



# African Policing Civilian Oversight Forum

## Submission to the Subcommittee for the Prevention of Torture in preparation for its visit to South Africa

9 February 2023

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit trust working on issues of police accountability and governance across Africa. We welcome the invitation from the Subcommittee for the Prevention of Torture (SPT) to attend a confidential briefing with civil society organisations in preparation for its forthcoming visit to South Africa. In anticipation of that briefing, we have prepared this written submission for the SPT's consideration. It focuses on the issue of the prevention of torture in places of detention under the mandate of the South African Police Service (SAPS). Our recommendations are:

**Recommendation 1:** That the SPT remind the NPM of the importance of a legislative foundation for its mandate, either as a stand-alone NPM Act or by amendment to the Prevention and Combating of Torture of Persons Act, No. 13 of 2013, and of the amendments required to the enabling legislation of NPM member institutions, particularly IPID.

**Recommendation 2:** That the SPT urge the NPM to develop a strategic plan for monitoring police stations and other places of detention under the management of SAPS, to target the monitoring of facilities where torture and inadequate conditions of detention are consistently reported, and to monitor thematic issues of national concern in a cross-section of facilities.

**Recommendation 3:** We strongly encourage the SPT to consider adding the following police stations to its monitoring schedule for its forthcoming visit to South Africa:

- Nquthu and Umbombo in the Zululand District of KwaZulu-Natal.
- Pongola in KwaZulu-Natal.
- Hobane in KwaZulu-Natal.
- Caledon in the Western Cape.
- Bethulie in the Free State.

**Recommendation 4:** That in preparation for its forthcoming visit to South Africa, the SPT consider the information contained in relevant APCOF reports and submissions on the [risks of police custody](#), the [lethal use of force by police](#), and its [report](#) and [submission](#) on the role of civil society in the NPM.

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Each is discussed in turn below.

## 1. IPID's preventive mandate

While we welcome the inclusion of the Independent Police Investigative Directorate (IPID) as a member of the National Preventive Mechanism (NPM), it currently lacks the necessary legislative mandate to conduct regular and independent preventive visits to places of detention. We understand that IPID has included NPM monitoring visits in its current operational plan and budget. However, we are concerned that the legislative foundation to guarantee a continued commitment by IPID to its NPM designation remains outstanding.<sup>i</sup>

We further note that this is not an issue limited to IPID. Legislative amendments to the enabling legislation to give effect to the NPM mandate is still outstanding for the Judicial Inspectorate for Correctional Services,<sup>ii</sup> the Health Ombud<sup>iii</sup> and the Military Ombud.<sup>iv</sup> Furthermore, while a draft legislative instrument for the NPM itself has been prepared, it has still not been passed into law after more than three years of NPM operations.

**Recommendation 1:** That the SPT remind the NPM of the importance of a legislative foundation for its mandate, either as a stand-alone NPM Act or by amendment to the Prevention and Combating of Torture of Persons Act, No. 13 of 2013, and of the amendments required to the enabling legislation of NPM member institutions, particularly IPID.

## 2. Visits to places of detention under the control of the South African Police Service

The SAPS are responsible for the care of detainees held across South Africa's more than 1000 police stations, courts with holding cells, and in police vehicles during transfers. There is no data on the number of people held in police custody. However using SAPS data for the number of persons arrested and charged in a year, the figure is a significant proportion of the numbers of arrests for all crimes, and persons arrested and charged, which is between 1.1 million and 2.8 million people annually.<sup>v</sup>

In 2021, the NPM published a report entitled, '*The conditions and treatment of people in police custody in South Africa: Report on visits to police stations by independent custody visitors 2019 – 2020*'.<sup>vi</sup> It revealed that between June 2019 and December 2020, only '106 independent custody monitoring visits were conducted at police stations in South Africa.'<sup>vii</sup> APCOF understands that the number of custody visits during the intervening period has not increased significantly, though IPID's plans for NPM monitoring in 2023 may marginally increase coverage.

Given the significant resources required to ensure coverage of all SAPS places of detention in South Africa, and the budget cuts experienced by IPID (in line with cuts expected across all government departments and institutions), there is not enough resourcing to ensure adequate geographical coverage by the NPM of police custodial facilities under the NPM mandate. APCOF therefore proposes that the NPM consider developing a strategy for targeted monitoring of police custody, to maximise the available resources and to enhance the impact of its preventive visits.

We suggest that stations and other custodial facilities be targeted for preventive visits on the following bases:

- IPID data which will identify from which police stations and other custodial facilities it receives the most notifications of torture, assault and rape.

- Data from the previous and forthcoming NPM reports on police custody monitoring, where several police stations have been identified as presenting an unacceptable risk to detainees of torture and other ill-treatment.
- Across thematic lines by using current monitoring data, and IPID complaints data, to identify recurring themes (for example, assault, rape, poor conditions of detention, access to health care services for detainees, or the presence of children in police cells) to allow for targeted thematic monitoring of a cross-section of custodial facilities.

**Recommendation 2:** That the SPT urge the NPM to develop a strategic plan for monitoring police stations and other places of detention under the management of SAPS, to target the monitoring of facilities where torture and inadequate conditions of detention are consistently reported, and to monitor thematic issues of national concern in a cross-section of facilities.

### 3. SPT visits to specific police stations

Incidents of torture, and challenges relating to inadequate conditions of detention, across South African police stations is a serious concern. Several stations have been identified as being particularly problematic, and the SPT should consider including preventive monitoring of these stations in KwaZulu-Natal, the Western Cape and Free State as part of its visit.

**Recommendation 3:** We strongly encourage the SPT to consider adding the following police stations to its monitoring schedule for its forthcoming visit to South Africa:

- Nquthu and Umbombo in the Zululand District of KwaZulu-Natal
- Pongola in KwaZulu-Natal
- Hobane in KwaZulu-Natal
- Caledon in the Western Cape
- Bethulie in the Free State

### 4. Further resources to inform the SPT's visit to South Africa

APCOF has published reports and submissions on NPM-related issues in South Africa:

- The risks of police custody: The potential for independent monitoring of police custody in South Africa.<sup>viii</sup>
- The use of lethal force by the police in South Africa.<sup>ix</sup>
- Promoting the effectiveness of South Africa's NPM: The case for civil society collaboration.<sup>x</sup>
- Submission in response to the draft discussion paper on the role of civil society in the work of the NPM.<sup>xi</sup>

**Recommendation 4:** That in preparation for its forthcoming visit to South Africa, the SPT consider the information contained in relevant APCOF reports and submissions on the risks of police custody, the lethal use of force by police, and the role of civil society in the NPM.

- The risks of police custody: The potential for independent monitoring of police custody in South Africa.<sup>xii</sup>

- The use of lethal force by the police in South Africa.<sup>xiii</sup>
- Promoting the effectiveness of South Africa's NPM: The case for civil society collaboration.<sup>xiv</sup>
- Submission in response to the draft discussion paper on the role of civil society in the work of the NPM.<sup>xv</sup>

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<sup>i</sup> Independent Police Investigative Directorate Act, No. 1 of 2011.

<sup>ii</sup> Correctional Services Act, No. 111 of 1998, Chapter IX.

<sup>iii</sup> National Health Act, No. 61 of 2003, sections 79-88.

<sup>iv</sup> Military Ombud Act, No. 4 of 2012.

<sup>v</sup> National Preventive Mechanism, 'The conditions and treatment of people in police custody in South Africa: Report on visits to police stations by independent custody visitors, 2019 – 2020', 2021, South African Human Rights Commission, *Table 1*, p 5, available at <https://sahrc.org.za/npm/index.php/npm-resources/general-reports> (accessed on 9 February 2023).

<sup>vi</sup> Ibid.

<sup>vii</sup> Ibid, p 6.

<sup>viii</sup> David Bruce, 'The risks of police custody: The potential for independent monitoring of police custody in South Africa', African Policing Civilian Oversight Forum, Research Paper No. 26, October 2019, available at <http://apcof.org/wp-content/uploads/026-risksofpolicecustody-thepotentialforindependentmonitoringofpolicecustodyinsouthafrica-davidbruce.pdf> (accessed on 9 February 2023).

<sup>ix</sup> Ignacio Cano, 'The use of lethal force by Police in South Africa', APCOF, LAV and NANHRI, 2021, available at <https://apcof.org/wp-content/uploads/use-of-lethal-force-by-the-police-in-south-africa-.pdf> (accessed on 9 February 2023).

<sup>x</sup> Abdirahman Maalim Gossar, 'Promoting the Effectiveness of South Africa's NPM: The case for civil society collaboration', African Policing Civilian Oversight Forum, Research Paper No. 28, August 2020, available at <https://apcof.org/wp-content/uploads/apcof-research-28-effectiveness-of-the-npm-web.pdf> (accessed on 9 February 2023).

<sup>xi</sup> African Policing Civilian Oversight Forum, 'Submission in response to the draft discussion paper on the role of civil society in the work of the NPM', 29 October 2020, available at <https://apcof.org/wp-content/uploads/apcof-submission-npm-and-cso.pdf> (accessed on 9 February 2023).

<sup>xii</sup> David Bruce, 'The risks of police custody: The potential for independent monitoring of police custody in South Africa', African Policing Civilian Oversight Forum, Research Paper No. 26, October 2019, available at <http://apcof.org/wp-content/uploads/026-risksofpolicecustody-thepotentialforindependentmonitoringofpolicecustodyinsouthafrica-davidbruce.pdf> (accessed on 9 February 2023).

<sup>xiii</sup> Ignacio Cano, 'The use of lethal force by Police in South Africa', APCOF, LAV and NANHRI, 2021, available at <https://apcof.org/wp-content/uploads/use-of-lethal-force-by-the-police-in-south-africa-.pdf> (accessed on 9 February 2023).

<sup>xiv</sup> Abdirahman Maalim Gossar, 'Promoting the Effectiveness of South Africa's NPM: The case for civil society collaboration', African Policing Civilian Oversight Forum, Research Paper No. 28, August 2020, available at <https://apcof.org/wp-content/uploads/apcof-research-28-effectiveness-of-the-npm-web.pdf> (accessed on 9 February 2023).

<sup>xv</sup> African Policing Civilian Oversight Forum, 'Submission in response to the draft discussion paper on the role of civil society in the work of the NPM', 29 October 2020, available at <https://apcof.org/wp-content/uploads/apcof-submission-npm-and-cso.pdf> (accessed on 9 February 2023).