two other online seminars were held specifically to mark the designation of the SA NPM. The SA NPM also participated in various webinars hosted by other stakeholders including webinars on death in police custody, LGBTIQ+ persons in places of deprivation of liberty, on anti-torture and on the use of force in correctional centres.

29. An online seminar with IPID and SAHRC was also convened to raise awareness of the OPCAT framework.

Other Projects

30. The SA NPM has participated in other joint projects including a baseline assessment with the Centre for Child Law, University of Pretoria which involved visits to all secure care centres for children in conflict with the law considering the UN Global Study for Children Deprived of their liberty. The assessment was aimed at understanding the current conditions for places that deprived children of their liberty to propose a child-centred model fit for the South African context.
31. With the support of the African Policing Civilian Oversight Forum (APCOF), the SAHRC piloted a model for lay visitors' scheme for police detention facilities. The pilot included developing monitoring tools such as a questionnaire, mobile application system for capturing data, code of conduct and capacity development of monitors. Once implemented, this will augment the capacity of the NPM.
32. The SA NPM has also been working with the Association for the Prevention of Torture (APT) and the SA-EU Strategic Partnership Dialogue Facility on a project to assess the implementation of the Bangkok Rules in South Africa and the SADC region. Through this project, the SA NPM has undertaken a baseline assessment on available measures to protect women deprived of liberty. Similarly, a workshop took place in April 2022 to present the findings but also start the conversation and seek input on a guidance tool to be used where women are deprived of their liberty. As part of this dialogue, the SA NPM is engaging other NPMs in Europe to exchange best practices and share lessons learned.
33. Through a memorandum of understanding (MoU) with the SAPS, the SAHRC is working collaboratively with SAPS to review the South African Police Service Training Manual on

Human Rights. Once completed, the training will be mandatory for all junior and senior police officers and officials of the SAPS.

34. Earlier this year, the SAHRC in collaboration with Triangle and Gender Dynamix, hosted the Department of Correctional Services (Johannesburg Management Area) for a gender sensitisation and training workshop in implementing the Jade September judgment to frontline employees of the Department. The workshop was attended by approximately 65 senior and junior officials from the management area. A similar sensitisation workshop was provided to the Malmesbury Correctional Centre officials by the SAHRC Western Cape provincial office.

Data on visits to places of deprivation of liberty during 2019 to 2022 and any measures taken by the state party

35. South Africa has approximately 243 correctional centres, ± 1000 police stations (± 45% are designated as immigration detention centres in terms of the Immigration Act), ±30 secure care centres and ±14 psychiatric institutions (for forensic psychiatry). Detailed information can be found in the relevant annual reports of the NPM institutions.
36. As the Mechanism is new, the baseline assessment has provided a framework for understanding the detention structure. Noting the absence of an overarching legislative foundation, cooperation agreements have been concluded to create a framework for a unitary NPM reporting. Equally, institutions such as IPID have thus begun monitoring police detention facilities (without dedicated funding for NPM functions).

Independent Monitors and Access to All Places of Detention

37. The NPM is relatively new, and it has dedicated the last two years to understand the environment through baseline assessments and the lay visitors' scheme pilot, assess its business model and whether it is fit for purpose, engage with stakeholders at national and global level to identify best practices and learn from other jurisdictions, including on how civil society and NGOs can participate its work. This process has commenced with a discussion paper on the engagement of civil society which will be finalised in due course.