



NATIONAL PREVENTIVE MECHANISM
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South African National
Preventive Mechanism

*Towards a society
free of torture*



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South African National Preventive Mechanism

Annual Report 2022/23



South African National Preventive Mechanism 2022/23 Annual Report (2023)

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South African National Preventive Mechanism

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FOREWORD

Thousands of persons are arrested or through some administrative processes find themselves deprived of their liberty. Often deprivation of liberty is seen through its traditional lense and to an extent, leads to the exclusion of other forms of deprivation of liberty in the context of international human rights norms and standards. Such people rely on institutions such as the National Preventive Mechanism (NPM) to strengthen their protection against any form of ill-treatment. Through its preventive and regular visiting mandate, the work of the NPM reminds us all that human rights must be a reality, even in situations where a person has or allegedly has committed an offence. The fundamental aspect is centred on the dignity of the person despite their liberty being limited.

We are pleased to present the fourth report of the South African National Preventive Mechanism as mandated by the Optional Protocol to the Convention Against Torture (OPCAT). This report covers the period 1 April 2022 to 31 March 2023.

This report should be read together with the annual report of the NPM institutions, considering that detailed observations and institutional operations are outlined there. During this period, we were guided by the recently developed NPM strategic plan in our efforts to respond to the obligations set forth in the OPCAT. In the context of Article 11 of the OPCAT, we engaged with the Subcommittee on the Prevention of Torture on several issues pertaining to the functions of the NPM, and attended several engagements. We also had the pleasure of receiving a delegation from the United Nations' Subcommittee on Prevention of Torture (SPT). Under the OPCAT, the SPT conducts visits to States parties to assess the situation of people deprived of their liberty and meets and works with each State's NPM, as well as with public authorities and civil society organisations. We express our gratitude for the support of and the constructive dialogue with the SPT.

The report of the NPM allows us to reflect on the state of deprivation of liberty, and particularly on the progress made in the implementation of the OPCAT in South Africa since it was ratified in 2019.



Our work would not have been where it is without the support of various stakeholders, including the SAHRC, government departments such as Justice and Constitutional Development, civil society and in particular, the financial support received from the European Union and the Swiss Federal Ministry of Foreign Affairs (through the Swiss Embassy to South Africa). This support enabled learning and knowledge exchange opportunities with various NPMs and organisations on the protection of women in the criminal justice system. At the same time, our work has benefited from the support of civil society since 2006, when South Africa signed the OPCAT. This support has enabled us to augment our capacity, skills and expertise, and equally assist in popularising the NPM mandate.

Like other cooperative NPM models, the South African NPM model is complex, yet it offers opportunities through the capacity and skills residing with the network of institutions tasked with the implementation of the OPCAT obligations. The model also benefits from a cross-pollination of institutional methodology as the OPCAT demands. However, the NPM still needs to be strengthened through a legislative framework to guarantee its independence (institutional, operational and functional); adequate resources; increased public awareness and constructive dialogue with authorities to meaningfully implement its recommendations. As the South African Human Rights Commission (SAHRC), our task is to ensure we advocate for these needed changes and equally ensure we diligently execute our coordinating and functional aspects in the NPM. These functions equally require adequate resources.

I wish to equally extend my gratitude to the NPM constituent institutions for their collective dedication, collaboration and continued support, without which the work of the NPM would be insurmountable. Their assistance and cooperation are fundamental to realising the OPCAT mandate, and strengthening the protection of persons deprived of their liberty. As the NPM Steering Committee, we met to consider performance and issues to improve cooperation and collaboration, and for that we remain grateful. Our appreciation is extended to the officials in the NPM secretariat and the SAHRC provincial offices who spent hours and days visiting places where persons are deprived of their liberty. We are also grateful to Adv Bongani Majola for his stewardship and Mr Vusumuzi Mkhize for the support to the implementation of the OPCAT mandate.

Equally, I encourage the state to engage constructively with the observations and recommendations of the NPM, as required by the OPCAT. Without this engagement, the promise of our constitutional democracy and international human rights protection becomes meaningless.

Chris Nissen

Chairperson

South African Human Rights Commission,

Member of the United Nations Subcommittee on Prevention of Torture, 2024.



OFFICIAL SIGN-OFF

It is hereby certified that this Annual Report on the South African National Preventive Mechanism (SA NPM) was developed by the South African Human Rights Commission (SAHRC) in its role as the SA NPM coordinator. It provides a high-level overview of the work of the NPM as a unitary institution in implementing the obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Report is to be submitted to Parliament and the United Nations Subcommittee on Prevention of Torture (SPT).

LIST OF ABBREVIATIONS/ GLOSSARY

ATD	Alternatives to Detention
APT	Association for the Prevention of Torture
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CIDT or other ill-treatment	Cruel, Inhuman or Degrading Treatment or Punishment
Constitution	Constitution of the Republic of South Africa, 1996
COVID-19	Corona virus infection or disease
CSA	Correctional Services Act, 111 of 1998
CPTA	Committee for the Prevention of Torture in Africa
CYCC	Child and Youth Care Centre
DCS	Department of Correctional Services
DMA	Disaster Management Act, 57 of 2002
DSD	Department of Social Development
DPWI	Department of Public Works and Infrastructure
ICCV	Independent Correctional Centre Visitor
IJ	Inspecting Judge for Correctional Services
IPID	Independent Police Investigative Directorate
JICS	Judicial Inspectorate for Correctional Services
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual+
MoA	Memorandum of Agreement
MoU	Memorandum of Understanding
MDB	Military Detention Barrack
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
NSIT	National Specialised Investigation Team
OHO	Office of the Health Ombud
OHSC	Office of the Health Standards Compliance
OMO	Office of the Military Ombud

OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PDL(s)	Place where a person is or may be deprived of their liberty
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SA NPM	South African National Preventive Mechanism
SANDF	South African National Defence Force
SCC	Secure Care Centre
SPT/Subcommittee	United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations



Visit of the UN Subcommittee on Prevention of Torture

EXECUTIVE SUMMARY

Introduction

This is the fourth report of the South African National Preventive Mechanism (SA NPM) designated in accordance with articles 3 and 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The report covers the period from 1 April 2022 to 31 March 2023. The report is submitted to Parliament and the United Nations Subcommittee on Prevention of Torture (SPT).

Tracking our recommendations

Given that the NPM's mandate seeks to realise systemic change, we built on our previous observations and tracked some of our key recommendations made in the previous reporting cycle, as part of the prevention ecosystem.

Priorities during the period under review

Women in the criminal justice system

We prioritised issues of women in the criminal justice system, particularly the intersectionality with deprivation of their liberty. Our preliminary observation on women in detention highlights the importance of recognizing the gendered nature of deprivation of their liberty. It further highlighted the opportunities to enhance existing policies and mechanisms concerning the treatment and conditions of women deprived of their liberty. However, we acknowledge government's efforts towards the implementation of the Bangkok Rules, especially through creating the first gender responsive correctional centre in Atteridgeville, Johannesburg. Similarly, the lessons learned in South Africa's first gender responsive correctional centre in Atteridgeville should be useful in government's systematic approach to addressing the needs of incarcerated women.

Externally supported peer learning and knowledge exchange

The period under review also afforded the NPM to learn from others through study visits supported by the European Union and Swiss Federal Ministry of Foreign Affairs. The NPM visited France, Italy and Switzerland.



Validation of the institutional review

Drawing on the institutional review process undertaken in the previous reporting cycle, a public workshop to validate the review findings and recommendations was convened by the NPM. This workshop was attended by a range of stakeholders, including NPM institutions, civil society, government and the SPT.

Follow-up to the UN Global Study on Children Deprived of Liberty

The NPM also finalised the baseline assessment on the conditions of children in conflict with the law as a follow-up to the UN Global Study on Children Deprived of their Liberty. We also observed that gaps in the protection of sexual minorities exist in the criminal justice system, and as such more awareness is needed.

Meetings of the NPM Steering Committee

To facilitate collaborative and effective NPM coordination, four meetings of the NPM Steering Committee were held over the period under review. The quarterly meetings provide a platform for NPM institutions to discuss progress on institutional development and to identify common thematic areas. The committee meetings also serve as a platform for learning and sharing of experiences. The committee discussed the institutional review report and noted the quarterly reports from the NPM institutions. The Steering Committee resolved that the Commission should host bilateral engagements with the individual NPM institutions to address the concerns raised over the proposed governance model.

Visit of the Subcommittee on Prevention of Torture

Importantly, the United Nations' Subcommittee on Prevention of Torture (SPT) visited South Africa between 28 February and 10 March 2023 to assess the situation of people deprived of their liberty. The SPT also met with the NPM, as well as with public authorities and civil society organisations.

Future priorities

Given that NPMs evolve and the need to maintain effectiveness, we will be focusing on the following:

- + Developing and consensus on a framework cooperating and collaborating with civil society.
- + Strengthening governance.
- + Strengthening NPM OPCAT compliance and effectiveness.
- + NPM legislative framework.

These priorities will also be supported by the observations of the SPT in its forthcoming report of the visit to South Africa.



INTRODUCTION & BACKGROUND



1. INTRODUCTION & BACKGROUND

1.1. Introduction

This is the fourth report of the South African National Preventive Mechanism (SA NPM) designated in accordance with Articles 3 and 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The report covers the period from 1 April 2022 to 31 March 2023. The report is submitted to Parliament and the United Nations Subcommittee on Prevention of Torture (SPT).

1.2. Background

Independent monitoring, among others, promotes adherence to procedural and custodial safeguards of persons in contact with or in conflict with the law, and who are at risk of being deprived of their liberty. These safeguards are upheld and protected and in so doing reduce the risks of torture and other cruel, inhuman or degrading treatment or punishment.

“A person who is imprisoned is delivered into the absolute power of the state and loses his or her autonomy. A civilised and humane society demands that when the state takes away the autonomy of an individual by imprisonment it must assume the obligation to see to the physical welfare of its prisoner. We are such a society and we recognise that obligation in various legal instruments. The obligation is also inherent in the right given to all prisoners by s 35(2)(e) of the Constitution to ‘conditions of detention that are consistent with human dignity.’”¹

¹ The Minister of Correctional Services v Lee (316/11) [2012] ZASCA 23 (23 March 2012) (Supreme Court of Appeal Judgment).



“The fact that they are convicted criminals does not prevent them to be treated like human beings.”²

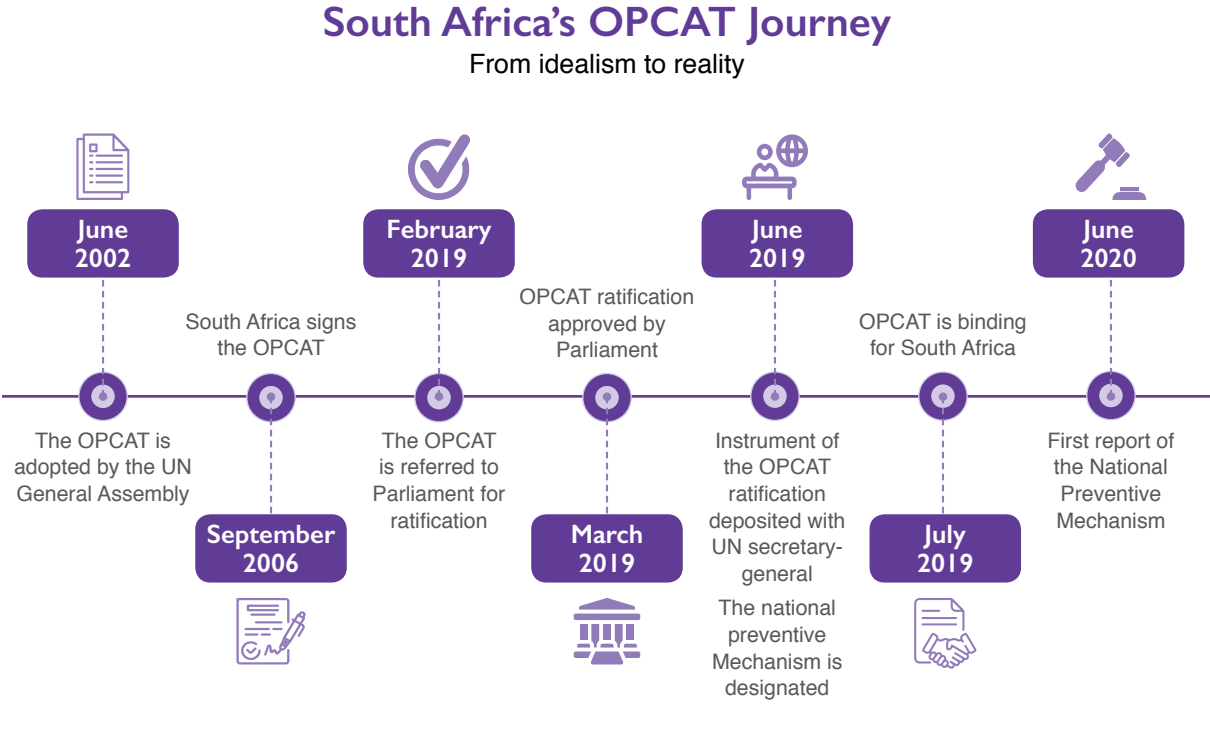
The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture or UNCAT) requires States to:

“Prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”³

To give effect to the UNCAT obligation, the OPCAT puts emphasis on the prohibition and the corresponding obligation to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment. Thus, under Article 3 of the OPCAT, States or parties must designate, maintain, or establish a National Preventive Mechanism (NPM) to strengthen the protection of persons who are or may be deprived of their liberty. Being mindful that each State party to the OPCAT has adopted an NPM tailored to its context, the Republic of South Africa adopted a multibody mechanism where pre-existing constitutional and statutory institutions were designated as bodies constituting the NPM (See Figure 2). The rationale being that designating multiple bodies as NPM benefits from existing monitoring infrastructure, increased footprint and cooperation through dialogue and the division of tasks between institutions with an existing monitoring role. With the division of tasks, NPM institutions focus on their thematic fields of expertise.

2 Smith v Minister of Justice and Correctional Services and Others (35658/2021) [2021] ZAGPJHC 556 (30 September 2021).
3 Articles 2 and 16 of the UNCAT. See also, UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2.

Figure 1: South Africa's OPCAT journey





OUR MANDATE IN CONTEXT



2. OUR MANDATE IN CONTEXT

Articles 19 and 20 of the OPCAT define the mandate of NPMs to examine the treatment of persons deprived of their liberty within the context of Article 4 of the OPCAT.⁴ The idea is premised on the view that regular visits to places where persons are deprived of their liberty can strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. These acts of torture and other ill-treatment can be manifested in nuanced ways. For instance, ill-treatment could be caused by infrastructural design, intentional or unintentional human conduct and stigmatising attitudes or policy design and implementation. To this end, the United Nations Subcommittee on Prevention of Torture (Subcommittee or SPT) cautions States parties and NPMs to the opacity of practices that lead to torture and other ill-treatment and call for vigilance through preventive monitoring and assessing a variety of systems such as legal and system features, and current practices including conditions to identify where the gaps in protection exist, and which safeguards require strengthening.⁵

Therefore, our interpretation of the provisions of Article 4⁶ is premised on increasing accountability for human rights in the country through (i) proactive/preventive monitoring of places where persons are or may be deprived of their liberty; supported by (ii) constructive dialogue with the State to strengthen the protection of those deprived of their liberty. Importantly, Article 19 suggests three elements to the NPM's mandate:



Regular visits to all places where persons are or may be deprived of their liberty.



Making recommendations aimed at the improvement of the treatment and conditions of people deprived of their liberty.



Providing comments and advice on existing and draft legislation and relevant government policies.

4 Art 4:

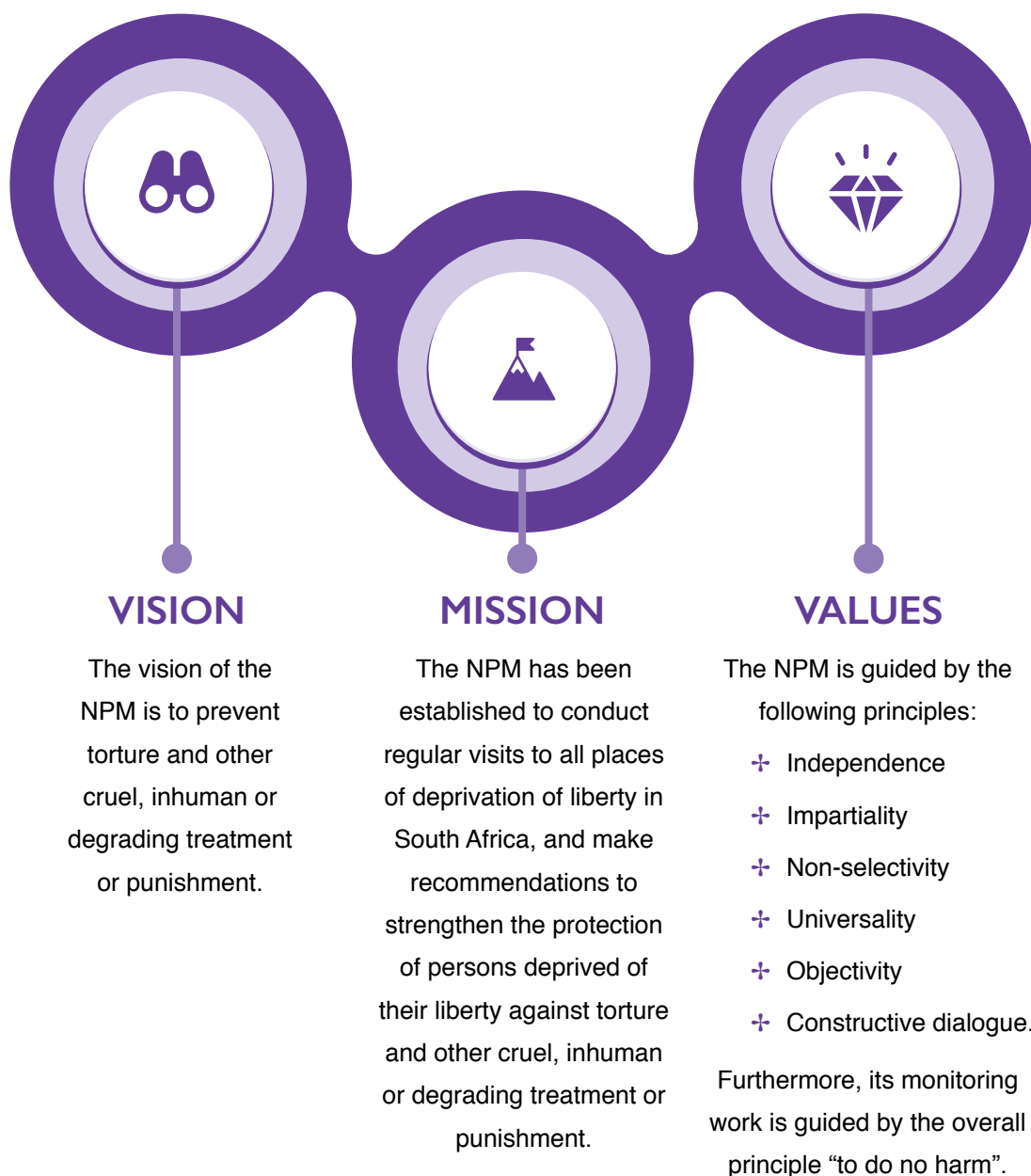
- (1). Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
- (2). For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

5 Subcommittee on Prevention of Torture (May 2008). First Annual Report of the Subcommittee on Prevention of Torture, CAT/C/40/2, para 12.

6 We interpret Article 4 to include any "public or private [place] of custodial setting where a person is not permitted to leave at will and is placed there by an order of any judicial, administrative, or other authority". This understanding recognises the dichotomy of public and private sectors and most importantly the role of private entities subcontracted to perform statutory functions.



2.1. Our strategic overview



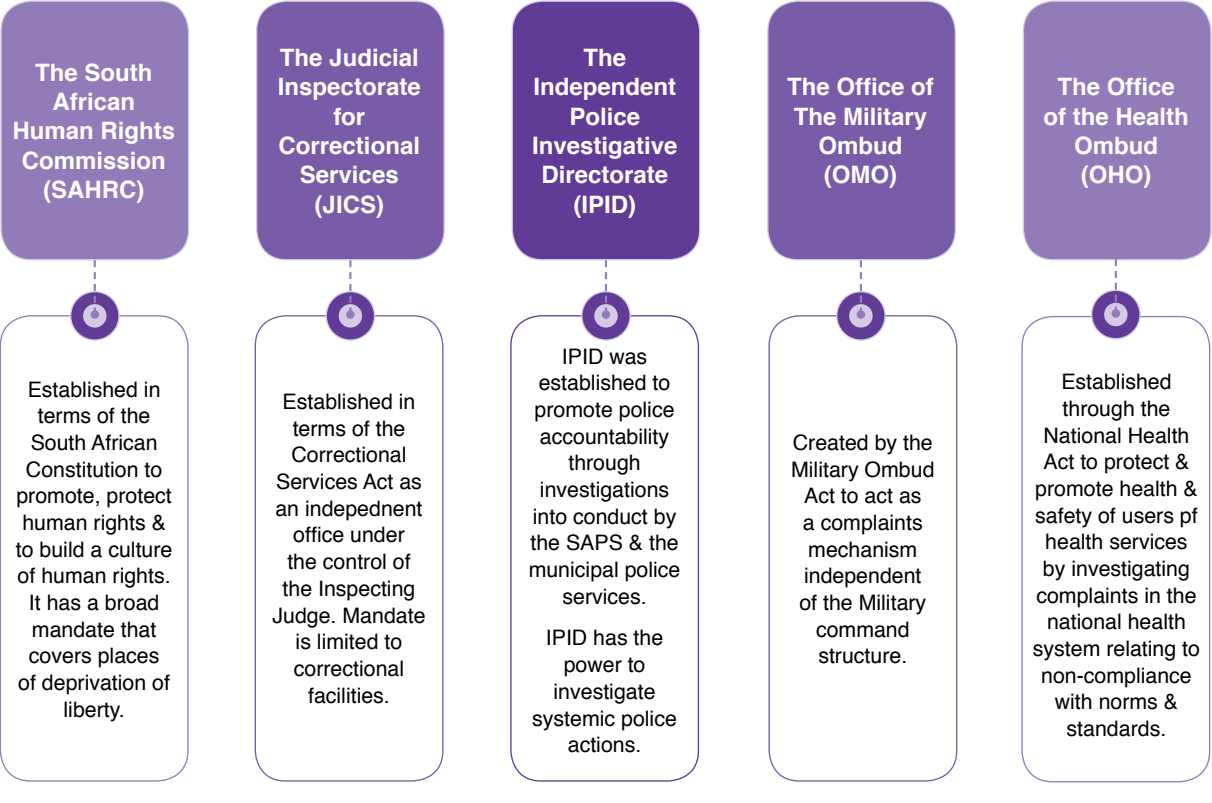
To realise our mandate, the work of the NPM is premised on the following assumptions and strategic themes:

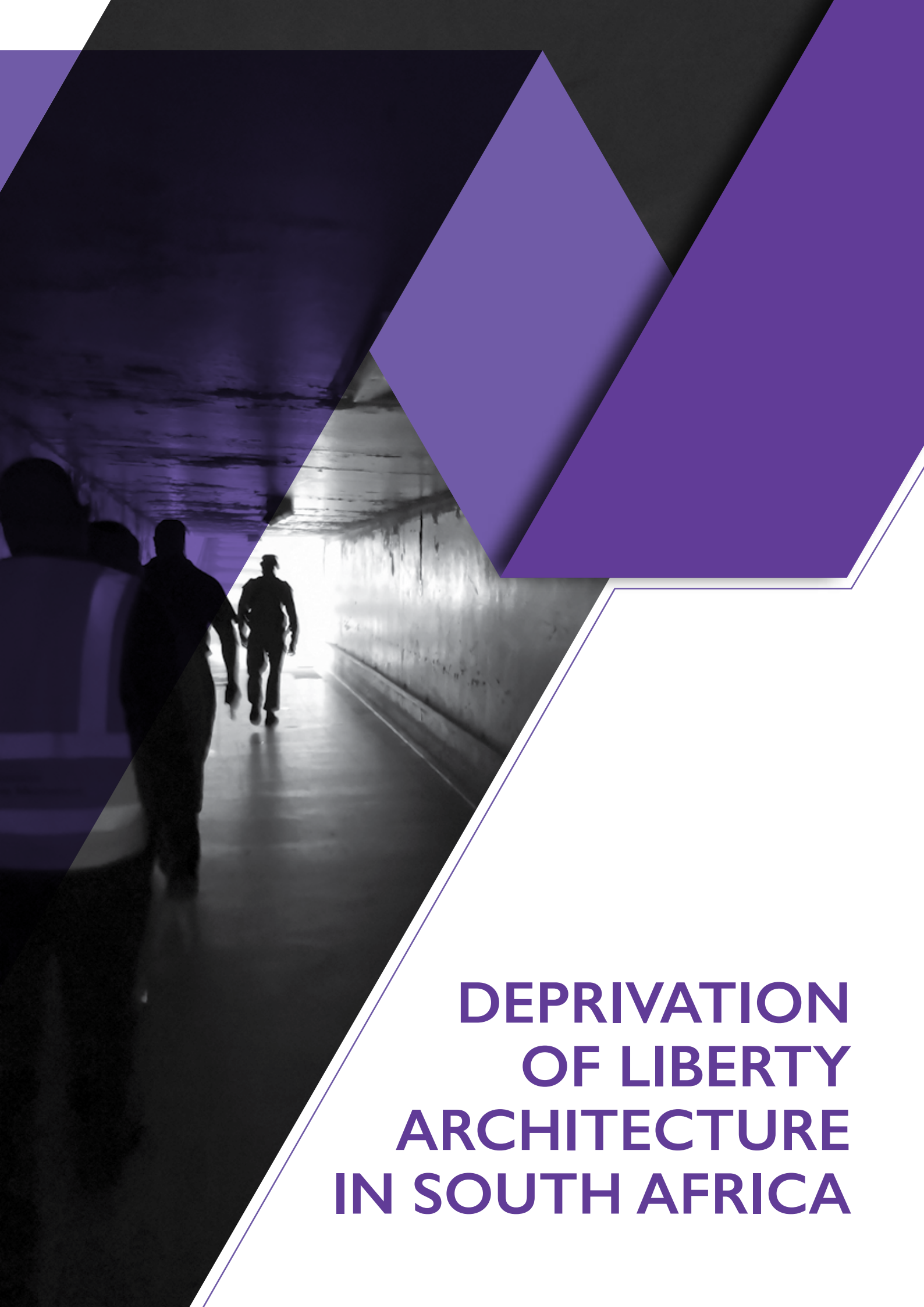
1. **Prevalence of torture and other ill-treatment.** We recognise that notwithstanding the absolute prohibition of torture, incidents of torture, and other cruel, inhuman or degrading treatment or punishment (ill-treatment) still occur. These incidents may be exacerbated by systemic shortcomings in the deprivation of liberty ecosystem such as poor conditions and overcrowding linked to aging infrastructure. Our operations should always be premised on constructive dialogue and the principles of independence, impartiality, non-selectivity, universality, and objectivity. Equally, the overall principle “to do no harm” is a fundamental pillar to our decisions.

2. **OPCAT-based requirements for NPMs.** We acknowledge that for the NPM to realise systemic change, institutional building will need to address the OPCAT requirements such as the need for (i) functional independence; (ii) full guarantee of the powers and guarantees of access to places and persons deprived of their liberty as set out under the OPCAT; (iii) improve the governance architecture; (iv) create a cohesive NPM; and (v) develop an expansive visiting framework to ensure all places where persons are or may be deprived of their liberty are visited.

3. **Strengthening the framework for cooperation and collaboration.** Our assumption is that, while the NPM is a multi-body entity, the work of the NPM requires greater engagement with civil society. We acknowledge that civil society can play a crucial role in reinforcing the NPM mandate, through, for instance, sharing of information and monitoring capacity.

Figure 2: Overview of the National Preventive Mechanism





**DEPRIVATION
OF LIBERTY
ARCHITECTURE
IN SOUTH AFRICA**

3. DEPRIVATION OF LIBERTY ARCHITECTURE IN SOUTH AFRICA

Table 1: Places of deprivation of liberty

REGION	PLACES OF DEPRIVATION OF LIBERTY IN SOUTH AFRICA					
	CORRECTIONAL CENTRES ⁷	PROVINCE	POLICE STATIONS	SECURE CARE	PSYCHIATRIC INSTITUTIONS ⁸	IMMIGRATION/ DESIGNATED POLICE STATIONS ⁹
EC	46	GP	142	2	2	1 Repatriation Centre ¹⁰ 21 Police Stations
GP	25	NW	83	2	1	28
KZN	41	FS	111	3	1	40
LMN	40	LP	101	2	2	28
FSNC	48	MP	90	2	0	55
WC	43	KZN	170	4	3	28
		WC	178	5	2	139
		EC	198	5	2	56
		NC	91	5	1	31
NATIONAL	243		1164	30	14	427

Table 1 represents traditional places of deprivation of liberty that the NPM currently monitors. These places are disaggregated into provinces or regions and thematic focus. For instance, from the total of 243 correctional centres, two are public private partnership centres, while 15 are new generation centres (these translate into 6.2%).



7 Two correctional centres are outsourced as part of public-private-partnerships.

8 These specialised facilities are designated to admit, care, treat, and rehabilitate state patients in terms of the Mental Health Care Act. These hospitals are complemented by 10 designated psychiatric hospitals that conduct forensic psychiatric evaluations in terms of sections 77 to 79 of the Criminal Procedure Act.

9 These police stations are designated by the Director-General of the Department of Home Affairs for immigration detention in accordance with Section 34 (1) of the Immigration Act, 13 of 2002.

10 Lindela Repatriation Centre located west of Johannesburg.



DETENTION IN FIGURES

4. DETENTION IN FIGURES

Table 2: No of sentenced people in correctional centres as on 31 March 2023

REGION	SENTENCED OFFENDERS						TOTAL
	CHILDREN		JUVENILE		ADULTS		
	Females	Males	Females	Males	Females	Males	
EC	0	3	4	195	245	14 269	14 716
GP	0	6	4	354	789	20 630	21 783
KZN	0	15	5	215	445	16 508	17 188
LMN	0	3	4	266	356	17 007	17 636
FSNC	0	3	8	204	254	13 572	14 041
WC	1	2	10	231	566	15 012	15 822
NATIONAL	1	32	35	1 465	2 655	96 998	101 186

The data indicates that Gauteng had more sentenced offenders compared to other regions. This applies to most of the categories (juveniles, youth and adults). The data also indicates that most of the Gauteng province's adult incarcerated population are males. This also applies to the juvenile category.

Table 3: No of unsentenced people in correctional centres as on 31 March 2023

REGIONS	REMAND DETAINEES & OTHER UNSENTENCED INMATES						TOTAL
	CHILDREN		JUVENILE		ADULTS		
	Females	Males	Females	Males	Females	Males	
EC	0	6	6	512	137	6 396	7 057
GP	0	0	50	885	682	14 405	16 022
KZN	0	29	14	481	229	6 315	7 068
LMN	0	4	6	373	99	5 591	6 073
FSNC	0	5	12	540	137	5 902	6 596
WC	0	21	36	819	550	11 628	13 054
NATIONAL	0	65	124	3 610	1 834	50 237	55 870

Similar to the trends in sentenced offenders, at 28.6%, Gauteng has the largest number of unsentenced inmates (remand detainees). This is followed by the Western Cape region at 23.3%. The majority of unsentenced inmates are male. Equally, these two regions have the highest female population in both adult and juvenile subgroups.



Table 4: Regional representation and grand total of people in correctional centres as on 31 March 2023

REGION	GRAND TOTAL	INFANTS
EC	21 773	5
GP	37 805	35
KZN	24 256	12
LMN	23 709	8
FSNC	20 637	5
WC	28 876	18
NATIONAL	157 056	83

The data indicates that even though Gauteng has the lowest number of correctional centres, it has more incarcerated people at 37 805 out of a total of 157 057. There are various factors attributed to this, but this trend could also be correlated to Gauteng's percentage share relative to the gross national population. Gauteng's population trends are influenced, for instance, by factors such as domestic and international migration. According to the 2022 census by Statistics South Africa, Gauteng's population is estimated at 15 million which translates into approximately 24.3% relative to the gross national population.¹¹ Similarly at a combined total of 53, both Gauteng and the Western Cape accounted for 63.8% of infants across the country compared to other regions combined.

Table 5: National number of children in conflict with the law as on 31 march 2023

	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Awaiting Trial	655	653	631	578	627	660	650	628	639	544	614	555
Residential Diversion	200	207	217	198	205	224	265	275	279	213	212	195
Senten-ced	254	248	247	224	215	247	243	236	227	249	221	221
National Total	1 409	1 108	1 095	1 000	1 047	1 131	1 153	1 139	1 150	1006	1047	971

Table 5 indicates that the total number of children in Secure Care has remained steady over time. However, the data equally indicates that there is a high number of those awaiting trial (more than 50%) compared to sentenced (25%) children. Of the total number of children, approximately 20% are on residential diversion.

Table 6: Mandatory reporting in terms of the CSA

DCS Mandatory Reports to JICS	
Natural deaths of inmates	425
Unnatural deaths of inmates	101
Segregations	3 670
Use of mechanical restraints	25
Use of minimum force	470
Total complaints received	410

¹¹ Statistics South Africa | Census Dissemination (statssa.gov.za).

DCS Mandatory Reports to JICS

Assaults – officials on inmates	86
Torture	0
CIDT	3

Table 6 indicates the number of mandatory reports received by the Judicial Inspectorate for Correctional Services during the period under review. Notably, the data indicates that there were 3 670 segregations reported to the Inspecting Judge in terms of Section 30 of the Correctional Services Act. These fall within the various categories of Section 30 of the CSA¹². For instance, segregations could be (i) at the request of an inmate; (ii) restriction of amenities or (iii) prescribed by a medical officer.

The nature of managing a corrections environment suggests that management of human conduct would invariably trigger interpersonal interactions and incidents. In anticipation of the potential negative attributes, such incidents require certain safeguards to be put in place. Therefore, the Correctional Services Act creates a framework for mandatory reporting of specific incidents relating to the treatment of inmates to external oversight institutions.



RECOMMENDATIONS

- i. Some instances of segregation may be prolonged and therefore, amount to torture. The Judicial Inspectorate for Correctional Services should consider an in-depth thematic analysis of the use of segregation to make appropriate recommendations on its use and potential misuse. The findings of Justice van der Westhuizen's 2019 report as well as the 2022 reports of JICS should provide a baseline for such analysis.
- ii. The in-depth analysis should assess the efficacy of the procedural safeguards put in place on managing segregation, including whether it is used as a behaviour modification tool without addressing the root causes, whether it considers the needs of populations in situations of vulnerability, opportunities for both policy and practice reform and capacity development that could change human behaviour.
- iii. While the number of CIDT appears to be low, NPM institutions need to monitor these trends to assess the root causes and through regular visits to places where persons are deprived of liberty, prevent these, as they could potentially lead to systemic ill-treatment and torture.

¹² Subsection (1) states:

Segregation of an inmate for a period of time, which may be for part of or the whole day, and which may include detention in a single cell, other than normal accommodation in a single cell as contemplated in section 7 (2) (e) is permissible:

- (a) upon the written request of an inmate;
- (b) to give effect to the penalty of the restriction of the amenities imposed in terms of Section 24 (3) (c), (5) (c) or (5) (d) to the extent necessary to achieve this objective;
- (c) if such detention is prescribed by the correctional medical practitioner on medical grounds; (d) when an inmate displays violence or is threatened with violence;
- (e) if an inmate has been recaptured after escape and there is a reasonable suspicion that such inmate will again escape or attempt to escape; and
- (f) if at the request of the South African Police Service, the Head of the Correctional Centre considers that it is in the interests of the administration of justice.



PREVIOUS OBSERVATIONS & RECOMMENDATIONS

5. PREVIOUS OBSERVATIONS AND RECOMMENDATIONS

Given that the NPM's mandate seeks to realise systemic change, we build on our previous observations and track some of our key recommendations as part of the prevention ecosystem. In the previous performance cycle, the NPM made the following observations and recommendations:

In the context of the coronavirus pandemic management and containment, the NPM reminded the government of the provisions of Article 14 of the OPCAT which provides that a declared state of emergency shall not be invoked by a state party as a compelling reason to object to an NPM visit. This was seen in the context of exclusion of key NPM bodies as essential services providers to overcome most of the restrictions to movement.

Equally, the NPM reiterated the need for ongoing constructive dialogue with the state. This dialogue aspect is beneficial for the state, the NPM as well as those deprived of their liberty who are the beneficiaries of the services. In this case, the NPM could have proactively advised the state on protective measures to strengthen the protection of those deprived of their liberty in line with its OPCAT mandate.

Noting the self-sufficiency programme introduced by the Department of Correctional Services, the NPM stressed the need to develop adequate control mechanisms to guard against exploitation of incarcerated persons and that it should remain voluntary. Such programmes should form part of the rehabilitation ecosystem.

With overcrowding posing as a systemic challenge in the correctional environment, the NPM expressed its concern on the effectiveness of overcrowding strategies and noted that the early release measures implemented by the state in responding to the coronavirus pandemic may have provided some interim utility. The state needed to explore long-term strategies to reduce overcrowding in correctional centres including through the use of alternatives to incarceration for low-risk pre-trial detainees and those arrested for petty offences in line with Sustainable Development Goal 16;¹³ the Principles on the Decriminalisation of Petty Offences in Africa;¹⁴ the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa¹⁵ and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).¹⁶

Equally, the NPM recalled and drew the government's attention to the May 2019 concluding observations of the Committee against Torture on various contributory factors to overcrowding, and the accompanying recommendations.¹⁷

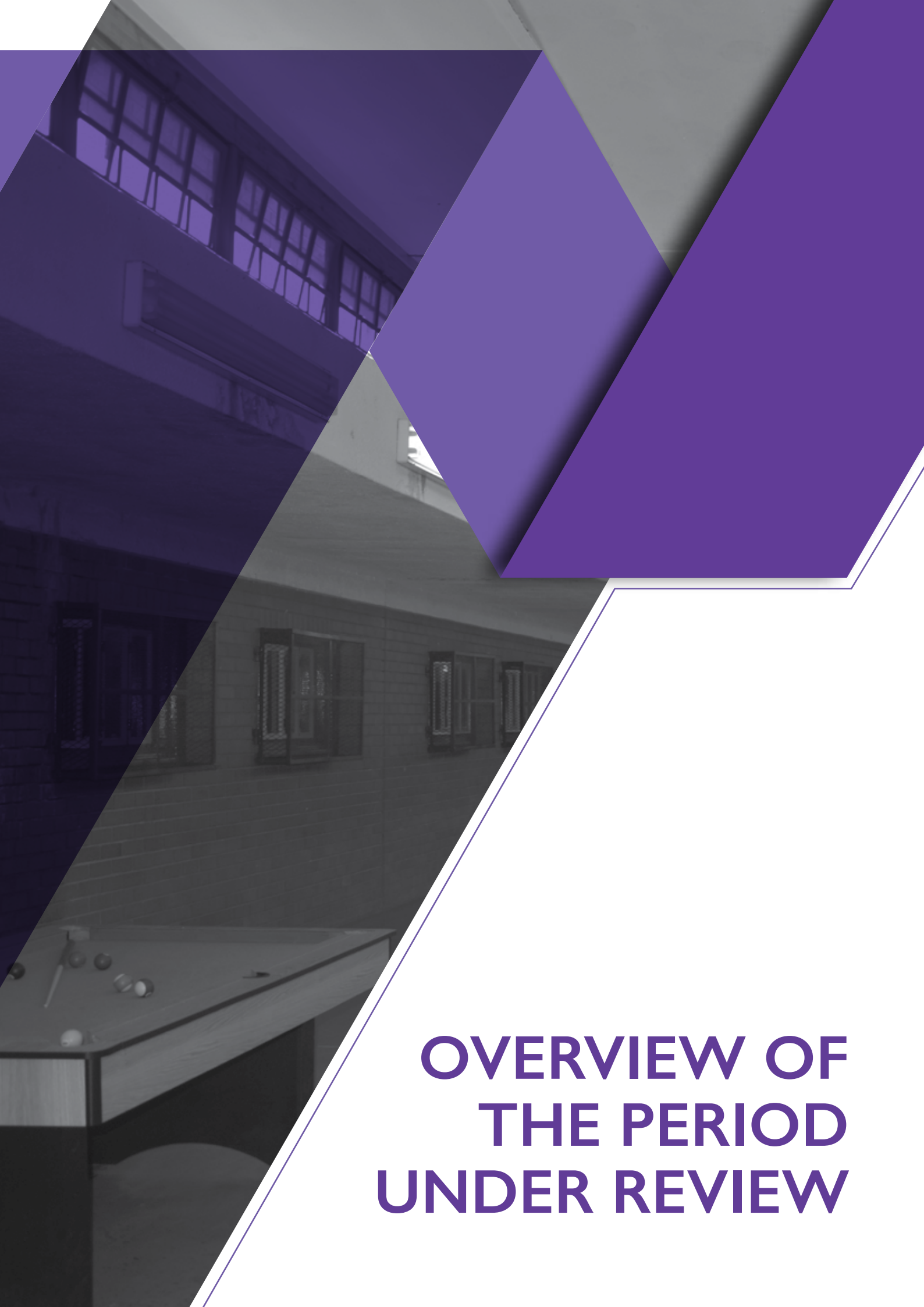
13 Sustainable Development Goal 16 seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Target 16.3 asks states to promote the rule of law at national and international-levels and ensure equal access to justice for all. Indicator 16.3.2 focuses on the number of persons in pre-trial detention with emphasis on the presumption of innocence and unnecessary use of pre-trial detention. It expands its attention on the economic and social impact of prolonged pre-trial detention.

14 See Principle Part 4 of the Principles on the Decriminalisation of Petty Offences in Africa adopted by the African Commission on Human and Peoples' Rights (the "African Commission") meeting at its 61st Ordinary Session held from 1 to 15 November 2017 in Banjul, Gambia.

15 Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.

16 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990.

17 UN Committee Against Torture (CAT), *Concluding Observations on the Second Periodic Report of South Africa*, 07 June 2019, CAT/C/ZAF/CO/2, paras 14 to 18.



OVERVIEW OF THE PERIOD UNDER REVIEW

6. OVERVIEW OF THE PERIOD UNDER REVIEW

6.1. Introduction

The period under review provided us an opportunity to consider new ways of working as a multibody mechanism. For instance, the NPM finalised a baseline assessment on the conditions of children in conflict with the law as a follow-up to the UN Global Study on Children Deprived of Liberty.¹⁸ We also prioritised issues of women in the criminal justice system and the intersectionality with deprivation of liberty.

Our preliminary observation on women in detention suggests that there needs to be an increased understanding of the gendered nature of deprivation of liberty and that there are opportunities to strengthen existing policies and mechanisms on the treatment and conditions of women deprived of their liberty. Places where persons are deprived of liberty and most specifically, correctional centres have been traditionally designed for the needs and experiences of male offenders. Rehabilitative services also parallel the design and management of these centres.

However, we note and commend government's efforts towards the implementation of the Bangkok Rules by establishing the first gender-responsive correctional centre in Atteridgeville.¹⁹ Equally, the lessons learned in Atteridgeville should be useful in guiding government's systematic approach to understanding and addressing the needs of incarcerated women.

These lessons could also serve as an evidence baseline for policy development, planning, budgetary considerations, practice improvement and sensitisation on how officials engage, treat and manage women offenders. Some of these lessons would similarly be useful in addressing the needs of other persons in situations of vulnerability such as young offenders, victims of gender-based violence and the elderly who end up in prison.

Table 7: Women in correctional centres over a 5-year period

NUMBER OF WOMEN IN CORRECTIONAL CENTRES					
YEAR	SENTENCED	REMAND	TOTAL FEMALE POPULATION	TOTAL INMATE POPULATION	TOTAL %
2018/19	2 957	1 359	4 316	162 875	2.64
2019/20	2 534	1 448	3 984	154 449	2.57
2020/21	2 169	1 284	3 453	140 948	2.44
2021/22	2 334	1 390	3 724	143 223	2.60
2022/23	2 169	1 958	4 127	157 056	2.62

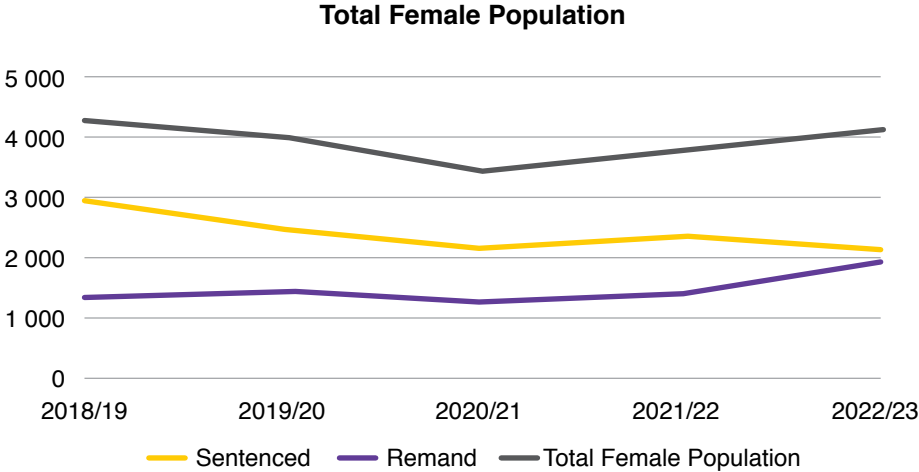
Table 7 and Figure 3 show the female inmate population (sentenced and remand detainees) over a 5-year period. The figures suggest that the total female inmate population decreased between the 2019/20 to 2021/22 financial years. The decrease could be explained by the inmate reduction strategies adopted

¹⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/213/15/PDF/N1921315.pdf?OpenElement>

¹⁹ Deputy Minister Holomisa launches the first Gender Responsive Centre for incarcerated women in South Africa – Department of Correctional Services (dcs.gov.za).

by the state in response to the coronavirus pandemic and other strategies to reduce overcrowding in correctional centres.²⁰ Nonetheless, the total female population has remained under 3% of the gross inmate population.

Figure 3: Women in correctional centres over a 5-year period

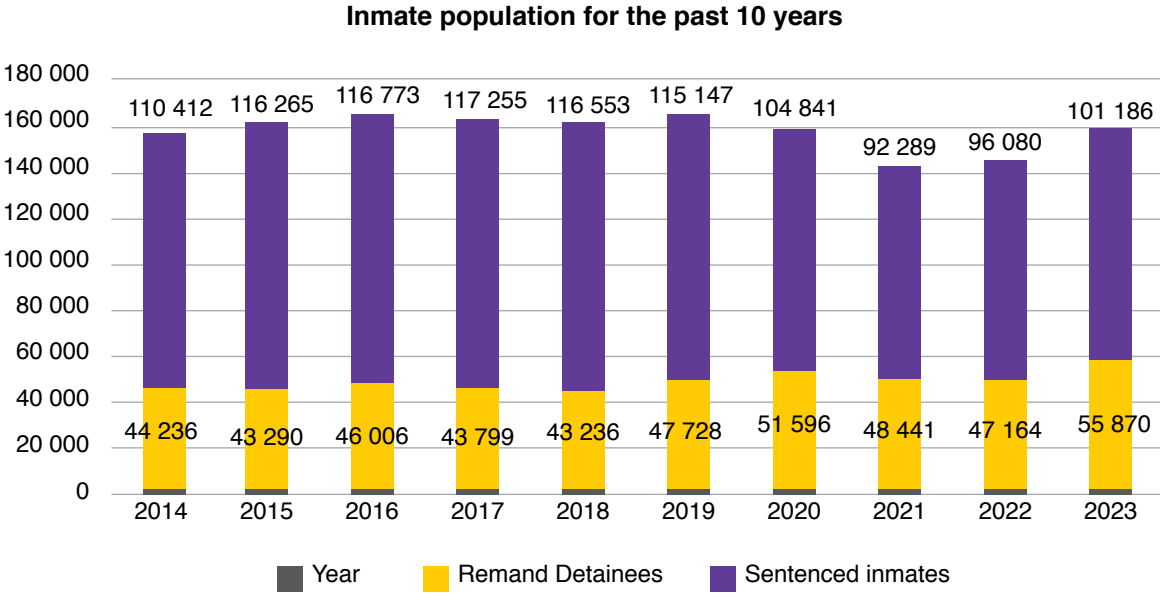


6.2. Existing challenges

Systemic issues affecting the overall deprivation of liberty architecture remain. These include overcrowding in correctional centres with contributory factors including aging and dilapidated infrastructure, and the high levels of remand detention (see Tables 2 to 4). This is exacerbated by deficiencies in the management and maintenance of public infrastructure. Meanwhile, reasons commonly cited for overcrowding in places such as police stations included the increase in arrests due to increased crime and anti-social behaviour on weekends and month-ends, and challenges in maintenance and dilapidated infrastructure which rendered some cells unusable. At one station two of the five cells were out of commission and used as storage facilities, and undergoing maintenance. Other stations continue to serve as remand facilities because of the distance between the stations and correctional centres and the impact this had on the frequency of transfers was cited as the reason for overcrowding. This was particularly a challenge in the provinces of the Free State, Eastern Cape and KwaZulu Natal.

²⁰ <https://www.thepresidency.gov.za/placement-parole-selected-categories-sentenced-offenders>.

Figure 4: Inmate population over a 10-year period



The pressure on police facilities was again evident with the disrepair of cells or used for other purposes such as storage and was especially prevalent in police stations visited in northern KwaZulu Natal and the Northern Cape. Further investigation into the development and maintenance of SAPS infrastructure is warranted particularly in a time of increasing budget pressure; the drive to recruit officers; and the pressure to respond more aggressively to crime and anti-social behaviour. These are all factors that might see continued upwards pressure on arrest numbers (see Table 10).

Visits to places of deprivation of liberty such as secure care centres and police stations were undertaken by the affiliated NPM institutions during the period under review. Importantly, visits were undertaken to all secure care centres countrywide conducted as a follow-up to the UN Global Study on Children Deprived of Liberty. The assessment was aimed at understanding the current conditions for places that deprived children of their liberty and to propose a child-centred model fit for the South African context. The recommendations of this assessment are intended to reinforce the protection of children in conflict with the law in secure care centres.

6.3. Stakeholder engagements

Several stakeholder engagements were key to the work of the NPM. These included peer learning opportunities with other NPMs and NHRIs and meetings with the National Commissioner of Correctional Services, the South African Police Service, civil society, the United Nations Subcommittee on Prevention of Torture (SPT) as well as the Committee on the Prevention of Torture in Africa (CPTA) took place during the review period.

6.4. Visit of the Subcommittee on Prevention of Torture

Within the context of ongoing constructive dialogue and cooperation mentioned in Article 11 of the OPCAT, the NPM maintained direct contact with the SPT. These dialogues took place on the margins of the 47th and 48th sessions of the SPT, respectively. During this period South Africa also received a delegation of the SPT for the first time since the OPCAT came into force for South Africa. Post the visit, the delegation made the following preliminary observations:

“There is an urgent need for South Africa to fully establish a national preventive mechanism. This would ensure the country’s compliance with its commitment made in 2019 to the Optional Protocol to the Convention against Torture. Such a national preventive mechanism should be a fully independent monitoring body empowered to visit all places of detention, which “is key to prevent torture and ill-treatment in the country”.

While a confidential report with observations and recommendations will be submitted to the government, the NPM equally looks forward to constructive dialogue with both the state party and the Subcommittee²¹ when the report becomes available with the view to strengthening the protection of persons deprived of their liberty in line with OPCAT.

6.5. Institutionalising the Bangkok Rules


During this period, the SA NPM collaborated 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 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (commonly known as the Bangkok Rules) in South Africa and the Southern African Development Community (SADC) region.

Noncustodial measures can reduce the social and economic cost of imprisonment, the prison population and rates of recidivism. Non-custodial measures should be considered at every stage of the criminal justice process – Honourable John Jeffery, Deputy Minister of Justice and Constitutional Development.²²

The SAHRC and APT sought to strengthen the SA NPM in using its unique preventive and constructive dialogue approach to achieve change in places of deprivation of liberty. The dialogue’s focus is on women within the broader criminal justice system and their intersection with deprivation of their liberty. The aim was to use the Bangkok Rules as a benchmark for monitoring the treatment of women prisoners and the development of practical guidelines and recommendations based on their monitoring visits through the NPM and other relevant South African authorities. This involved two key dimensions: (i) the state of capacity, particularly in relation to the protection of women in the criminal justice system; (ii) the state of detention visit systems in the SADC region, particularly in relation to the protection of women in the criminal justice system; and (iii) the proposal of practicable recommendations and guidelines for the

²¹ Within the context of article 12 (d) of the OPCAT.

²² Deputy Minister John Jeffery: Implementation of Bangkok Rules in South Africa | South African Government (www.gov.za).



implementation of the Bangkok Rules in South Africa and, where applicable, similarly situated SADC countries in the form of lessons learned and best practice.

The findings of the assessment were presented at a workshop in Johannesburg in April 2022. This workshop also sought to start the conversation and seek input on a guidance tool to be used where women are deprived of their liberty. The Deputy Minister of Justice and Constitutional Development, the EU Ambassador to South Africa, as well as government departments such as Correctional Services and the South African Police Service participated in the workshop.

6.5.1. Regional Workshop on Women Deprived of Liberty

Our research suggests that across the SADC region the pace of ratification of the OPCAT and NPM establishment has lagged behind the rest of the continent. For instance, only five states (the Democratic Republic of Congo, Madagascar, Mauritius, Mozambique and South Africa) have ratified the Optional Protocol. Of these, only four (Madagascar, Mauritius, Mozambique and South Africa) have taken steps towards establishing an OPCAT-compliant NPM. Additionally, Angola and Zambia have signed but not ratified the treaty.

Equally, there is a significant absence of information on women deprived of liberty in the region. The available research does, however, show that across the region, women in detention face specific healthcare needs and are more likely to experience physical and sexual abuse, as well as mental illness. The intermittent references to women's experiences within the existing literature also repeatedly emphasise the need for further information on women's pathways to arrest and detention, their personal experiences within places of detention or institutionalisation, and the conditions in which they are detained.

Given the findings of the research, a second dialogue with SADC national human rights institutions was convened at Constitution Hill on 26 and 27 January 2023 to build regional momentum for OPCAT ratification and NPM establishment, and sharing information and practices relating to women deprived of liberty in line with the Bangkok Rules. The Bangkok Rules provide a range of standards particular to women deprived of their liberty and their unique and complex gender-specific needs (particularly Rules 4, 40-41, 67-70). These findings and submissions provided insights into the challenges that women's detention facilities experience, including the gaps in services, systems and treatment options. They also established a certain level of agreement on the basic standards of the treatment and care of women in detention, including minimum standards for "detention documentation" that could be expected of detention facilities in the SADC region.

Importantly, a draft guidance tool adapted from the original Bangkok Rules was developed and shared for consultation. This Guidance Tool identifies priority areas into eight (8) categories and adds two (2) additional categories, namely "facility data" and "documentation". Given the many aspirational principles and strategies within the Bangkok Rules, this Guidance Tool narrowed its focus to three principal areas: (i) Health; (ii) Mental Health; and (iii) Security.



The 10 (sub) categories include:

- + Facility data
- + Documentation
- + Law and policy framework (rule 1 on basic principles)
- + Rules 2 and 3: Admission and registration of women (includes rules 40-41 and 48-53)
- + Rule 4: Allocation
- + Rule 5: Personal hygiene
- + Rules 6-11: Healthcare services (includes rules 7, 9, 11, 40-41)
- + Rules 12-18: Mental healthcare services
- + Rules 19-25: Safety and security 1
- + Rules 25-28: Safety and security 2.

6.5.2. How to use the Guidance Tool

The Guidance Tool can be used to measure, monitor or improve basic conditions of detention in women's detention facilities, as well as improve record-keeping, documentation and reporting of or about women in detention and the management of facilities. It can also be used to assess compliance with the Bangkok Rules, but this is not the absolute intention of the Tool. It is recommended that this Tool be used as a baseline and a guideline, and that it is accompanied by contemporaneous notes and observations. Importantly, the Guidance Tool can be used:

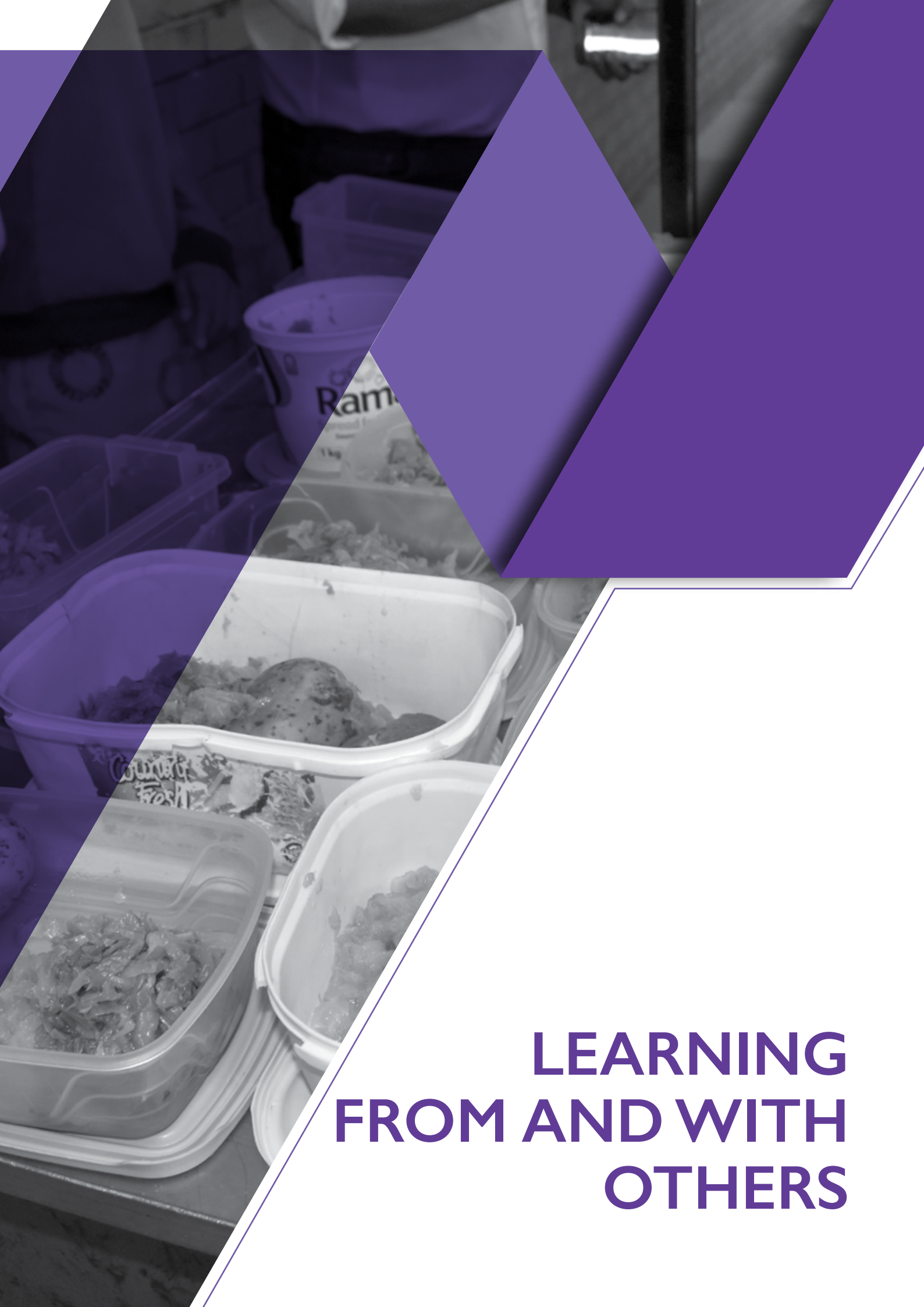
- + By any stakeholder with access to places of detention, including correctional services and related authorities, monitoring bodies or civil society organisations.
- + In its entirety or in parts. For example, if the authority wants to check, monitor or improve the admissions process, then they would utilise the section called Rules 2 and 3: Admission and registration of women, which reflects Rules 40-41 and 48-53 of the Bangkok Rules.
- + Establish the degree to which a facility is compliant with the Bangkok Rules, as a baseline for existing and (the monitoring of) newly implemented programmes and procedures or as an instrument to gather documentation for facility-level, national or international reports, including reports to monitoring bodies.

It is not recommended, however, that the Guidance Tool is used as the only tool for monitoring bodies and their representatives to use. Monitoring bodies require a more in-depth, qualitative understanding of the implementation and/or the failures of implementation of human rights instruments more broadly. It would be necessary to supplement the Tool with case studies, interviews and contemporaneous notes and observations. This tool is a first step – a baseline – to guide those involved in monitoring the Bangkok Rules and other human rights instruments and to use this Tool as an instrument to monitor progress over time, across facilities or across regions.



RECOMMENDATIONS

- i. Given the limitations of the baseline assessment, research should be prioritised and collected on the unique needs and experiences of women prisoners, as well as any information on complaints by women offenders. There is also a need to integrate a gender perspective into analyses of torture and ill-treatment to ensure that violations rooted in discriminatory social norms around gender and sexuality are fully recognised, addressed and remedied. Resources should be dedicated to research on the health needs of women, particularly related to sexual and reproductive health should be prioritised.
- ii. While there should be many improvements in the prison system and the healthcare system as a whole in South Africa, specific focus should be placed to improve conditions for women in correctional centres, taking into account their specific healthcare needs (such as maternal healthcare, the needs of pregnant inmates and healthcare services for survivors of gender-based violence).
- iii. The use of alternatives to detention for low-risk women offenders should be explored and promoted to address criminal behaviour.
- iv. There is also the need to integrate a gender perspective into analyses of torture and ill-treatment to ensure that violations rooted in discriminatory social norms around gender and sexuality are fully recognised, addressed and remedied.
- v. Resources should be dedicated to research on the health needs of women, particularly related to sexual and reproductive health should be prioritised.
- vi. Resources should also be dedicated to research on institutions and systems to support alternatives to incarceration.



**LEARNING
FROM AND WITH
OTHERS**

7. LEARNING FROM, AND WITH OTHERS

7.1. Selected country lessons on women deprived of liberty

The work on assessing the implementation of the Bangkok Rules was supported by a learning exchange with France, Italy and Switzerland. The study visit took place from 26 September to 8 October 2022 and was broadly aimed at creating a platform for exchange of lessons on the implementation of the Bangkok Rules.

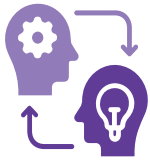
Specific objectives of the study visit were to:

- Create a platform for peer-to-peer learning, sharing of experience and expertise with the NPMs of France and Italy on key institutional issues, as well as on their knowledge and methodology relating to the theme of women in the criminal justice system.
- Inform both ongoing institutional strengthening efforts, as well as the development of the relevant guidelines for the newly established South African NPM to use in monitoring the conditions of women in places of deprivation of liberty.
- Inform the development of practical guidelines and recommendations for relevant authorities relating to the treatment and conditions of detention for women.

Figure 5: Peer learning and knowledge exchange with other OPCAT states parties

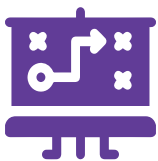
Date	Event
France	
28 Sept 2022	Meeting with the Commission nationale consultative des droits de l'homme (CNCDH)
	Working meeting and exchange of practices with the Contrôleur général des lieux de privation de liberté (CGLPL)
29 Sept 2022	Working meeting and exchange of practices with the Contrôleur général des lieux de privation de liberté
	Meeting with the Défenseur des droits
30 Sept 2022	Visit to Fleury-Mérogis Prison and exchanges with the authorities
Italy	
3 Oct 2022	Meeting the National Guarantor for the Rights of Persons Deprived of Liberty (Italian NPM)
	Visit to Istituto Penale Maschile e Femminile per Minorenni Casal del Marmo
4 Oct 2022	Visit to Rebibbia prison
5 Oct 2022	Cooperation with the Italian territorial Guarantors on specific aspects of monitoring deprivation of liberty
Switzerland	
6 Oct 2022	Workshop with the Association for the Prevention of Torture
7 Oct 2022	Exchange of practices and discussions with the National Commission for the Prevention of Torture (Swiss NPM)

7.2. Knowledge exchange between NPM institutions



A joint workshop with human rights officers of the SAHRC and the independent correctional centre visitors of the JICS was held on 9 to 11 November 2022. The workshop explored lessons learned during visits to places of deprivation of liberty and to create a platform for knowledge and best practices sharing, scoping for reducing duplications and instead building complementarity in the context of a cooperative model NPM.

7.3. Building one NPM through joint strategic planning



A strategic planning session was held with the NPM constituent institutions on 7 to 9 December 2022. The session was designed to contribute towards a mutual understanding of OPCAT and its strategic and operational implications for a multi-entity NPM in South Africa. Specifically, the strategy session sought to: (i) Create a platform for sharing of experiences and lessons on monitoring places of deprivation of liberty; (ii) contextualising change and managing change within the context of NPMs and the South African context; (iii) achieving consensus on the direction of the NPM; and (iv) joint contribution towards the revised NPM strategic plan.

7.4. Reinforcing a human rights-based approach to policing



The NPM made proposals on augmenting the human rights learning manual of the SAPS curriculum. This review ensures that there is a human rights-centred approach to policing. The training will be mandatory for all junior and senior police officers and officials of the SAPS.

7.5. Creating awareness of the NPM mandate



In creating awareness of the NPM mandate, a presentation was made at a consultative workshop convened by the DoJ and CD on South Africa's 3rd Periodic Country Report to the Committee against Torture regarding the implementation of UNCAT. A similar engagement took place with the Intersectoral Committee on Child Justice on the ratification of OPCAT, designation of the NPM and its observations visiting places where children are deprived of their liberty.

7.6. Reinforcing the rights and protection of sexual minorities



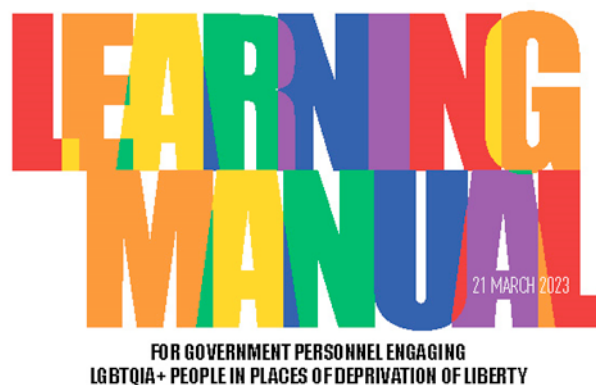
The work of the NPM during the period under review indicated that there are gaps in the protection of sexual minorities in the criminal justice system and that more awareness is needed. This issue has also been aptly articulated by the Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment who raises a concern that:

“A considerable proportion of the incidents of torture carried out against members of sexual minorities suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles”.²³

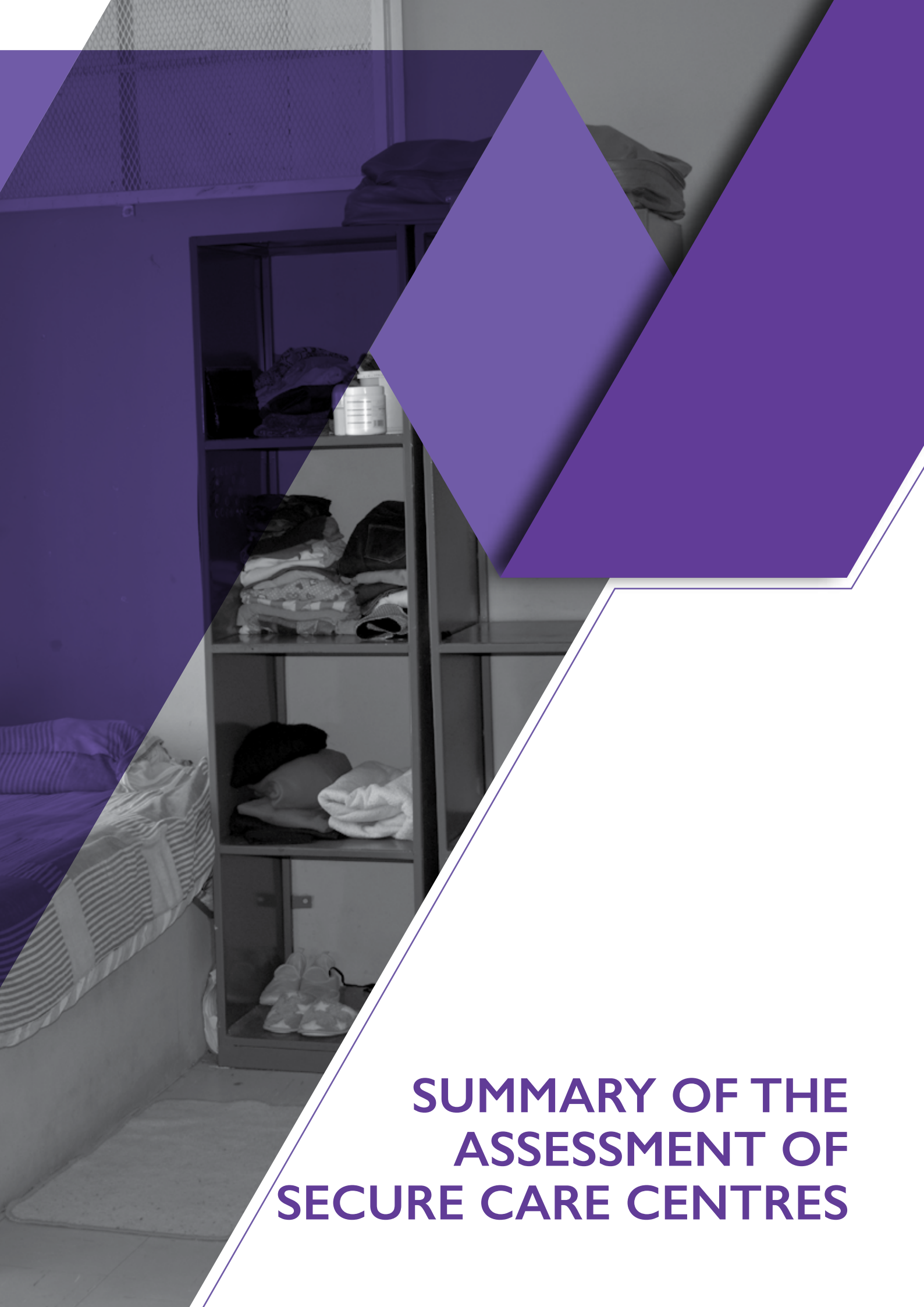
Recognising its mandate to strengthen the protection of persons deprived of liberty and those exposed to added vulnerabilities, the NPM developed a learning manual designed to create awareness and strengthen the protection of sexual minorities who are or may find themselves deprived of their liberty. The manual exposes officials working in places where persons are deprived of their liberty to heightened vulnerability of sexual minorities. The exposure to the added vulnerability will, hopefully address multiple forms of discrimination, stigmatising attitudes – whose manifestation may at times create fertile environments for torture and other ill-treatment.

The learning manual will be piloted during the first quarter of the 2023/24 fiscal year. The first cohort will include the Departments of (i) Home Affairs; (ii) Correctional Services; (iii) the SAPS; (iv) Social Development; (v) the Military Ombud (vi) JICS; and (vii) IPID.

Figure 6: LGBTQIA+ Learning Manual



²³ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment A/56/156; Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT/OP/C/57/4.



SUMMARY OF THE ASSESSMENT OF SECURE CARE CENTRES

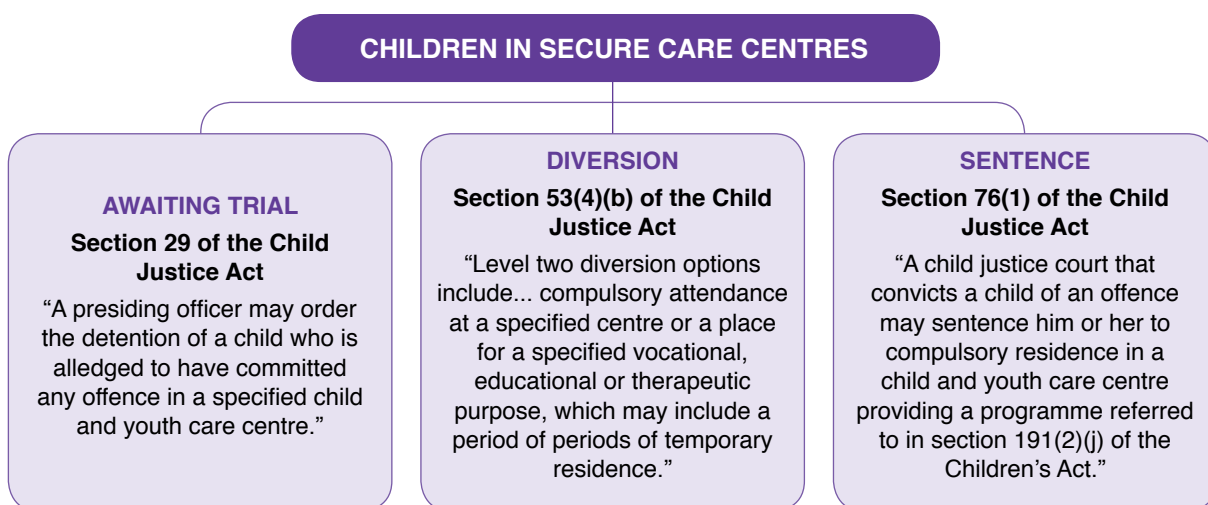
8. SUMMARY OF THE ASSESSMENT OF SECURE CARE CENTRES

8.1. Introduction

Secure Care Centres (SCCs) are established as safe and therapeutic environments for children in conflict with the law. These centres aim to provide a range of educational, developmental, and therapeutic programmes tailored to the individual needs of each child. Their ultimate objective is to promote positive development and successfully reintegrate children into the community while preventing them from re-offending. The establishment and operation of these centres is governed by the Children’s Act, 2005 (Act No. 38 of 2005) (Children’s Act), which also outlines specific regulations, norms, and standards.

Child and Youth Care Centres (CYCCs) are similarly established under the Children’s Act. Their purpose is to offer residential care for children who are in need of care and protection outside of a family setting, following designated residential care programmes. Certain CYCCs are designated as SCCs, but in these cases children who are in conflict with the law and those in need of care and protection are housed in separate sections. The primary responsibility for overseeing SCCs lies with the Provincial Departments of Social Development.

Figure 7: Categories of children in Secure Care Centres



8.2. Background to the Secure Care Assessment

The baseline assessment was undertaken as (i) a follow-up to the United Nations’ Global Study on Children Deprived of Liberty; and (ii) to develop a model for an independent mechanism to reinforce the rights of children in Secure Care. The NPM partnered with the Centre for Child Law at the University of Pretoria in undertaking the baseline. Twenty-nine (29) SCCs were visited in the 9 provinces. However, Mogale Leseding CYCC and Mafikeng SCC have since been decommissioned since the completion of the baseline assessment. The Ocean View Secure Care section was still under renovation at the time of the baseline assessment. Detailed observations and recommendations from the baseline assessment can be found in the full SCC report accessible on the NPM’s website.

Figure 8: Breakdown of Secure Care Centres in South Africa



8.3. Utilisation of Secure Care Centres/Child and Youth Care Centres

It was observed that the current SCC model operates large buildings that are not fully utilised. This situation can be attributed to the positive outcomes resulting from the implementation of the Child Justice Act and concerted efforts by various government departments to reduce the number of children within the child justice system.

However, the higher number of children awaiting trial in secure care as compared to the number of sentenced children was a concern (see Table 5). Additionally, it was noticed that there is a significant proportion of children placed on residential diversion in SCCs. This suggests an over-reliance of SCCs for children awaiting trial and those on residential diversion programmes.



RECOMMENDATION

To address the issues of over utilisation of SCCs, it is recommended that alternative measures be explored, such as implementing home-based supervision by probation officers in certain instances, as this approach has the potential to be equally effective in ensuring children’s presence during their trials. Furthermore, non-residential programmes should be considered, and care and protection measures expanded to prevent unnecessary placement of children on diversion into SCCs.

8.4. Material conditions

Material conditions in some SCCs were a concern. These conditions expose children in secure care centres to inhuman conditions. Several of these centres faced infrastructure challenges.

8.5. State of infrastructure

Several infrastructure challenges that have a direct impact on the quality of care provided to children and the living conditions they are subjected to were observed. Examples included broken shower heads and taps, damaged windows, non-functioning lights and security equipment such as closed-circuit television systems, malfunctioning heating systems in children's rooms, as well as non-functioning toilets. These observations highlight the urgent need for maintenance and repairs to ensure a safe and functional environment for all children housed at the centre.

Various responses to the centre-specific visit reports have been received from the provincial Departments of Social Development (DSD) and respective centres. These responses indicated that the infrastructure challenges faced by the centres have been addressed. In some cases, it has been reported that service providers have been appointed to address the infrastructure, plumbing and electrical issues at the respective centres. These infrastructure challenges arise from the absence of maintenance, aging infrastructure, and the difficulties faced by the centres in securing the required support from the Department of Public Works and Infrastructure (DPWI). Anecdotal cases of the relationship with the DPWI suggest shortcomings in inter-governmental relations between the spheres of government leading to undesirable services and conditions in Secure Care facilities.



RECOMMENDATION

While the NPM acknowledges and appreciates the efforts made by DSD district offices in addressing the infrastructure challenges encountered by SCCs, it however, recommends that the national DSD office in collaboration with the respective district DSD offices and the DPWI should ensure that the necessary support is provided to the centres to effectively address maintenance needs and promptly resolve infrastructure challenges. The aim is to ensure that SCCs receive timely assistance and resources for maintaining and repairing their infrastructure.

During visits, it was noticed that there is only one centre in the country which is exclusively designated to accommodate only girls and that in most cases girls are accommodated in units in centres which cater for both boys and girls. Several centres that accommodate both boys and girls faced difficulties in providing suitable accommodation for girls. In some cases, girls were placed in clinic observation dorms because either the number of boys at the centre resulted in the girls' dormitory being used to house boys or the centre lacked a dedicated dorm for girls altogether. Consequently, girls in these centres are compelled to remain confined to their dormitories for a significant duration to uphold the

separation and segregation between children of different genders. This arrangement inadvertently leads to discriminatory practices, as boys enjoy more opportunities to participate in recreational activities and other extracurricular pursuits compared to the girls. This also leads to intersectional challenges such as restrictions on the provision of sanitary pads that compromise the dignity and privacy of girls, thereby jeopardising their hygiene.



RECOMMENDATIONS

- i. It is recommended that the national office of the DSD, in collaboration with the various provincial DSD offices and respective centre managers ensure that girls are accommodated in dedicated dormitories. If this is not feasible due to the number of boys in the centre, efforts should be made to guarantee that girls are afforded equal opportunities to engage in recreational activities and other extracurricular pursuits.
- ii. It is also recommended that centre managers take responsibility to ensure girls have access to sanitary pads when needed. These steps would contribute to promoting gender equality, dignity, and the overall well-being of the girls in SCCs.

It was observed that centres face significant challenges when detaining boys between the ages of 14 to 17 years alongside young adults aged 18 to 21 years. This arrangement has resulted in distressing incidents, with reports of bullying and, at times, sexual assault of the younger boys by the older ones in some centres. As a measure to ensure the safety of the younger boys, they are placed in separate units away from the young adults. While this separation may be necessary for their protection, it leads younger boys to spend much of their time confined to their dorms in an effort to shield them from potential harm.

Regrettably, this practice though well-intended can have adverse effects on the development and well-being of the younger boys. Isolation from social interactions and recreational opportunities can hinder their personal growth, emotional health, and ability to participate in valuable activities provided by the centres. Finding a balance between ensuring safety and promoting holistic development is crucial in addressing this challenge.



SADC Regional Dialogue on Women in Detention held at Constitution Hill.



RECOMMENDATIONS

- i. To ensure the safety and well-being of the younger boys in SCCs, it is recommended that the DSD in consultation with respective centre managers, the Department of Justice (DoJ) and the National Prosecuting Authority (NPA) undertake a process of identifying centres in each province to be designated centres to accommodate young children from the ages of 14 to 17 years, and centres to accommodate young adults from the ages of 18 to 21 years. This strategic separation will effectively eliminate the risk of bullying and potential harm posed to the younger children from any interactions with the young adults. These specialised centres should be equipped with age-appropriate amenities and staffed with personnel trained to handle the needs of each age group.
- ii. Upon completion of the process, it is further recommended that all children's court orders be revised and amended to specify that they are to be accommodated exclusively in these specialised centres designed to cater to their age group. This amendment will ensure that each age group of children is placed in environments appropriate for their needs, and promote a safe and more suitable setting for their rehabilitation and growth. By making this adjustment, the court orders will align with improved facilities and measures in place and providing a better framework for the care and support of all children within the Child justice system.
- iii. While this process is unfolding, it is recommended that the DSD in consultation with the respective centre managers and staff develop and implement comprehensive safety protocols within centres to prevent bullying, harassment and sexual assaults among children. This may include increased supervision, security measures and training for staff to identify and respond promptly to abuse and/or misconduct.

The lack of uniformity in standards for programmes was observed across SCCs. While certain centres offered a wide range of extramural activities such as gyms, swimming pools, soccer fields, and netball courts for the children, others lacked such facilities. This disparity was also evident in the variation of vocational programmes offered and children's dorms from one centre to another.



RECOMMENDATION

It is recommended that the national DSD in collaboration with its provincial offices takes the lead in establishing a process to ensure uniformity in the vocational programmes offered across different centres, infrastructure in children's dorms as well as provision of extramural activities for the children. This is crucial in promoting consistency and equal opportunities for children in SCCs.

8.6. Safety and Security

A few centres had satisfactory levels of security. However, most centres experienced challenges with their security infrastructure. While some centres had closed-circuit cameras (CCTV) and security light towers installed around the perimeter fencing, it was observed that in certain cases some, or all of the CCTV cameras, CCTV camera monitors or light towers, were not functioning properly or at all. It was also noticed that most SCCs lacked body scanners and even in cases where they were present, they were not operational.

The lack of effective and functioning security measures at Secure Care Facilities may lead to the failure to provide a safe and secure environment for children. As an early warning mechanism, CCTV cameras allow the centre to detect and prevent any breaches to internal security, including the risk of harm posed by children against other children and staff, as well as staff against children. During visits to SCCs, an incident was reported wherein armed individuals forcibly entered a SCC in the Western Cape at night, jeopardising the safety of both the children housed in the centre and staff members. If the centre had functioning security infrastructure in place, it could have aided the centre in preventing such an incident or promptly alerting the staff before the intruders gained access to the centre.

However, The NPM noted with appreciation that there have been improvements in contract management as the issue of security service providers operating on month-to-month contracts is being addressed in some centres.



RECOMMENDATION

It is recommended that the national and provincial DSDs in collaboration with the DPWI should ensure that comprehensive maintenance and repair of security infrastructure is carried out at all SCCs. It is crucial to promptly provide centres without security infrastructure with appropriate security measures. In cases where existing security infrastructure cannot be repaired, it is recommended that new infrastructure be promptly supplied to these centres.

8.7. Behaviour Management Practices

The absence of clear disciplinary guidelines has resulted in concerning forms of discipline being imposed on children within SCCs. These practices include subjecting children to extended periods of isolation, corporal punishment and forcing them to consume large quantities of water as a form of punishment. There have been reports of certain Child and Youth Care Workers (CYCWs) engaging with children in an unprofessional and inappropriate manner, with instances of violence and the use of offensive language directed at the children. Reports received from provincial DSD offices and respective centres advised that the abolishment of isolation as a form of behaviour management has been communicated to staff.

Isolation would be used as a measure of last resort in line with the Blue Print Minimum Norms and Standards for Secure Care Facilities, and in such instances the centre manager will need to approve the use of isolation.

Meanwhile, some centres have implemented strategies to raise awareness on prohibited behaviour management, including the display of posters containing lists of prohibited behaviour management practices that are visible to staff members and children. One province reported implementing a policy for managing children’s behaviour. The policy emphasises positive behaviour management, recognises and encourages positive behaviour by employing a 4-tier approach that helps transition children from an internal locus of control to an external locus of control.



RECOMMENDATION

The NPM acknowledges and appreciates the actions taken by the respective centres in addressing prohibited behaviour management practices. However, to effectively address and eliminate such practices, it is recommended that officials working with children should receive regular training and opportunities for capacity development. To facilitate this process, the national DSD in consultation with provincial DSD offices and the relevant centres is requested to submit the behaviour management policies implemented in the respective centres to the NPM by no later than 31 March 2024.

8.8. Provisional Accreditation of Centres

The NPM continues to be concerned about the lack of full accreditation of some centres as SCCs. Visits to various SCCs indicated that several SCCs continue to operate under provisional accreditation without any evident plans in place to address the necessary requirements for full accreditation. Disturbingly, several of these centres have been functioning on provisional accreditation for years.



RECOMMENDATION

The national DSD in consultation with provincial DSD offices and the DPWI is urged to enhance the material conditions of centres operating under provisional accreditation to facilitate their qualification for full accreditation. Furthermore, the NPM reiterates its recommendation that the DSD implement a national development plan to support all centres in attaining full accreditation. To ensure effective monitoring of this plan, it is recommended that the plan be communicated to the NPM by no later than 31 March 2024.

8.9. Occupational Health and Safety

The issue of ensuring regular servicing of firefighting equipment in places of deprivation of liberty remains a systemic failure. The absence of serviced fire extinguishers is often attributed to delays from the DPWI. This failure contravenes the Occupational Health and Safety Act, 85 of 1993 (OHS Act) and its Regulations, which stipulate the requirement for servicing intervals for such equipment.



RECOMMENDATION

While it may be the responsibility of the DPWI, institutional heads are requested to ensure that each facility is provided with firefighting equipment serviced regularly. It is also incumbent on the respective provincial department to monitor this regularly.

8.10. Nutrition and Food Handling and Preparation

Most SCCs were found to lack certificates of acceptability issued by their local municipalities. This could suggest that the kitchens in these centres are not certified to prepare food, highlighting the infrastructure difficulties faced by the centres. Preparation and handling of food without certification contravenes the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 and its Regulations governing general hygiene requirements for food premises. Anyone found contravening or enabling the contravention of these Regulations is guilty of an offence.



RECOMMENDATION

The national DSD in consultation with the provincial DSDs should initiate discussions with the DPWI to formulate a strategy ensuring that centres comply with the Occupational Health and Safety Regulations, as well as the proper maintenance of any malfunctioning kitchen equipment. The Department of Labour and Employment should undertake inspections to evaluate the extent to which Occupational Health and Safety Regulations are adhered to.



MONITORING POLICE DETENTION FACILITIES

9. MONITORING POLICE DETENTION FACILITIES

There were 1 159 functional police stations as of 31 March 2023 (see Table 9). Post 31 March 2023, three police stations have been put into operation, resulting in a total of 1 162 functional police stations. Among these stations, 384 (See Table 10) have been specifically designated in accordance with Section 34 (1) of the Immigration Act, 13 of 2002, as facilities for immigration detention pending deportation or transfer to the Lindela Repatriation Facility.

Table 8: Distribution of Stations under SAPS management

Provincial distribution of SAPS Stations as on 31 March 2023								
GP	FS	MP	LP	NW	EC	NC	WC	KZN
145	111	90	105	85	199	92	151	184

Table 9: SAPS Stations designated under the Immigration Act

Provincial Stations designated for immigration detention on 31 March 2023								
GP	F S	MP	LP	NW	EC	NC	WC	KZN
39	39	48	71	32	78	30	32	45

Thousands of people are arrested and deprived of their liberty in police detention facilities every year (see Table 10). Figures vary from year to year, but data suggests that more than 1 million people are arrested each year. The 2020/21 fiscal year saw the number of arrested persons almost double. This could be explained by the increase in the number of persons arrested for violating the coronavirus pandemic regulations. Some of these persons end up in police detention facilities.

Table 10: Number of people arrested and detained persons

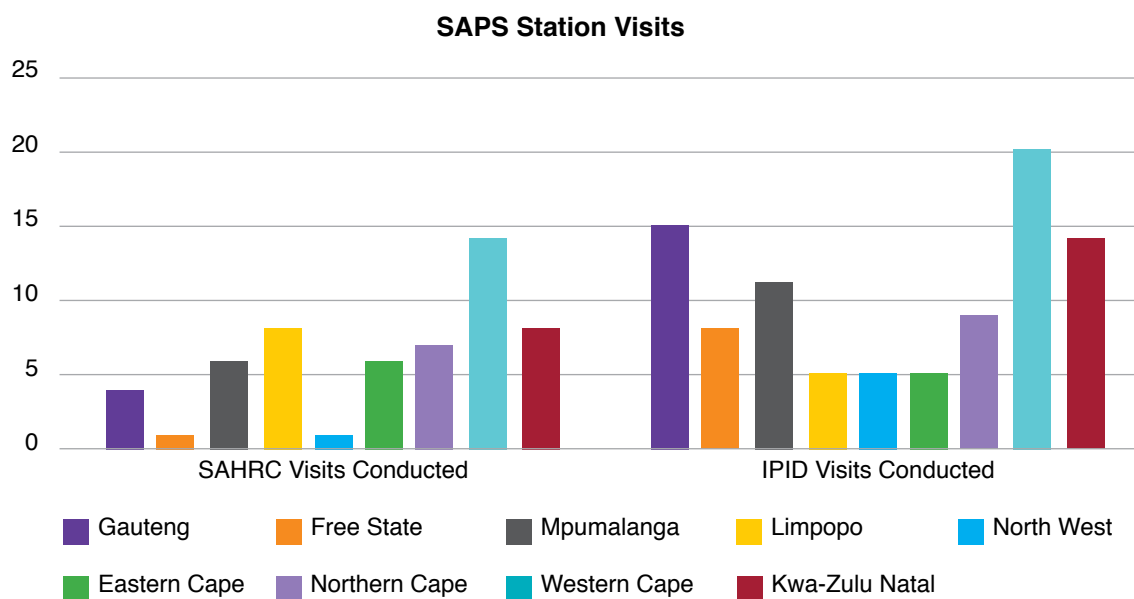
	2018/19	2019/20	2020/21	2021/22	2022/23 ⁴
Arrested Persons	1 501 402	1 133 891	2 797 097	1 412 879	1 146 916
Detained Persons	1 360 014	1 303 003	1 095 284	1 075 959	1 118 772

Table 10 also indicates that more than 1 million people get detained in the police detention facilities annually. Invariably, civil claims may also arise owing to police conduct or inaction. For example, as of 31 March 2023, a total of 51 085 claims valued at R108 736 115 211.89 were still pending. While these claims date back to prior years, there were 4 243 payments made (via court orders and settlements) totalling R647 927 115.60, with arrest and detention claims accounting for the highest payouts (R548 751 164.30).²⁴

To strengthen the protection of persons in police detention facilities, a total of 255 police stations were visited by the SAHRC and IPID during the period under review (see Figure 9).

²⁴ South African Police Service Annual Report at p86.

Figure 9: Provincial distribution of visits by the SAHRC and IPID



The data indicates that most of the visits were undertaken in the Western Cape by the SAHRC, while on the other hand the provinces of Mpumalanga, the Western Cape, Gauteng and KwaZulu-Natal received the same number visits by IPID. From the visits undertaken to police stations, conditions of custody facilities and infrastructure-related issues feature prominently.

Table 11: Comparative annual intake of torture cases

Comparative Annual intake of Torture			
Province	2021/2022	2022/2023	Percentages
Eastern Cape	64	46	-28%
Free State	19	36	89%
Gauteng	7	16	129%
KwaZulu-Natal	52	51	-2%
Limpopo	9	16	78%
Mpumalanga	15	39	160%
North West	10	9	-10%
Northern Cape	0	0	0
NSIT	0	1	100%
Western Cape	16	14	-13%
Total	192	228	19%

While some provinces saw a decline in recorded torture cases, others saw a steep increase. For instance, Gauteng and Mpumalanga saw an upwards trend of more than 100% compared to the previous reporting cycle. However, no cases of torture were recorded in the Northern Cape. A 28% decrease was recorded in the Eastern Cape; 13% in the Western Cape; and 10% in North West. While some provinces recorded decreases in torture cases, most of these were nominal.

While the totality of data emanating from the work of IPID requires contextual analysis, the NPM highlights the concerning trends in Tables 11 and 12 and Figure 10. The data in Table 12 indicates a concerning increase in certain categories of cases within Section 28(1) (d) – (f). These cases warrant further interrogation.

Table 12: IPID annual intake comparisons

Annual intake comparisons	2021/2022	2022/2023	Percentage changes
Section 28(1)(a)-deaths in police custody	223	221	-1%
Section 28(1)(b)-deaths as a result of police action	410	393	-4%
Section 28(1)(c)-complaints of discharge of an official firearm(s)	744	710	-5%
Section 28(1)(d)-rape by police officer	99	122	23%
Section 28(1)(e)-rape in police custody	2	4	100%
Section 28(1)(f)-torture	192	228	19%
Section 28(1)(f)-assault	3 407	3 354	-2%
Total			



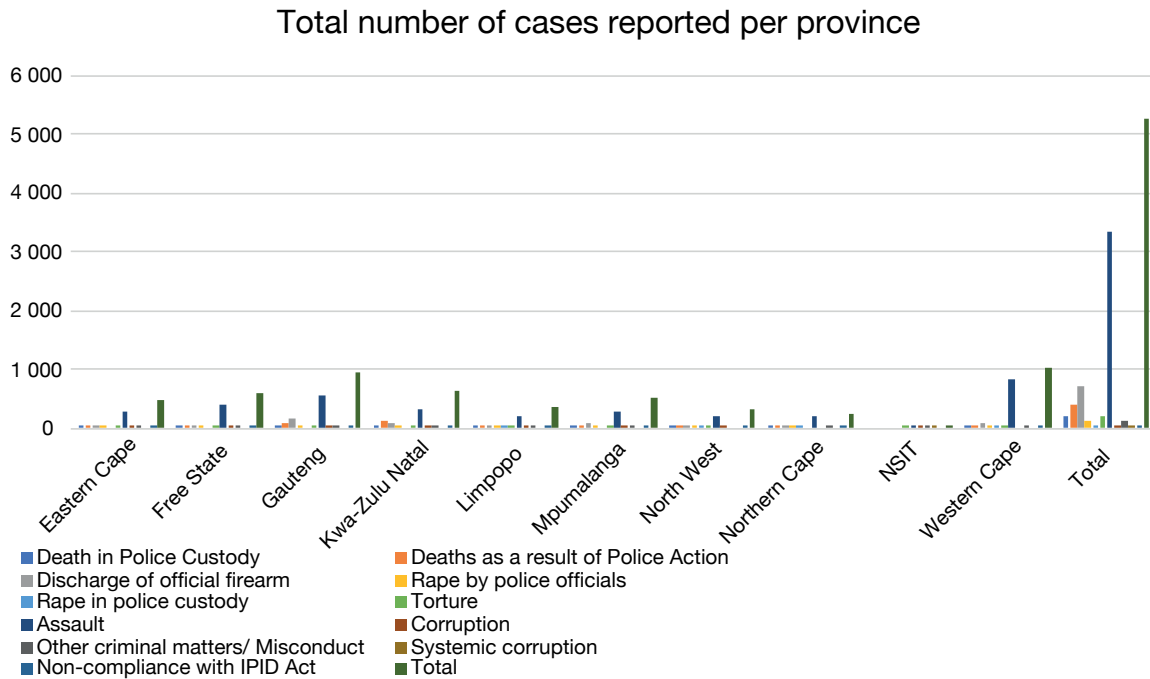
RECOMMENDATION

It is recommended that IPID strengthens its systematic approach to cases that constitute torture and those that lead to CIDT in the context of Section 28 of the IPID Act. This process should give due regard to the Istanbul Protocol and be human rights-centred.



SADC Regional Workshop on OPCAT and Women in Detention held at Constitution Hill.

Figure 10: Total number of cases reported to IPID



9.1. Material Conditions

The material conditions of police detention cells continue to be of concern to the NPM. Many cells in police stations suffer from poor maintenance and neglect, resulting in deteriorated infrastructure and unsanitary conditions. Like the previous reporting period, we have observed infrastructure challenges such as broken or malfunctioning toilets, inadequate water supply, insufficient lighting, and overall decay within the cells. These conditions raise significant concerns regarding the well-being and dignity of detained persons, officials and visitors. The provisions of National Instruction 13 of 2019 are instructive in what the minimum conditions of detention should be.

Table 13: National Instruction on management of persons in police custody

National Instruction 13 of 2019: Management of persons in custody of the SAPS (NI 13)	
25 (2)	<ul style="list-style-type: none"> Comply with the Occupational Health and Safety Act – cells to be inspected monthly. Provision of clean blankets – clean bedding to be separated from dirty blankets and mats.
25 (3)	<ul style="list-style-type: none"> Provision of ablution facilities with hot and cold water for washing. Transfer to other stations if detention facilities are not in good order.
25 (4)	<ul style="list-style-type: none"> Defects to be reported promptly by the station commander. Station commander to request custody facilities upgrades where there are defects and to monitor and report on progress.
25 (8)	<ul style="list-style-type: none"> Provision of meals three times a day, according to set menu. Any deviation to be recorded in the Occurrence Book (OB).

It is also apparent that police stations in water-stressed areas have felt the impact exacerbating the existing infrastructure challenges regarding water and sanitation.

Due to inadequate infrastructure, several police stations' detention cells have been deemed unusable and condemned for detaining persons. Consequently, staff at detaining stations are compelled to travel long distances, sometimes between multiple stations to detain arrested persons and transport them again for court appearances.

“An official at one station reported having to visit four different police stations before finding one with available detention cells, as most stations either had full cells or non-functional ones”.

This situation has implications for resources, as station vehicles are unavailable for visible policing activities or responding to other emergencies. Officials themselves spend a significant amount of time on the road, transporting arrestees to detaining stations and the courts, impacting their availability for other policing duties.

“The IPID with its constitutional mandate as an oversight institution over the SAPS and MPS prides itself for being a member of the NPM – whose work entails the visitation of places of deprivation of liberty has impacted immensely the awareness and appreciation of the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The IPID will continue to commit resources to the strategic imperatives of the NPM and is expected to help reduce deaths in police custody and improve conditions in the SAPS detention facilities – Ms DJ Ntlatseng, Executive Director, Independent Police Investigative Directorate”.



Participants at the SADC Regional Workshop on the implementation of the Bangkok Rules in South Africa held at Constitution Hill.



RECOMMENDATIONS

- i. Based on the challenges identified with the detention cells' material conditions, the NPM recalls its recommendation that SAPS management in consultation with the Department of Public Works and Infrastructure allocate resources to address the decay and neglect of police station infrastructure, particularly focusing on detention cells. This should involve repairing or replacing broken fixtures such as toilets, taps, showerheads, and lights to ensure functional and safe conditions.
- ii. It is further recommended that the SAPS management implements a comprehensive maintenance plan to regularly inspect and address any such issues at the police stations. This should include routine checks for blockages, leaks, and other maintenance needs to prevent further deterioration.
- iii. By implementing these recommendations, it is expected that the material conditions of the detention cells can be improved, ensuring a safer and more humane environment for detainees, and addressing the challenges associated with inadequate infrastructure.

9.2. Security Infrastructure

The lack of effective and functioning security measures at most police stations is a continuing concern. Many police stations do not have adequate perimeter fencing, access control or CCTV camera infrastructure. It was further observed that at some stations firearm safes are kept in the Community Service Centre where they are visible and easily accessible. It is reiterated that adequate security infrastructure such as CCTV cameras allow officials on duty to detect and prevent any breaches to internal security, including the risk of escapes by detainees.



RECOMMENDATION

The NPM reiterates its recommendation that the National Police Commissioner in consultation with the Provincial Police Commissioners and the DPWI conduct a national audit to provide for the repair and maintenance of police stations' security infrastructure.

9.3. Power Outages

As with the rest of country, some state facilities are not exempted from power shedding. This situation was found to present a risk in police stations. The inconsistent power supply disrupts operations and hampers safety for officials, members of the public and persons in PDLs. With regard to police stations, the unpredictable power supply currently further hampers police stations' ability to provide quality service to the communities which they serve. A significant number of stations were found to lack back-

up generators when there is not power from Eskom. In some instances, generators were either faulty or not adequate to provide the whole station with electricity. Police officials are then obliged to use rechargeable lights when working at night, and making rounds to detention cells.



RECOMMENDATION

It is recommended that the national audit should also cater for the repair of stations' back-up generators and the provision of generators for those stations which are not yet equipped with one. Where they cannot be repaired, stations in these instances should be provided with a new back-up generator.

9.4. Victim Empowerment Rooms

Victim-Friendly Rooms (VFRs) at police stations provide onsite counselling and support to rape, sexual assault and domestic violence survivors. These facilities are governed by National Instruction 2 of 2012. The National Instruction establishes minimum norms and standards for VFRs. There are 1 207 VFRs at police stations countrywide. Notwithstanding and for various reasons, there appears to be disparities in how the NI is implemented. As observed in the previous reports, there was no uniformity between those stations which did have VFRs, as the conditions of the VFRs varied from one station to another. At some stations the VFRs had a bed and a couch, whereas some did not and in some instances some VFRs had ablution facilities for victims while other stations did not.



RECOMMENDATIONS

- i. The NPM recommends that the National Commissioner of the South African Police Service conducts a comprehensive baseline assessment to be undertaken of all existing VFRs. This assessment must identify variations or disparities among VFRs and determine the most effective and suitable model for implementing these services.
- ii. By conducting a baseline assessment, policymakers and stakeholders can gain valuable insights into the strengths and weaknesses of the current VFR model. It will enable them to identify areas where services are lacking or need improvement, and to understand the specific needs of different communities. Such knowledge can facilitate the development of targeted interventions and resource allocation to ensure VFRs are well-equipped to support victims of gender-based violence and femicide.
- iii. This assessment can help in establishing best practices and augment the existing norms and standards (National Instruction 2 of 2012 paragraphs 9 and 10) to be adhered to by all stations' different VFRs. This will ensure a more standardised and efficient approach to providing support and assistance to victims.



**MONITORING
CORRECTIONAL
CENTRES**



Knowledge exchange between the independent correctional centre visitors of JICS and SAHRC human rights officers and monitors.

10. MONITORING CORRECTIONAL CENTRES

10.1. Overview of investigations conducted

Table 14: Number of investigations in correctional centres

Total investigations conducted by JICS for the reporting period	
Investigation focus	Number
Suicide of inmates	13
Escape, arson and bribery	1
Assault of officials by inmates	3
Murder of inmate by another inmate	5
Stabbing of inmate by another inmate	1
Allegations of corruption	2
Murder arising from officials using force on inmates	6
Death by poisoning	2
CIDT	3
Assault of officials by inmates	1
Death of inmates during gang-related fight (inmates on officials and inmates on inmates)	1
Unnatural death of inmates later classified as due to natural causes	3
Total	41

From 1 April 2022 to 31 March 2023, the JICS conducted 136 announced inspections, and 54 unannounced inspections.

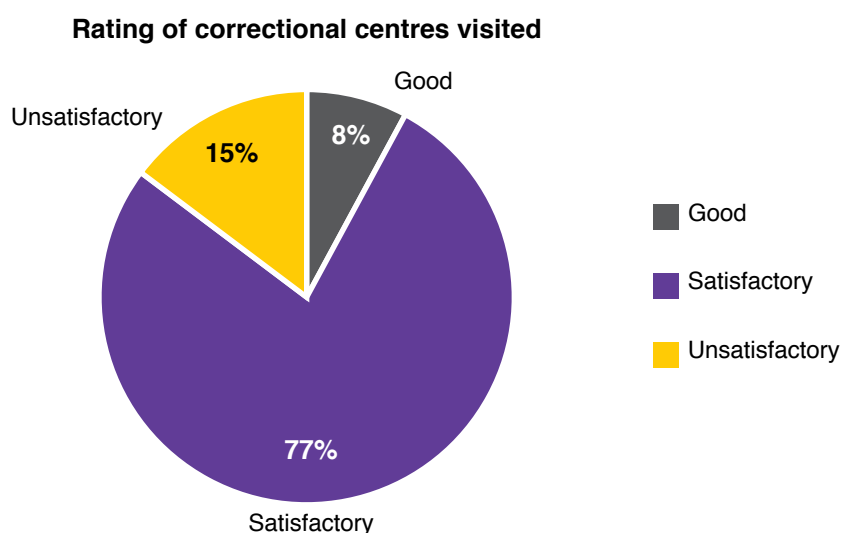
10.2. How correctional centres are rated

Correctional centres are rated based on standard variables such as overcrowding; presence of professional staff; adequacy of infrastructure; quality of nutrition provided; accessibility to medical services; safety and well-being of both inmates and DCS officials, as well as the level of interaction with the community.

Facilities rated as “Good” were deemed to maintain high standards and generally needed minor or no enhancements. Such facilities are typically overseen by a proficient Head of a Correctional Centre (HCC), who ensures effective management. “Satisfactory” facilities display certain areas identified for improvement, but generally are capably managed by the HCC. Management capability largely determined the rating of a correctional centre between good and unsatisfactory.

Unsatisfactory facilities included defective infrastructure and equipment; unacceptable hygiene; extreme overcrowding; and poor treatment of inmates.

Figure 11: Rating of Correctional Centres



10.3. Deaths in correctional centres

Table 15: Unnatural deaths over a 5-year period

Number of unnatural deaths from 2018 to 2023					
Year	2018/19	2019/20	2020/21	2021/22	2022/23
Unnatural deaths	103	96	75	104	101

Table 16: Natural deaths over a 5-year period

Number of natural deaths from 2018 to 2023					
Year	2018/19	2019/20	2020/21	2021/22	2022/23
Natural deaths	384	335	455	419	425



MONITORING MILITARY DETENTION BARRACKS



II. MONITORING MILITARY DETENTION BARRACKS

Four NPM visits were conducted at the two active Military Detention Barracks (MDB) of the South African National Defence Force (SANDF) during the period under review. These visits were conducted jointly by the Office of the Military Ombud and the SAHRC, at Central MDB at Tempe Military Base in Bloemfontein (Central MDB) and Southern MDB in Wynberg Cape Town (Southern MDB).

At Central MDB, there were 15 detainees, while 22 were detained at Southern MDB for the year under review. The reports of these visits were submitted to the Minister of Defence and Military Veterans. At the same time, the reports were shared with the SANDF and through constructive dialogue, steps are being taken to address the findings and recommendations contained in the reports. The observations of visits to the MDBs are summarised below.

II.1. Nature of Military Detention

Due the nature of the MDBs, deprivation of liberty is traditionally of a short-term nature. For example, sentences ranged from 90 to 240 days and offences were more often related to absence without official leave, disobeying a lawful command, theft, damage to State Property, assault, contempt of court, intimidation and contravention of bail conditions.

II.2. Material Conditions

No positive material changes to both facilities were noted. Challenges observed in the previous year such as unstable foundations, rising damp, absence of fire hydrant, maintenance to geysers, remained. For instance, some of the cells were identified as incapable of use and were condemned at the Southern MDB. Meanwhile, there was only one vehicle to transport inmates at the Central MDB and when it is unserviceable, inmates were transported with a sedan or open light delivery vehicle – posing a threat especially where aggressive or dangerous inmates need to be transported at short notice. The infrastructure challenges are attributed to various factors, such as delays from the DPWI, and restrictions imposed on the Southern MDB, as a heritage site. While no incidents of torture and other cruel punishment or treatment of detainees could be found, the conditions of the facilities may amount to inhumane conditions for the detainees and an occupational and safety hazard for the personnel at the MDBs.

It was observed that due to various reasons such as budgetary constraints, the MDBs were using manual registers. To minimise the risk of loss, theft, damage, an electronic system for registers should be considered.

While the Provost Marshall General explained the impact the MDBs' limited budget to parliament in May 2022, no positive progress has been made in this regard. To this end, the limited funding to the MDBs has an overall impact on occupational health and safety and on the maintenance of humane conditions of the facilities.

The treatment and conditions of the LGBTQI was discussed with MDBs. To this end, interim measures were put in place to ensure the protection of sexual minorities until the relevant Regulations have been revised. For instance, LGBTQI members will be searched by members of the same gender and all staff will be sensitised to show the necessary respect when conducting searches. Further, these members will be confined in single cells and showers and other activities will be managed on a rotational basis, or in separate facilities when available. Capacity development will be prioritised as an in-service training to all staff members and newly appointed staff members at the unit.



RECOMMENDATION

It was recommended to the Minister of Defence and Military Veterans to ensure that necessary steps are taken to address the challenges faced by these MDB's as a preventive measure to inhumane and degrading treatment and punishment.



Training of principal trainers on engaging LGBTIQ+ person's in place of deprivation of liberty.



MENTAL HEALTH IN THE CRIMINAL JUSTICE SYSTEM

12. MENTAL HEALTH IN THE CRIMINAL JUSTICE SYSTEM

As previously noted, the presence of persons with psychosocial and mental health challenges in correctional centres and police detention facilities continues to be a concern. Such persons fall within the different stages under the ecosystem of Chapter 13 of the Criminal Procedure Act²⁵ and Chapter VI of the Mental Health Care Act.^{26,27} These can be referrals from the courts for forensic psychiatric evaluation and/or indefinite detention after being declared a “patient of the state”.²⁸ While data is not readily available to assess the extent of the challenge in police stations, this is not the case in correctional centres, as seen in Table 17 below.

The persistent unavailability of bed space in forensic psychiatric facilities leading to delays in the admission for both forensic observation and indefinite detention exacerbate this challenge. Our assessment suggests that ineffective interdepartmental cooperation appears to contribute significantly to this challenge. The NPM is concerned further that the necessary psychiatric care, treatment and rehabilitation may not be readily available in these facilities due to other systemic challenges such as staff and budgetary constraints in the traditional PDLs.

Police stations present an extreme case given that such facilities are not designed for that purpose, and persons in this category hardly receive the necessary treatment, care and rehabilitation. Police officials may also not be trained accordingly, and would not be able to provide the requisite care. As a result, despite many efforts by the state such as developing the *Interdepartmental Protocol on Procedure to be followed in respect of state patients* (State Patient Protocol) gaps in policy and practice still exist. These gaps render persons with psychosocial and mental health challenges in the criminal justice at risk of inhuman conditions, violence, abuse and neglect in the process of being deprived of their liberty.

Table 17: Number of forensic state patients in correctional centres

State patients in correctional centres				
Year	2020	2021	2022	2023
#	186	133	123	125

²⁵ Criminal Procedure Act, 51 of 1977.

²⁶ Mental Health Care Act, 17 of 2002.

²⁷ Kaliski S. *Psycholegal Assessment in South Africa*. Cape Town: Oxford University Press, 2006.

²⁸ State patients are individuals who have been charged with serious offences and who have been declared unfit to stand trial and/or who are not criminally responsible because of their mental illness or incapacity. They are then referred by the courts to forensic psychiatric facilities for treatment, rehabilitation and indefinite detention.



RECOMMENDATIONS

- i. To address the unavailability of data, the Department of Justice and Constitutional Development together with the national Department of Health should annually collect statistical data on forensic state patients in the criminal justice system. This should include data on declared state patients and those undergoing forensic psychiatric observation; places or facilities where such persons are committed or referred and the duration. This would ensure that forensic psychiatric patients are not accommodated in inadequate facilities. At the same time, their whereabouts could be traced and their well-being known at all times. Institutionally, this may be useful to inform system-wide responses and that they receive the required care and rehabilitation, even in temporary facilities.
- ii. The National Department of Health should lead a process to review the Interdepartmental Protocol to measure its efficacy, shortcomings and put measures in place to address the identified gaps.
- iii. For the South African Police Service, a systematic process should be developed to ensure that statistical data is obtained at station-level on admission, district, provincial and consolidated at national-level. The South African Police Service should also ensure that at station-level, there is regular awareness and sensitisation on the interdepartmental protocol on state patients and that effective and efficient cooperation, including urgent escalation mechanism are established at all levels.
- iv. As a complementary process, the South African Police Service should consider developing an electronic detention management system that could be integrated into the Crime Administration System (CAS) to ensure data on detained persons is readily available.



PROGRESS ON INSTITUTIONAL DEVELOPMENT



SADC Regional Workshop on Women in Detention.

13. PROGRESS ON INSTITUTIONAL DEVELOPMENT

13.1. The case of the Judicial Inspectorate

No legislation has been promulgated to define the mandate, powers and functions of the NPM. The Justice and Correctional Services Minister has applied to the Constitutional Court for an extension to amend Sections 88A(1)(b) and 91 of the Correctional Services Act in relation to the independence of the Judicial Inspectorate. The Constitutional Court granted an extension to December 2023. These sections were declared constitutionally invalid to the extent that they fail to provide an adequate level of independence to the Judicial Inspectorate.²⁹ Subsequently, the Correctional Services Amendment Bill is being considered by Parliament.

Similarly, the Finance Minister has endorsed the realisation of JICS's independence, and additional funding was allocated from the DCS over a three-year period. Modalities for the transfer and utilisation of these funds are being explored. The new JICS Bill that deals with the Judicial Inspectorate's transformation into a government component is to be tabled in Parliament once the amendments to the CSA have been finalised. The JICS Bill is intended to establish the JICS as an independent body to inspect correctional facilities and report on the treatment of inmates in correctional facilities and on conditions in correctional facilities.

²⁹ Sonke Gender Justice NPC v the President of the Republic of the Republic of South Africa, [2020] ZACC 26.

13.2. The Office of the Military Ombud

Given the fact that the NPM mandate is not entrenched in the legislative framework governing the Office of the Military Ombud, a process is underway to review the Military Ombud Act and the organisational structure to integrate the OPCAT functions.

13.3. Building a unitary institution through the NPM Steering Committee

To facilitate collaborative and effective NPM coordination, four meetings of the NPM Steering Committee were held over the period under review. The quarterly meetings provide a platform for NPM institutions to discuss progress on institutional development and identify common thematic areas. The committee meetings also serve as a learning and sharing-of-experiences platform. The committee discussed the institutional review report and noted the quarterly reports from the NPM institutions. The Steering Committee resolved that the Commission should host bilateral engagements with the individual NPM institutions to address the concerns raised over the proposed governance model.

13.4. Consensus on a model for governance

Given the lessons learned in the first few years of the NPM's existence and particularly the level of complexity of the operational environment 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 commissioned to review the institutional structure of the NPM. This was to develop a pragmatic governance model, strategic and human capacity plan to strengthen the functioning and capacity of the NPM. Through this work (i) a strategic plan for the 2022/25 strategic term was crafted; (ii) the governance model; (iii) business and funding model; and (iv) human capacity plan developed for the NPM. The proposed governance and operational framework are to support the progressive implementation of OPCAT in relation to functional independence – legislative, operational, financial – the identification of experts and independent members.



FUTURE PRIORITIES

14. FUTURE PRIORITIES

14.1. Strengthening OPCAT compliance and the effectiveness of the NPM

Supported by OPCAT's Special Fund, the NPM will work towards strengthening its effectiveness through compliance with OPCAT in the following ways:

- + Addressing challenges of finding a common methodology across multi-institutions, measuring impact and communicating as a unitary institution. This will be done by creating a common understanding of the prevention aspects within the framework of OPCAT and its practical translation into pragmatic working methods of NPM members.
- + Conceptualising what preventive visits entail in the South African context.
- + Defining how we increase reach and visibility as a unitary institution. This will entail a two-pronged approach focusing on (a) institutional mandates and referral pathways for use by persons deprived of their liberty, and (b) improving external and internal communication among NPM bodies.
- + Learning and capacity development on methodological issues within the spirit of OPCAT.

14.2. Framework for working with civil society

Given the NPM's desire to work with civil society, a framework to guide this relationship is to be explored. This is premised on lessons from other jurisdictions and the potential benefits of expanding the NPM's pool of expertise. Civil society will include but not be limited to community-based and human rights organisations and experts such as academics and researchers, psychiatrists, environmental health specialists, forensic pathologists, social workers, policing and corrections specialists. This framework will potentially be complemented by a scheme for lay visitors.

14.3. Strengthening governance

The past four years of the NPM's existence and operations have highlighted the complexity of the environment within which it operates. Operations have also revealed the necessity of an interim cooperation and governance framework given the absence of a legislative framework. To address this challenge, the NPM is working towards finalising a cooperation agreement to create a Board for the NPM. The Board will be established to assist the SAHRC with managing the coordination and strategic mandate of the NPM.

14.4. Legislation

While recognising the complexity of legislative processes, a draft NPM Bill is being processed and would potentially be finalised in the seventh administration given the forthcoming general elections in 2024.

14.5. Defining the revenue model for a unitary NPM

To ensure full realisation of the NPM mandate, NPM institutions would need to prioritise an assessment on its funding and other resource needs. This will include functional and coordination elements to ensure that the mechanism is fully costed.

NPM contacts and useful links:



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



South African Human Rights Commission:
<https://www.sahrc.org.za/>



Office of the Health Ombud:
<http://healthombud.org.za/category/publications/reports/>



Office of the Military Ombud:
<https://www.milombud.org/>



Independent Police Investigative Directorate:
<http://www.ipid.gov.za/>



Judicial Inspectorate for Correctional Services:
<http://jics.dcs.gov.za/jics/>



Committee against Torture:
<https://www.ohchr.org/en/treaty-bodies/cat>



Association for the Prevention of Torture:
<https://www.apr.ch/>



Subcommittee on Prevention of Torture:
<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>



Committee for the Prevention of Torture in Africa:
<https://achpr.au.int/en/mechanisms/committee-prevention-torture-africa>



South African National
Preventive Mechanism

*Towards a society
free of torture*

For more information contact the SA National Preventive Mechanism on:

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

Email: npm@sahrc.org.za

Phone: +27 11 877 3780