

**Address by the Deputy Minister of Justice and Constitutional Development,  
the Hon JH Jeffery, MP,  
At the hosting of the South African National Preventive Mechanism  
International Conference,  
hosted by the South African Human Rights Commission,  
30 June 2021**

Program Director, Adv Thipanyane,  
Distinguished guests,  
Everyone joining us on the platform this morning,

There is no denying our brutal past, where torture was regularly used by the state machinery to oppress people, punish them or silence them.

Sadly, even in our hard-fought democracy, instances of torture still occur – with the most recent case being reported earlier this month when the Independent Police Investigative Directorate (IPID) arrested a SAPS detective for allegedly torturing a suspect to death in the Eastern Cape, where the suspect was detained at the Barkley East police station.

The establishment of our NPM has been a major step forward.

While South Africa joined the international community in reaching the consensus that torture and other ill-treatment must be prevented, it did take a long time to complete the OPCAT implementation process.

As you know, the Optional Protocol was adopted by the United Nations General Assembly in December 2002 and came into force in June 2006. South Africa signed the OPCAT in September 2006. Parliament's National Assembly and the National Council of Provinces approved the ratification of OPCAT on 19 and 28 March 2019 respectively.

In compliance with Article 27, South Africa deposited its instrument of ratification of the OPCAT with the Secretary-General of the United Nations on 20 June 2019 and under Article 28 (2), the OPCAT came into effect for South Africa on 20 July 2019.

So the establishment of the NPM in 2019 marked almost 13 years since South Africa signed the Optional Protocol.

The fact that we now have a well-functioning NPM is a significant achievement.

It really is encouraging to look at the list of NPMs per State Parties on the United Nations website and see South Africa listed there – especially *because* it took so long for us to establish the NPM.

It is equally encouraging to be able to click on the interactive map on the SAHRC website and see the various police stations, mental health institutions, correctional centres, refugee reception centres, secure care centres and CYCCs (child and youth care centres) which have already been visited.

Having visited 64 places of deprivation of liberty is no small achievement.

As you are aware, the responsibility of leading the NPM was assigned to the South African Human Rights Commission after extensive consultations and benchmarking involving existing oversight bodies and civil society at national and international levels.

And there have been many highlights of the NPM in the past two years.

The NPM has undertaken a baseline assessment to places of deprivation of liberty in all South Africa's nine provinces and released its first report during its first year into existence. As mentioned, these places included secure care centres, police stations, correctional centres, immigration detention and psychiatric institutions.

In expanding its work, discussion papers have been developed – one on the legislative changes required to strengthen the mandate of the NPM and another one on working with civil society.

To facilitate coordination and information sharing, a steering committee has also been established. This committee is constituted by the heads of the NPM institutions.

Some agreements have been concluded between the NPM institutions and the coordinating body. These agreements are designed to provide an interim cooperation agreement pending the finalisation of legislation.

The NPM is also currently undertaking a baseline assessment as a follow-up to the Global Study on Children Deprived of their Liberty by conducting thematic visits to secure care centres where children in conflict with the law are deprived of their liberty.

It is important that NPM is well-known and further popularised. For this reason, a corporate identity and webpage have been developed to serve as an information portal and build on the NPM brand identity.

To enhance visibility and the distinctive NPM identity, the logo signifies the oversight mechanism that monitors places of deprivation of liberty. The figure in the logo represents a person who is protected and treated with dignity. The grey colour represents safety and dignity. The black represents power. The purple contains a mix of the energy from the colour red and integrity from the colour blue.

Webinars and events, such as the one we are having today, raise further awareness of the important work done by the NPM.

At the beginning of the Covid-19 pandemic, the NPM developed advisory recommendations to the state to strengthen the protection of those deprived of their liberty.

Under an EU-funded project together with the Association for the Prevention of Torture (APT), it is working on assessing the implementation of the Bangkok Rules in South Africa and the SADC region.

Great strides have also been made in building relationships with key stakeholders in government and civil society, both locally and internationally.

The role of civil society is fundamental to the realisation of the NPM's mandate. As mentioned in APCOF's Research Paper No 28:

*“Significant value and credibility will be added to the work of South Africa's NPM if civil society - as critical role players in efforts to combat and prevent torture in places of deprivation of liberty – is involved in the engine room of the NPM, as well as in its monitoring work, so as to promote the effectiveness, independence and legitimacy of the mechanism.”*

But along with these successes and the progress made, we also know that the NPM has particular challenges – both now and those envisaged in future.

In its first Annual Report, the NPM not only identified potential challenges, but it also made proposals to strengthen the mandate of the NPM through a number of interventions.

It must be stressed that no NPM in the world can discharge its functions without the cooperation and assistance of the relevant state officials responsible for the various places of deprivation of liberty.

We know from the Annual Report of our NPM that access to several places of deprivation of liberty was a challenge.

There is therefore a need for further engagement with the state, including the consideration of appointing NPM focal persons.

The operational independence of the NPM should be guaranteed and the visiting mandate of the NPM should extend to all places of deprivation of liberty, as set out in Article 4 of the Optional Protocol.

In our efforts to build a truly independent and effective NPM, it is equally important that the independence of the various oversight bodies should be incrementally and adequately addressed – as was shown by the Constitutional Court in the *Sonke Gender Justice* case.

The question then arises as to how the state can support the NPM going forward.

All NPMs should meet some *minimum requirements* provided by the OPCAT, which include the following:

- Functional independence
- Financial independence
- Adequate levels of funding
- Multidisciplinary and diversity in the NPM
- Powers to access places, persons and information
- Power to report, make recommendations and comment on policy and legislation
- Protection for persons deprived of liberty and others

There are many ways in which government can support the NPM to meet these requirements.

Importantly, the necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol and the NPM should enjoy financial and operational autonomy when carrying out its functions.

In this regard, in 2019 I stated that the proposed NPM model was to be funded by allocations from the DOJCD, ring-fenced for the next three years. Over the medium term, budgeted amounts have to the NPM have been R1,68m in 2019/20, R2,3m in 2020/21 and R2,41m in 2021/22.

Our Department has further supported the SAHRC and the Association for the Prevention of Torture (APT) in their successful application for funds under the SA-EU Strategic Partnership Dialogue Facility and I want to extend South Africa's gratitude to the EU for this budget support of €65 000.

The reality is that across government, we are all experiencing severe budget cuts, to the extent that government departments have had to adjust many of their output targets downwards.

This means having to do more with what we have and there is a greater need, for all of us, to come up with creative ways in which to do this.

With regards to legislation, in addition to the various Acts which relate to the different bodies and the NPM, there is also a need to amend the Prevention and Combating of Torture of Persons Act in order to incorporate more OPCAT requirements. Although this is not on our Department's legislative program for this financial year, it is something that must be attended to.

I can also advise that the UN Committee against Torture, after considering our country report and meeting with the country delegation, requested that South Africa provide it with comprehensive information on three of their recommendations regarding:

- ensuring the prompt investigation and prosecution of all deaths in custody;
- speeding up the ratification of the Optional Protocol to the Convention; and
- ensuring that all allegations of torture by law enforcement officials are referred by the Independent Police Investigative Directorate (IPID) to the National Prosecuting Authority (NPA).

These responses have been prepared by our Department and submitted to DIRCO for submission to the Committee.

Programme Director,

This past Saturday, the 26<sup>th</sup> of June, was the International Day in Support of Victims of Torture.

And on Sunday, we saw the National Prosecuting Authority and the Hawks saying that they enhancing efforts to investigate and prosecute TRC cases. Many victims of apartheid era atrocities were victims of torture and we are confident that the enhanced and dedicated capacity within the NPA to prosecute these crimes will help to ensure justice for many victims and their families.

In closing, I also want to focus on the specific challenges brought about by the Covid-19 pandemic and how this impacts on the work of the NPM.

The UN's anti-torture structures have warned that the Covid-19 pandemic is leading to an escalation of torture and ill-treatment worldwide, and torture survivors are especially in danger of getting infected due to their vulnerable situation.

People deprived of liberty, already subject to the risk of cruel, inhuman and degrading treatment behind bars and in other confined spaces, are now facing a new threat – namely that of being particularly vulnerable whilst being in detention or confined in closed spaces, where social distancing is practically impossible.

Dr. Jens Modvig, the former Chair of the UN Committee against Torture stated that, I quote, -

*“Governments have a greater duty than ever to guarantee the safety of all people deprived of their liberty. Inmates should enjoy the same standards of healthcare that are available in the community at large, including access to virus testing and medical treatment.”*

Some of the comments from certain sections of the public raising their unhappiness in response to the announcement that prisoners will be receiving Covid-19 vaccinations were truly alarming. They seem to forget what our Constitution says.

As Judge Edwin Cameron recently wrote –

*“being imprisoned is the punishment – not punitive treatment while in prison. Everyone has the rights of access to healthcare – including prisoners.”*

In short, Covid-19 has made the work of NPMs around the world even more important.

As the UN experts have stressed, the independent documenting of the material and living conditions of persons deprived of their liberty must always be part of the state's overall Covid-19 response.

The pandemic must never be used to avoid complying with our duty to eradicate all forms of torture.

I want to commend the NPM on the work it has been doing over the past two years and assure you of government's support as it continues with its endeavours.

I thank you.