



South African National  
Preventive Mechanism

*Towards a society  
free of torture*

*Introducing  
South Africa's  
National Preventive  
Mechanism*



south african  
**human  
rights**  
commission



Towards a Culture  
of Human Rights

In December 1984, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was adopted. The Convention places an obligation on State parties to take effective legislative, administrative, judicial, or other measures to prevent acts of torture within their respective jurisdiction. It further prohibits a State party from expelling, returning or extraditing a person to another State where they are likely to be subjected to torture.

In ensuring that there is a mechanism for the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, on 18 December 2002, the United Nations adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The OPCAT entered into force on 22 June 2006. The OPCAT is underpinned by the belief that the protection of persons in places of deprivation of liberty can be strengthened by non-judicial means of a preventive nature based on regular visits to places of detention. Similarly, on 20 September 2006, South Africa signed the OPCAT and ratified it on 19

and 28 March 2019, respectively. In compliance with Article 27, 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. Under Article 28 (2), the OPCAT came into effect for South Africa on 20 July 2019.

Once States are parties to the OPCAT, the Subcommittee for the Prevention of Torture's (SPT) mandate is triggered.

This mandate has two elements:

- The Protocol gives the SPT the right to visit all places of deprivation of liberty in States party to the Protocol and examine the treatment of people held there; and
- The SPT has the liberty to choose states to visit where people are deprived of their liberty. However, States must establish, maintain or designate national institutions known as National Preventive Mechanisms (NPMs) that work alongside the United Nations Subcommittee on Prevention of Torture (SPT) at a national level. The SPT assists and advises the NPMs on strengthening safeguards relating to deprivation of liberty and strengthening their powers and independence.

## WHAT IS A NATIONAL PREVENTIVE MECHANISM?

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The mandate for an NPM comes from the OPCAT, a human rights treaty drafted by States who wanted to ensure stronger protection for people deprived of their liberty. Central to the OPCAT is the idea that a system of regular, independent visits to places of deprivation of liberty can serve as an important safeguard against abuses and prevent torture and other cruel, inhuman or degrading treatment or punishment in places that by their very nature fall outside the public scrutiny.

Visits to places of deprivation of liberty by the NPM are done with or without prior notice. The OPCAT is not prescriptive on the structure for the NPM; however, there are minimum requirements for NPMs, which include the following:

- Independence (functional, personal, and institutional independence);
- Sufficient resources (financial, human, logistical);
- Expertise and diversity necessary to fulfil its mandate;
- Powers and guarantees, in particular, access to all places of deprivation of liberty, information, and persons; and
- Privileges and immunities (i.e., protection from sanctions and confidentiality of information).

It is important to note that the establishment of the NPM should not replace existing oversight mechanisms but create a complementary oversight mechanism. This mechanism is preventive and proactive as opposed to a complaints-based system.

## WHO FORMS PART OF THE SOUTH AFRICAN NPM?

The following institutions have been proposed as members of the NPM, subject to legislative review and amendments to their enabling legislation regulating independence, powers and functions:



## WHAT IS CIVIL SOCIETY'S ROLE IN THE NPM

Civil society plays a critical role in the success of monitoring and awareness. The NPM can tap on the existing civil society expertise to strengthen its work. Through the SAHRC, as the NPM coordinating body, a mechanism for collaborating with civil society, including independent experts is being finalised.

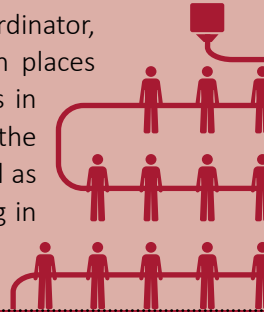
The SAHRC Act already recognises the role and permits the participation of civil society organisations in the work of the SAHRC in terms of section 13 (1) (b)(iii) of the SAHRC Act. In this regard, it is envisaged that civil society will play a significant role, for instance, by providing support to the NPM, including through research and data verification.

## WHICH PLACES CAN BE VISITED BY THE NPM?

Article 4 of the OPCAT is very broad to cover both public and privately run institutions where persons are not free to leave at will. The NPM may visit any place where people are or may be deprived of their liberty, including police stations, correctional facilities (military and civilian), immigration detention centres, child and youth care facilities, secure care facilities, and mental health and social care institutions.

## WHAT WILL SAHRC'S ROLE BE?

The SAHRC will perform a coordinating and functional role. As coordinator, the SAHRC would collate and produce an aggregated report on places of deprivation of liberty, coordinate research on addressing gaps in monitoring and policy deficits, develop a guide for monitoring by the other institutions for consistency, and report to Parliament as well as the SPT. The SAHRC will be responsible for coordination, including in the following areas:



- Developing an effective NPM that meets the requisite provisions of the OPCAT;
- Ensuring cohesion of methodology and coordination of work;
- Promoting collaboration, information sharing, cohesion and good practice between NPM bodies;
- Convening regular meetings of NPM bodies;
- Facilitating joint activities between NPM bodies;
- Liaising and facilitating engagement with international human rights bodies (e.g. the SPT and other NPMs);
- Making joint submissions to international treaty bodies;
- Representing the NPM with Government and other national actors;
- Representing the NPM at the international level; and
- Preparing the NPM annual report and other NPM joint publications.

The NPM is further required to consult regularly with the SPT; make recommendations to applicable authorities to strengthen the prevention of torture, and comment on proposed legislation or policies regarding places of deprivation of liberty.

## HOW DOES THE NPM DO ITS WORK?

The NPM must regularly examine the treatment of persons deprived of their liberty in places of deprivation of liberty as defined in Article 4 of the OPCAT and to strengthen, if necessary, their protection against torture and other cruel, inhuman, or degrading treatment or punishment.

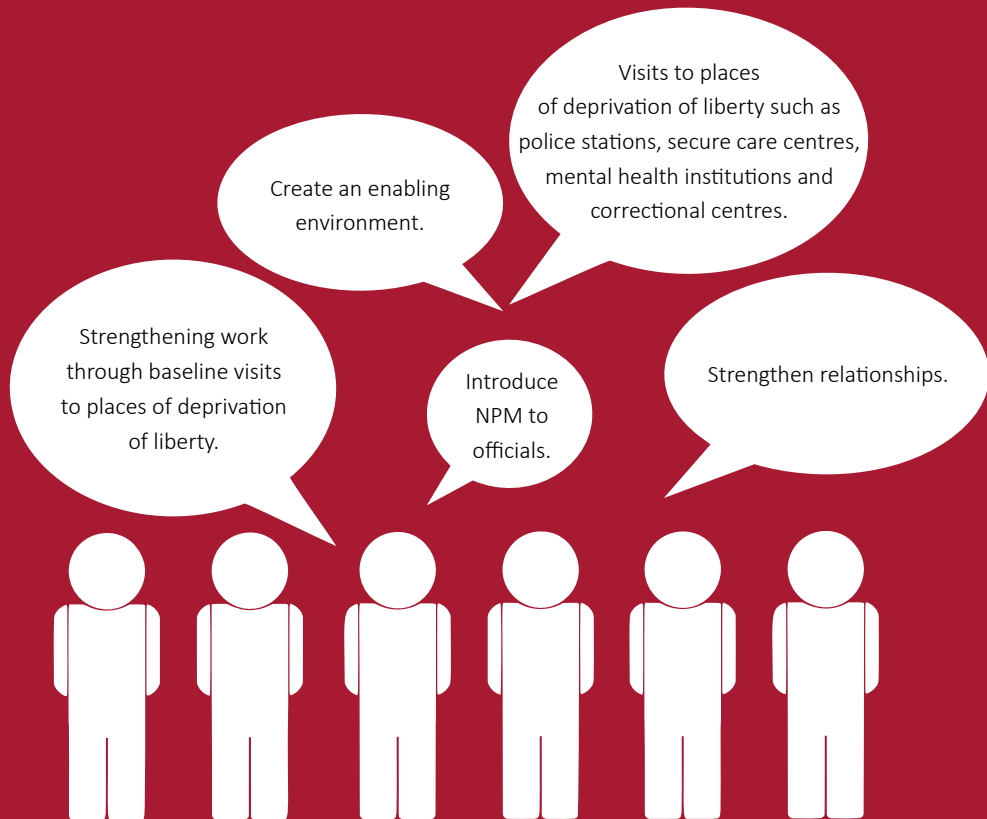
It must make recommendations to the relevant authorities to improve the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman, or degrading treatment or punishment, taking into consideration the Constitution of the Republic of South Africa; relevant norms of the United Nations; and to submit proposals and observations concerning existing or draft legislation.

## BENEFITS OF AN NPM

Through the NPM's systemic analysis before, during and after monitoring visits (as well as follow-up visits), the NPM can identify trends, improvement, or deterioration of the conditions of detention and provide recommendations to reinforce/implement protective measures as underscored by international and domestic human rights law. This creates credibility regionally and internationally as well as legitimacy in respect of independence – envisaged in respect of persons deprived of their liberty.

From a business case point of view, the NPM will possibly reduce consequence costs to the State in respect of litigation in civil claim matters against the State arising out of places of deprivation of liberty or through conduct or omissions of those employed in such places. It also attempts to create an environment for improved opportunities for rehabilitation and less dependency on the State.

It ensures compliance with the constitution and creates consensus on strengthened mechanisms, policies, procedures, and protections for persons deprived of their liberty.



## THE FIRST YEAR OF OPERATION

During the 2019/2020 financial year, the SAHRC has been working on identifying ways of strengthening its work over the next few years through baseline visits to places of deprivation of liberty. They were meant to assess the treatment of persons deprived of their liberty and provide various stakeholders with information on the NPM's mandate. As part of the baseline assessment, the SAHRC undertook largely announced visits to some places of deprivation of liberty such as police stations, secure care centres, mental health institutions and correctional centres. Undertaking announced visits has been adopted strategically to create an enabling environment where the preventive mandate of the NPM is introduced to the officials on the one hand and, on the other hand, the NPM officials familiarise themselves with the South African deprivation of liberty architecture.

Meetings were also held to strengthen relationships amongst identified NPM bodies, discuss possible amendments to relevant legislation, and establish the NPM Steering Committee.



Therefore, the current position in respect of the bodies that will participate in the NPM may need to be reconsidered in light of these requirements. The above requirements indicate a need to consider how the legal foundation of the different NPM institutions may potentially be amended to ensure that they each have the full powers, resources and mandates necessary to fulfil their OPCAT functions. In this regard, the NPM will be working on draft legislation to introduce, strengthen and protect its mandate.





## USEFUL LINKS:



### **South African National Preventive Mechanism:**

<https://sahrc.org.za/npm/index.php>



### **African Commission on Human and People's Rights:**

<https://www.achpr.org/>



### **Association for the Prevention of Torture:**

<https://www.ap.t.ch/en>



### **Committee for the Prevention of Torture in Africa:**

<https://www.achpr.org/specialmechanisms/detail?id=7>



### **South African Human Rights Commission:**

<https://www.sahrc.org.za/>



### **Judicial Inspectorate for Correctional Services:**

<http://jics.dcs.gov.za/jics>



### **Health Ombud:**

<http://healthombud.org.za/category/publications/reports/>



### **Military Ombud:**

<https://www.milombud.org/>



### **Subcommittee on Prevention of Torture:**

<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>



### **IPID:**

<http://www.ipid.gov.za/>

A strong system of cooperation and coordination is also essential to the success of this kind of system. In this regard, memoranda of understanding, clear focal points, and regular discussions at different levels of the institutions will be essential.

It will also be desirable to conduct joint training of relevant staff; regularly participate in each other's visits to places of deprivation of liberty; make joint submissions on relevant policy and legislation; conduct joint work on thematic and cross-cutting issues through inter-institutional working groups and the publication of joint thematic reports.

For more information,  
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