

INDEPENDENT MONITORING OF POLICE CUSTODY IN SOUTH AFRICA

TRAINING MANUAL



INDEPENDENT MONITORING OF POLICE CUSTODY IN SOUTH AFRICA

TRAINING MANUAL

Published by African Policing Civilian Oversight Forum (APCOF), 2019

ISBN: 978-1-928332-54-1

The views expressed herein can in no way be taken to reflect the official opinion of the European Union, nor do they necessarily reflect those of APCOF.

This publication was produced with financial assistance from the European Union.



African Policing Civilian Oversight Forum (APCOF)

Building 23b, Suite 16
The Waverley Business Park
Wyecroft Road
Mowbray, 7925
Cape Town, ZA

Tel: +27 21 447 2415
Fax: +27 21 447 1691
Email: info@apcof.org.za
Web: www.apcof.org.za

PROGRAMME

Day 1

09.00–10.00	MODULE 1: Introduction and approach to this training
10.00–10.15	<i>Tea break</i>
10.15–12.30	MODULE 2: Why independent police custody monitoring? MODULE 3: Other organisations investigating and monitoring police custody in South Africa
	<i>Lunch break</i>
13.30–15.15	MODULE 4: Human rights and policy custody
15.15–15.30	<i>Tea break</i>
15.30–16.00	MODULE 4: Human rights and policy custody (continued)

Day 2

9.00–10.00	MODULE 5: Conducting independent monitoring visits
10.00–10.15	<i>Tea break</i>
10.15–12.30	MODULE 5: Conducting independent monitoring visits (continued)
12.30–13.30	<i>Lunch break</i>
13.30–15.15	MODULE 5: Conducting independent monitoring visits (continued)
15.15–16.00	Wrap-up and evaluation

TABLE OF CONTENTS

MODULE 1	Introduction and approach to this training	01
MODULE 2	Why independent police custody monitoring?	11
MODULE 3	Other organisations investigating and monitoring police custody in South Africa	15
MODULE 4	Human rights and police custody	21
MODULE 5	Conducting independent monitoring visits	33
MODULE 6	Evaluation	45
ANNEXURE 1	Code of Conduct for Independent Custody Visitors	47

Annexure 2 (Relevant Standing Orders and National Instructions) and Annexure 3 (Independent Police Custody Visit questionnaire) are included in an Annexures publication accompanying this Training Manual.



MODULE 1

Introduction and approach to this training



APPROACH TO THIS TRAINING AND MANUAL

This training session and manual follow a thematic approach, as the graphic below sets out.

Module 1	Introduction and approach to this training
Module 2	Why independent custody monitoring?
Module 3	Other organisations investigating and monitoring police custody in South Africa
Module 4	Human rights and police custody
Module 5	Conducting independent custody monitoring visits
Module 6	Evaluation

At the end of the training, we will ask you to identify which aspects set out above you have a better understanding of.

Your understanding of, and ability to conduct, an independent visit to a police custody facility 

International, African and South African standards regarding custody 

Ethical issues involved in being an independent custody visitor 

How the independent custody monitoring scheme complements other oversight bodies 

South African Police Service (SAPS) Standing Orders relevant to custody 

Before we start, let's take a moment to reflect on what it means to be an independent custody visitor to South Africa's places of police custody. Although, by the end of the course, you will have a better idea of what your responsibilities are, you are likely to have some concerns right now.



DISCUSS: Concerns about being an independent custody visitor

Do any of the following speech bubbles resonate with you? Let's chat regarding how you feel about becoming an independent custody visitor.

I'm hesitant to go to police stations.

I don't know what to expect.

I'm not sure how to treat the police officers if they are rude or obstructive.

I'm worried someone will try to bribe me.

I'm excited!

It's normal to be hesitant or even fearful when you volunteer to be an independent custody visitor. For instance, you may find yourself in some difficult or uncomfortable situations. However, you will have to be the judge of when you need to call for help.

There is an emergency phone number to call, and this can be used 24/7. Before your first visit, you will be given this number, as well as other useful contact details.

A CODE OF CONDUCT FOR INDEPENDENT CUSTODY VISITORS

We've also developed a Code of Conduct for the independent custody monitoring scheme that serves as a standard for carrying out and measuring your work. The Code of Conduct sets out the professional standards of conduct expected of an independent custody visitor and regulates your behaviour in order to ensure uniformity and consistency in the performance of your duties. Anyone who would like to be an independent custody visitor must accept and sign the Code of Conduct and be accredited as an independent custody visitor.

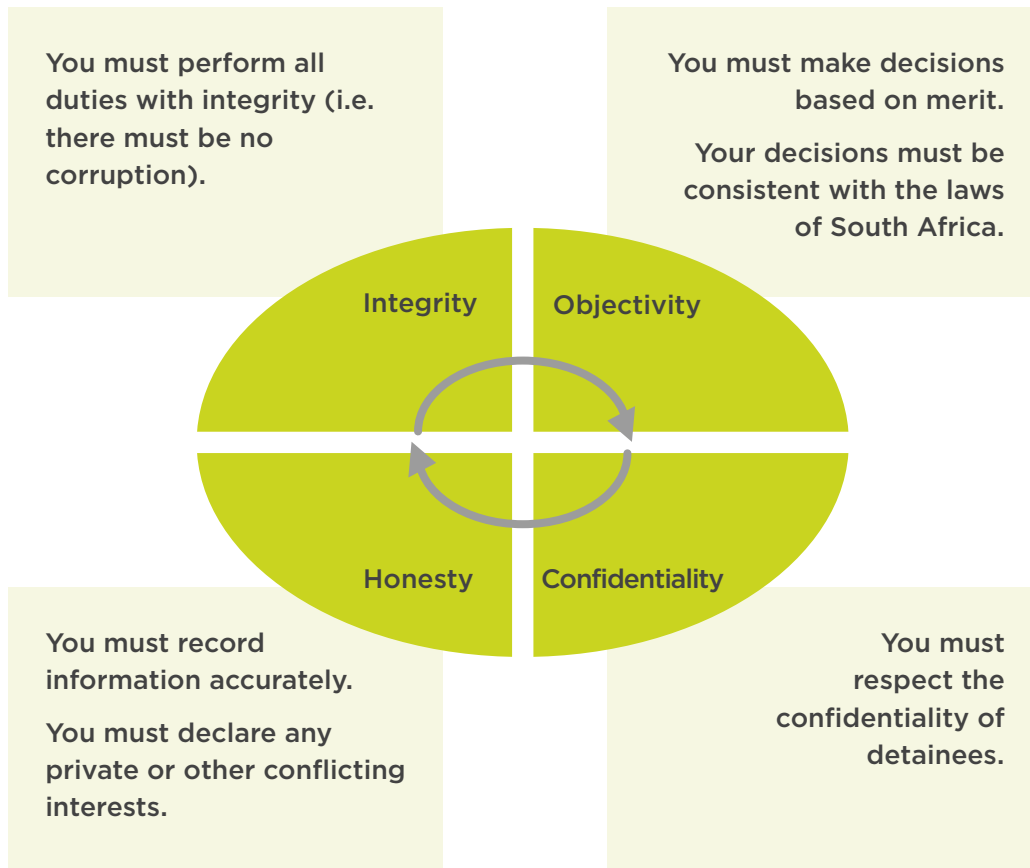
The Code of Conduct is binding on all independent custody visitors and is attached as Annexure 1.

If you don't adhere to the Code of Conduct, you may be sanctioned for misconduct.



DISCUSS: Four guiding principles

There are four guiding principles that independent custody visitors must adhere to when performing their work. These are shown in the diagram below:



The Code of Conduct gives more detail on how independent custody visitors should conduct themselves and how they should act in relation to police officials and detainees.

Read the three case studies below and give your opinion on whether the independent custody visitors concerned adhered to, or did not adhere to, the Code of Conduct. Then read the relevant sections in the Code of Conduct.

CASE STUDY #1

Lesedi and John arrive unannounced at the Eshowe Police Station to inspect the police custody cells. They walk in and tell the officer behind the desk that they are there to do an inspection. The officer is busy taking down an affidavit at the time. Lesedi and John are impatient and soon start accusing the officer of delaying on purpose. They don't swear at the officer, but they do use foul language when talking to each other about what they think is going on. The officer asks that they wait until she has finished taking down the statement and indicates that she will then help them. However, the independent custody visitors say they are going to report her to her superior if she does not attend to them first.

CASE STUDY #2

Behati and Mpho have an appointment to inspect Thohoyandou's police custody cells. Unfortunately, Behati completely forgets about the appointment and is out jogging when Mpho calls to ask her where she is. Deciding that it is better to go as she is (in her running gear and a bit sweaty) than to arrive late or not at all, Behati stops jogging immediately and goes to join Mpho. When they get to the police station, she realises that she does not have her badge, her pen or her notebook. The captain is not pleased to see Behati dressed as she is. She apologises and the captain says with a laugh that he is going to report her to her senior unless she gives him a 'small consideration'.

CASE STUDY #3

Thomas and Thandi are visiting police custody cells in Hillbrow on a Saturday night. When they get there, the cells are full of people. Men and women are detained together. One person, Thembeke, asks to speak to Thandi. Thembeke shows Thandi a big bruise which she says she got from a police officer when she was arrested. To Thandi, it seems as though Thembeke is a man dressed up as a woman. (Thembeke is actually transgender.) Thandi's personal view is that being transgender is all nonsense – you're either born a boy or a girl. She disapproves of transgender people, as well as of gays and lesbians. So, she does not want to refer the complaint to the South African Human Rights Commission.

CODE OF CONDUCT

SECTION 4



Performance of duties

In the performance of duties, an Independent Custody Visitor should:

- 4.1 Act in a manner that will uphold and promote the aims and objectives of the Independent Custody Monitoring Scheme;
- 4.2 Treat all persons with respect and dignity;
- 4.3 Exercise judgement fairly and impartially in observing and assessing the treatment of persons in custody and adherence by officials to the regulatory framework;
- 4.4 Conduct all visits and interact with all South African Police Service members, detainees, or other persons present at the station without prejudice or discrimination, directly or indirectly, against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- 4.5 Be punctual in the execution of duties and appointments with the detention facilities;
- 4.6 Project an image of professionalism, and dress in clothes that are appropriate for the detention environment;
- 4.7 Uphold the values of this Code of Conduct by ensuring that personal and professional conduct is of the highest standard;
- 4.8 Safeguard and make responsible use of information and resources to which they have been given access;
- 4.9 Record observations and information in an honest, transparent and accurate manner;
- 4.10 Honour the confidentiality of conversations with detainees, and consider all records, documents and discussions as being confidential;
- 4.11 Perform all duties and conduct all private affairs in a manner that avoids conflicts of interest;
- 4.12 Refrain from engaging in any transaction or action that is in conflict with or infringes on the performance of official duties;
- 4.13 Refrain from acting in a manner that will jeopardise the safety of a person in custody; and
- 4.14 Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of the Independent Custody Monitoring Scheme.

CODE OF CONDUCT



SECTION 5.1

Relationship with members of the South African Police Service

An Independent Custody Visitor should:

- 5.1.1 Honour and respect the policies of the police station and act in compliance with them in the performance of all duties;
- 5.1.2 Cooperate with the Station Commander and other members of the South African Police Service in the performance of all duties; and
- 5.1.3 Use appropriate channels to raise any issues of concern during the performance of duties.

Independent custody visitors should be aware of, and comply with, procedures at the police station being monitored. If you identify non-compliance by the SAPS with relevant laws and standing orders, you must record the details of non-compliance accurately and comprehensively using the questionnaire (we will speak about this in Module 5). You should also try to find out the reasons for non-compliance, but should avoid accusations and confrontations with the SAPS's station command.

CODE OF CONDUCT



SECTION 5.2

Your relationship with detainees

An Independent Custody Visitor should:

- 5.2.1 Put the detainees' rights first in the performance of duties;
- 5.2.2 Refrain from making any promises or committing to personally assist any detainee;
- 5.2.3 Refrain from abusing the position of Independent Custody Visitor to promote personal or financial gain;
- 5.2.4 Respect and protect every detainee's right to dignity, and all rights enshrined in the Constitution of South Africa; and
- 5.2.5 Follow all lawful directives, instructions and standing orders when dealing with persons in custody.

As an independent custody visitor, you may come into contact with detainees during the course of your duties and engage in discussions with them. In this situation, you must be careful to ensure that you respect the rights to privacy and dignity of detainees, and refrain from engaging in any conduct or making any promises to personally assist any detainee. Rather, complaints received should be referred to the South African Human Rights Commission by the independent custody visitor following the conclusion of the monitoring visit.

Risks and threats as an independent custody visitor

While there is conduct on the part of an independent custody visitor that is obviously unacceptable or even criminal, sometimes there are dilemmas that are not so clear-cut. We saw this in the case study above when Behati had to weigh up the advantages/disadvantages of either being late or presenting herself in dress that was inappropriate.

The following are some other risks and threats that you may encounter in your work as an independent custody visitor.

■ Risk of corruption

Just as corruption is an occupational risk facing the police, it is also a risk for an independent custody visitor. Where an independent custody visitor identifies practices that are not compliant with South Africa's legal framework relating to police custody, this may lead to people being disciplined or criminally prosecuted. This places the independent custody visitor in a position where people, particularly those responsible for the non-compliance, may try to corruptly influence the independent custody visitor's checklists or reports in order to avoid facing accountability. An independent custody visitor therefore needs to have the integrity to resist the temptations of corruption.

■ Cutting corners or using illegitimate means

Independent custody visitors may face a conflict between ends and means, particularly where it seems clear that legitimate ends cannot be achieved without using illegitimate means. It may seem unlikely that members of an independent custody monitoring scheme involved in monitoring human rights would resort to human rights violations, but some may be inclined to cut corners in other ways, such as failing to respect the dignity or privacy of detainees they speak with or overlooking clear procedural or custodial non-compliance for the sake of expedience or to save time. As an independent custody visitor, you should be exemplary in upholding the rights which you seek to enforce.

■ Dealing with moral dilemmas

An independent custody visitor should be aware of the ethical dilemmas faced by the police and how complex these can be. Where the police appear to have been pursuing legitimate ends, it may seem that they are not ethically blameworthy. You, as an independent custody visitor, therefore need to have clarity regarding the justification and motivation for non-compliance with human rights principles which you are supposed to uphold, but also acknowledge that doubts as to what is ethical may sometimes intrude into your work.

■ **Threats to yourself**

The people who are the subject of monitoring may use methods to avoid scrutiny or legal accountability. This may include threats to harm independent custody visitors involved in monitoring activities. Monitoring may therefore require independent custody visitors to have a degree of moral courage as well as clarity on how to assess and respond to such threats.

Other basic principles for monitoring police custody

- Do no harm.
- Exercise good judgement.
- Respect the authorities and the staff in charge.
- Respect the persons deprived of their liberty.
- Be credible.
- Respect confidentiality.
- Respect security.
- Be consistent, persistent and patient.
- Be accurate and precise.
- Be sensitive.
- Be objective.
- Behave with integrity.
- Be visible.



DISCUSS: Re-evaluate your role as an independent custody visitor

Having dealt with this section on principles, risks and threats, how do you feel about being an independent custody visitor?



MODULE 2

Why independent police custody monitoring?



THE PROBLEM

Currently, in South Africa, there is a gap with regard to a regular, independent system for monitoring places of police detention. Although there is a comprehensive police accountability framework, and while the civilian secretariats at national and provincial level often visit police stations, there is still no consistent, or regularly consistent, independent monitoring of our police custody facilities. Furthermore, as we will examine in more detail in Module 3, South Africa has, since July 2019, been under an international legal obligation to ensure the regular monitoring of police custody facilities in terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The consequence of this is that we have no reliable evidence on important aspects of police custody. For example, we don't know whether procedures are being observed or whether arrestees are being tortured; and we don't have first-hand evidence of conditions in cells, such as ventilation or access to water.

THE SOLUTION: Establish an independent custody monitoring scheme to provide oversight of police custody

A regular, consistent and independent custody monitoring scheme designed to provide oversight of police custody is therefore proposed as part of the solution.


The independent custody monitoring scheme is a system of announced and unannounced visits by accredited civilians to police custody facilities for the purpose of monitoring adherence to procedural safeguards in respect of detention and conditions of detention. In addition, independent custody monitoring of police stations may help to prevent human rights abuses, such as torture, and ensure that the human rights of detainees are upheld.



BRAINSTORM AND DISCUSS: Gaps in information on police custody

Even if you have never been in a police cell, you can probably think of some issues that you believe are worth monitoring. The photographs below are meant to prompt you into thinking about some of the issues that you, as an independent custody visitor, might want to look at:



Write down some of the issues that you think should be monitored	

You probably came up with a list similar to the following one:

- Numbers in custody;
- Time in custody (longer than the allowed 48 hours);
- Safeguards complied with or disregarded;
- Torture;
- Paperwork and whether the details of detainees are accurately recorded;
- Abuse of detainees;
- Children;
- Sex workers;
- LGBTI;
- Foreign nationals;
- Deaths in custody;
- Assault by police officers;
- Assault by other detainees;
- Toilets;
- Overcrowding;
- Extreme temperatures;
- Ventilation;
- Lighting; and
- Meals

APCOF Research Paper No. 26 identified key risks in the police custody environment. These include:

- Escape – which may include the risk of assault on, or injury to, the police or others;
- Torture or other abuse by officials;
- Death from injuries sustained prior to custody;
- Suicide;
- Death from natural causes;
- Rape and assault by other persons in custody (including the possibility of death as a result of such assaults);
- Risk of death related to substance abuse;
- Misreading symptoms as evidence of substance abuse when they are in fact evidence of head injuries; and
- Overcrowding, which can exacerbate the potential for friction between people in custody.
- The independent custody visitor scheme is therefore designed to minimise the risks in the police custody environment by ensuring that the regulatory framework that applies to police custody is consistently applied at every SAPS station in South Africa.



MODULE 3

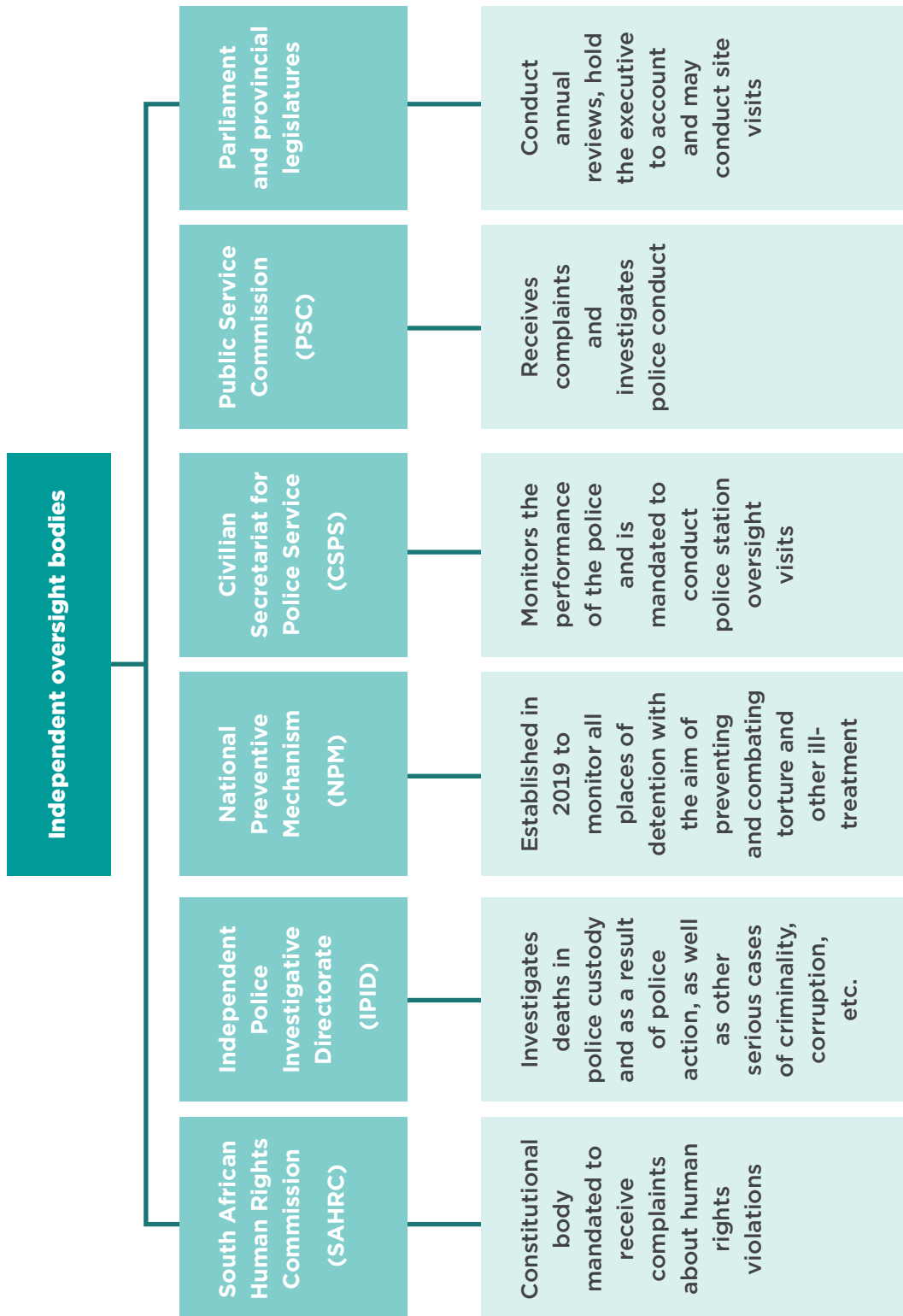
Other organisations
investigating and
monitoring
police custody
in South Africa



INTRODUCTION

You may be asking: Are there not other organisations monitoring police custody in South Africa, and, if so, surely they are tasked by law to do this work?

You are right on both counts. There are a number of oversight and accountability mechanisms. These mechanisms, termed ‘**independent oversight bodies**’, are set out below:



Despite their mandates to conduct oversight of police custody, this is not happening regularly and consistently. That is why we are proposing to re-establish an independent custody monitoring scheme for police custody.

There are numerous examples of independent custody visitor schemes internationally, as described in APCOF (African Policing Civilian Oversight Forum) Research Paper No. 20:

EXTRACT FROM APCOF RESEARCH PAPER NO. 20

Independent monitoring of police detention facilities in South Africa



Various countries have introduced models to independently monitor police custody facilities. Much of the impetus in respect of such monitoring has been driven by the steady ratification of the Optional Protocol to the Convention against Torture (OPCAT) and the introduction of national preventive mechanisms (NPMs). These mechanisms range from locating this function within the national human rights institutions (NHRIs) to the establishment of dedicated, independent visitor schemes.

The type and range of independent monitoring schemes for police custody include:

- **National human rights institutions (NHRIs):** Of the 84 states that have ratified OPCAT, 65 have designated their NHRI as the NPM. In Africa, this includes South Africa, Togo, Mozambique, Mauritius and Mali. Many other African NHRIs also have internal systems for the regular and independent monitoring of police custody. These include Kenya, Sierra Leone, Algeria, Comoros, Mauritius, Nigeria, Namibia (through the Office of the Ombudsman) and Uganda.
- **Independent custody visitor schemes:** These schemes, which function in the same way as the South African independent custody monitoring scheme, operate in Malawi and the United Kingdom. In some instances, they also form part of the NPM.
- **An independent police conduct authority:** This authority, which is presided over by a member of the judiciary, operates in New Zealand as part of its NPM.

BRIEF HISTORY OF AN INDEPENDENT CUSTODY VISITOR SCHEME IN SOUTH AFRICA

In 1993, an independent custody visitor scheme pilot was introduced in a number of police stations in South Africa as a 'community visiting scheme'. Since, at the same time, community police forums (CPFs) were being set up, the visiting schemes became incorporated as subcommittees of the CPFs.



The schemes soon petered out as the political mood regarding detainees shifted as a result of a 'tough-on-crime' approach to policing, a scaling back of the CPFs' role as an accountability mechanism in favour of a stronger partnership orientation towards collaboration with the South African Police Service (SAPS), and the formation of the Independent Complaints Directorate (ICD) (now IPID).

- By 1999, there was only one entity promoting a system of regular community visitors to police cells as a means to address the recurring allegations of police torture. This was a KwaZulu-Natal based non-government organisation, the KZN Campaign against Torture, which eventually closed due to lack of funding.
- While there is consistent concern about the lack of independent and regular monitoring of police cells, specific action has not been taken. In 2012, and with the establishment of IPID to replace the ICD, the last vestiges of systematic police cell monitoring disappeared when this mandate was transferred from the former ICD to the Civilian Secretariat of Police Service (CSPS). In this new dispensation, the Secretariat undertakes police station visits but is yet to action a system of regular custody inspections across South Africa.
- In 2018, the South African government ratified OPCAT, which necessitated the establishment of a mechanism, known as the National Preventive Mechanism (NPM), to monitor all places of detention in South Africa. This independent custody visitor scheme was designed with the possibility of OPCAT ratification in mind, and, now that the NPM has been established, the scheme will form part of the NPM.

CONTRIBUTION OF AN INDEPENDENT CUSTODY MONITORING SCHEMES

Independent custody monitoring schemes differ from other oversight bodies in that their work is both proactive and reactive. Their purpose is to ensure that police stations and holding cells nationally, are visited.

Independent custody visitor schemes constitute an **additional** independent monitoring scheme and are part of a comprehensive monitoring framework, under the auspices of the NPM for all places where people are involuntarily deprived of their liberty.

The National Preventive Mechanism (NPM)

In March 2019, the Parliament of South Africa approved the ratification of OPCAT. By ratifying OPCAT, South Africa has made a binding legal commitment to establish an NPM to prevent acts of torture and other ill-treatment. The NPM will allow all places of detention to be visited and must be functionally independent from the departments and institutions responsible for the management of detention facilities. The mandate in terms of the NPM extends to any place of detention, including those for the imprisonment of adults under both a civilian (correctional services) and military jurisdiction and for the secure institutionalisation of children, as well as police custody, psychiatric institutions, and immigration detention facilities.

South Africa does have mechanisms for performing this monitoring task in select places of detention, as outlined above. However, in the case of police custody, there is currently no mechanism for independent monitoring, which means that there is limited information about conditions of detention, the treatment of persons within those facilities, and whether their constitutional right to freedom from torture is being upheld and respected. In terms of police custody, IPID does not visit police cells but can investigate complaints of torture. Notwithstanding this, IPID can only respond to complaints and has no mandate to make regular visits to police custody to actively prevent torture and other ill-treatment.

The ratification of OPCAT promises to give South Africans an urgently needed measure of protection against torture and other ill-treatment through the establishment of an NPM that can provide independent oversight across all places of detention. The South African Human Rights Commission (SAHRC) has been given responsibility to coordinate the operation of the NPM. In this role, it will receive information, report on and monitor the work of existing bodies having oversight over places of detention (including IPID, the Judicial Inspectorate for Correctional Services (JICS), the Military Ombud and the Health Ombud), and continue conducting its own oversight visits to places of immigration detention. The capacity of these existing institutions to carry out independent visits will be tested once they are brought under the banner of the NPM, which demands functional independence and transparency. Indeed, the move towards a coordinated NPM may encourage much-needed reform of oversight mechanisms and, in some cases, the establishment of such mechanisms. The implementation of the NPM will also plug the existing gaps in current oversight, with, arguably, the most urgent being regular oversight monitoring of police custody.

A further question that needs to be addressed is: How can an independent custody monitoring scheme address the current gap in the accountability framework for policing in South Africa?

The independent custody monitoring scheme will contribute to closing the gap between human rights standards and policing practice in South Africa by:

- Contributing to the NPM by providing independently sourced data from police station custody visits;
- Increasing transparency with regard to the oversight of police cells;
- Contributing statistics and other relevant information on the use of torture and on conditions of police custody;
- Strengthening the promotion and protection of human rights;
- Strengthening access to redress for people who are held in custody;
- Improving coordination among sector stakeholders, with a key role for civil society in the development and implementation of a system of police custody monitoring;
- Identifying systemic issues relating to the use of, and conditions in, police custody that will provide an entry point for the development of remedial action by relevant stakeholders;
- Highlighting the challenges specific to vulnerable groups; and
- Providing an evidence base for targeted remedial action by relevant stakeholders.



MODULE 4

Human rights and
police custody



Before we proceed to the practical aspect of monitoring, let's take a moment to consider the general concept of human rights, for it is against the background of the human rights protections afforded to persons in conflict with the law and deprived of their liberty by the police that the checklist for independent custody visitors has been devised.

The concept '**human rights**' refers to rights and values that are:

- Universal – they apply to everyone, everywhere;
- Inalienable – they cannot be alienated (given away, bought/sold or taken away); and
- Inherent – they exist within us all.

This is so because we are human. These rights are the basis of our humanity.

Human rights are not connected to religion. Every human being has the same rights, regardless of their religion or lack of religion.



DISCUSS: Human rights especially relevant to police custody

What are some human rights? And which are specifically relevant to police custody?

The following are a number of these rights:

- Freedom from discrimination;
- Freedom of conscience;
- Equality and equal protection before the law;
- The right to dignity;
- Freedom from torture and other ill-treatment;
- The right to liberty and security of the person;
- The right to have a cause heard;
- Freedom of movement;
- The right to life;
- The right to privacy;
- The right to receive and disseminate information;
- Freedom of expression;
- Freedom of association;
- The right to participate freely in public affairs;
- Equal access to public services; and
- The right of assembly.

HOW HUMAN RIGHTS ARE ENSHRINED IN MODERN LAW

To enforce and protect human rights, the relevant principles have been articulated in a range of international, regional and country-specific laws. These laws give legal expression to the concept of human rights and make it more concrete.

International instruments

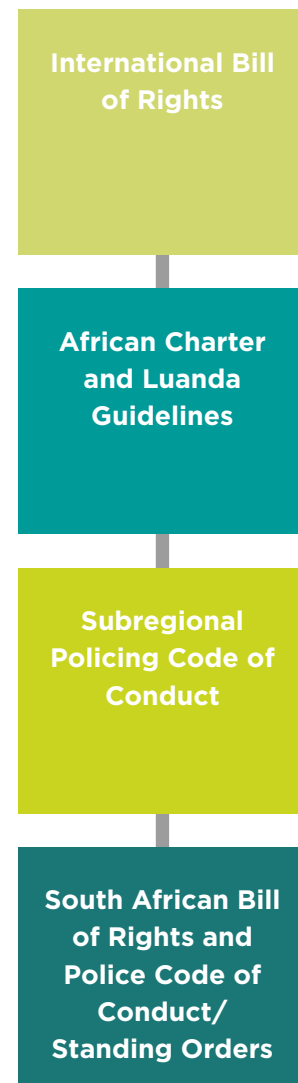
On an international level, countries sign treaties and conventions embodying these rights. If the treaty or convention is ratified by the country's parliament, it becomes law and the country has a legal duty to respect the treaty or convention and the rights it protects.

The main international sources of human rights law are:

- The International Covenant on Civil and Political Rights (ICCPR); and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

Together, these make up the International Bill of Rights. The human rights we identified in the activity that we just completed are all contained within this International Bill of Rights. In relation to certain rights such as freedom from torture, the right to non-discrimination and the right to gender equality, these have been further developed and expanded into additional international treaties which provide more specific detail on the measures states must take to uphold, protect and promote these fundamental rights.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Convention against Torture or UNCAT) is one such treaty, and it is particularly relevant to the establishment of independent custody monitoring schemes and to the work of independent custody visitors. In addition to promoting the prevention of torture through measures such as detention monitoring, its Optional Protocol (OPCAT) requires states to establish National Preventive Mechanisms (NPMs) with a mandate to conduct regular visits to all places where persons are deprived of their liberty. One of the key functions of NPMs is to identify systemic challenges within places of detention with a view to making recommendations to improve the protection of persons deprived of their liberty. The function of an NPM is, in this regard, dependent on independent custody visitors.



African instruments and guidelines

The African Charter

Africa has embraced the human rights-based approach through the African Charter on Human and Peoples' Rights. The Charter was adopted by the Assembly of the Organisation of African Unity (OAU) on 28 June 1981, in Nairobi, Kenya, and came into force on 21 October 1986. By 1999, the African Charter had been ratified by all the member states of the OAU. The African Charter established the African Commission on Human and Peoples' Rights on 2 November 1987 in Addis Ababa, Ethiopia. The Commission's Secretariat is now in Banjul, The Gambia.



The Commission is officially charged with three major functions:

- The protection of human and peoples' rights;
- The promotion of human and peoples' rights; and
- The interpretation of the African Charter on Human and Peoples' Rights.

The two most important articles in the African Charter relating to monitoring of the police are:

- Article 5 – which states that all people have the right to dignity and to freedom from torture and cruel, inhuman or degrading punishment and treatment; and
- Article 6 – which states that all people have the right to liberty and security of the person and which prohibits arbitrary arrest and detention.



The Luanda Guidelines

In 2014, the African Commission adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (known as the Luanda Guidelines).



The Robben Island Guidelines

In 2000, the African Commission adopted the Robben Island Guidelines on the prohibition and prevention of torture in Africa.

As the titles of the two sets of guidelines suggest, the rights of people under arrest and in police custody are set out. In addition, it is specified that states must take measures to ensure that rights such as the right to dignity, liberty and security of the person are upheld in practice.

It is also stated that, in order to fulfil the provisions of the African Charter, states are encouraged to establish 'independent monitoring bodies' in respect of police custody.



Subregional level: Code of Conduct for Policing in the region



At the subregional level, the Southern African Regional Police Chiefs Coordinating Committee has adopted a Code of Conduct for policing in the region. The Code of Conduct reflects the principles of human rights law as set out at both the international and African regional level, including the prohibition of torture and cruel, inhuman or degrading treatment by police officials and the protection of the health of persons in police custody.

South African Bill of Rights in the Constitution



The Bill of Rights contains the fundamental rights of all South Africans, including the right to dignity and the right to equality, and provides specific protections for arrested, detained or accused persons. The Bill of Rights also states when rights may be limited.

Section 8 of the Constitution confirms that:

[t]he Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.



This means that police officials must ensure that they uphold and protect the rights of everyone, including people they arrest and people in police custody.

An accused, arrested or detained person should only experience a limitation of those rights that relate to their detention, such as freedom of movement. All other rights will apply in the custody environment, including the right to life, to freedom from torture, to access health care and to be provided with adequate food and water.

An independent custody monitoring scheme is designed to check that these human rights standards are complied with in practice by ensuring that the procedural safeguards articulated in the Bill of Rights, and operationalised through South African law and Standing Orders of the South African Police Service (SAPS), are observed.



BRAINSTORM AND DISCUSS: The Bill of Rights and police custody

What sections of the South African Bill of Rights do you know that are relevant to police custody? Below are the pertinent sections:

Section	Right/protection
9 - Equality	(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. .. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. ..
10 - Human dignity	Everyone has inherent dignity and the right to have their dignity respected and protected.
11 - Life	Everyone has the right to life.
12 - Freedom and security of the person	(1) Everyone has the right to freedom and security of the person, which includes the right - (a) not to be deprived of freedom arbitrarily or without just cause; (b) not to be detained without trial; (c) to be free from all forms of violence from either public or private sources; (d) not to be tortured in any way; and (e) not to be treated or punished in a cruel, inhuman or degrading way. ..
14 - Privacy	Everyone has the right to privacy, which includes the right not to have - (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed.

Section	Right/protection
<p>27 - Health care, food, water and social security</p>	<p>(1) Everyone has the right to have access to -</p> <ul style="list-style-type: none"> (a) health care services, including reproductive health care; (b) sufficient food and water; (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. <p>..</p> <p>(3) No one may be refused emergency medical treatment.</p>
<p>28 - Children</p>	<p>(1) Every child has the right -</p> <p>..</p> <ul style="list-style-type: none"> (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be - <ul style="list-style-type: none"> (i) kept separately from detained persons over the age of 18 years; and (ii) treated in a manner, and kept in conditions that take account of the child's age. <p>..</p> <p>(2) A child's best interests are of paramount importance in every matter concerning the child.</p> <p>(3) In this section, 'child' means a person under the age of 18 years.</p>
<p>32 - Access to information</p>	<p>(1) Everyone has the right of access to -</p> <ul style="list-style-type: none"> any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.
<p>34 - Access to courts</p>	<p>Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.</p>

Section 35 in the Bill of Rights provides a comprehensive list of specific rights that will apply to arrested, detained and accused persons:

Section	Right/protection
<p>35 – Arrested, detained and accused persons</p>	<ul style="list-style-type: none"> (1) Everyone who is arrested for allegedly committing an offence has the right – <ul style="list-style-type: none"> (a) to remain silent; (b) to be informed promptly – <ul style="list-style-type: none"> (i) of the right to remain silent; and (ii) of the consequences of not remaining silent; (c) not to be compelled to make any confession or admission that could be used in evidence against that person; (d) to be brought before a court as soon as reasonably possible, but not later than – <ul style="list-style-type: none"> (i) 48 hours after the arrest; or (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day; (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and (f) to be released from detention if the interests of justice permit, subject to reasonable conditions. (2) Everyone who is detained, including every sentenced prisoner, has the right – <ul style="list-style-type: none"> (a) to be informed promptly of the reason for being detained; (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly; (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly; (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released; (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

Section	Right/protection
<p>35 – Arrested, detained and accused persons</p>	<ul style="list-style-type: none"> (f) to communicate with, and be visited by, that person’s – <ul style="list-style-type: none"> (i) spouse or partner; (ii) next of kin; (iii) chosen religious counsellor; and (iv) chosen medical practitioner. <p>(3) Every accused person has the right to a fair trial, which includes the right –</p> <ul style="list-style-type: none"> (a) to be informed of the charge with sufficient detail to answer it; (b) to have adequate time and facilities to prepare a defence; (c) to a public trial before an ordinary court; (d) to have their trial begin and conclude without unreasonable delay; (e) to be present when being tried; (f) to choose, and be represented, by a legal practitioner, and to be informed of this right promptly; (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly; (h) to be presumed innocent, to remain silent, and not to testify during the proceedings; (i) to adduce and challenge evidence; (j) not to be compelled to give self-incriminating evidence; (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language; (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted; (m) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has changed between the time that the offence was committed and the time of sentencing; and (n) of appeal to, or review by, a higher court.

Section	Right/protection
	<p>(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.</p> <p>(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.</p>

HUMAN RIGHTS AND THE REGULATORY FRAMEWORK FOR SAPS CUSTODY MANAGEMENT

The regulatory framework that applies to the management of custody by the SAPS draws on the human rights framework that we have just discussed. The SAPS Standing Orders and National Instructions that set out the rules of custody management for SAPS officials aim to give operational effect to human rights. So, for example, when the SAPS Standing Orders limit the use of restraints on persons in custody, they are giving effect to South Africa’s obligations regarding torture and other ill-treatment.

At the time of training, the regulatory framework for the management of persons in SAPS custody is primarily embodied in:

- Standing Order 361G - Handling of persons in the custody of the service from their arrival at the police station.

This is the most important Standing Order relating to your work as an independent custody visitor, and you should familiarise yourself with its contents.

However, there are a number of other Standing Orders and National Instructions that also play important roles in the regulatory environment pertaining to police custody. These include:

- Standing Order 341 (General) - Arrest and the treatment of an arrested person until such person is handed over to the community service centre commander;
- Standing Order 350 (G) - Use of restraining measures;
- Standing Order 362 (G) - Custody register (SAPS 14);
- National Instruction 8 of 2016 - Medical treatment and hospitalization of a person in police custody;
- National Instruction 6 of 2014 - The prevention and combating of torture of persons; and
- National Instruction 2 of 2010 - Children in conflict with the law.

The independent custody monitoring scheme has been designed so that **SAPS regulatory compliance with these Standing Orders and National Instructions, as well as the broader human rights framework**, can be assessed.

CASE STUDY Applying the Bill of Rights to a detainee



During a police station monitoring visit on a Friday morning, you encounter the following issues:

- *Three detainees have been held at the police station since Monday afternoon, while two others have been there since Wednesday night.*
- *When you ask the officers about the detainees who have been held since Monday afternoon, one of them comments that the detainees will 'speak eventually - they have the information we need; it's just a matter of getting it out of them'.*
- *When you check the Occurrence Book and Custody Register, you see no entries regarding legal assistance for one of the detainees, who is not a South African national and who does not speak any of South Africa's official languages.*
- *While checking the cells, you notice a young person wearing a high-school jersey in a cell with people who are clearly adults.*
- *During your cell observations, you need to use the light from your cell phone to find your way, as you worry about tripping or missing a step as you pass through. You also notice that it's cold enough to warrant wearing a coat on this cold Johannesburg morning, and regret not bringing it with you.*
- *While passing a cell, one of the detainees calls out and asks whether you are there to provide him with his medication, and when he will have a chance to see the doctor at the hospital for his medical condition.*
- *The police station has a room that seems to be used to allow lawyers to speak to their detained clients, but, when you pass by the open door, you see a woman seated in there. When you ask an officer what she's doing there, the officer states that there is 'nowhere else to put her', as there is no spare cell for women. The woman has a small child on her lap, but you don't recall any entry about a child in either the Occurrence Book or Custody Register.*
- *You overhear officers talking about a detainee. They are confused as to whether the person is 'just drunk, or it's something else'.*
- *You observe a detainee in a cell who is wearing handcuffs, put on in such a way that his/her hands are resting in front of his/her body.*
- *As you are leaving, you hear a woman at the front desk ask whether she can visit her sister now, or whether she will have to return later. She seems anxious and mentions that she has already come to the police station twice to see her sister and can't be refused again as she has no more money for another return taxi trip.*

Do any of these observations give rise to constitutional issues? Do the SAPS Standing Orders provide the SAPS with specific instructions for dealing with the issues raised?



MODULE 5

Conducting
independent
monitoring visits



Now that you have some orientation and context in respect of the monitoring and inspection of places of police custody, we will look specifically at how to conduct an inspection. We will use screenshots of the questionnaire that we have developed for this purpose.

First, let's look at how you should prepare for a visit to a place of police custody.



BRAINSTORM AND DISCUSS: Preparing for a visit

What would you do to make sure that you are ready to conduct an inspection of police custody cells?

PREPARING FOR A VISIT

■ Be informed

Gather information about the police station you are planning to visit. Know the regulations and procedures at the police station. Know what to look for.

■ Vary the visits

Making unannounced visits means that police officials must not be expecting you. Don't always visit on the same day of the week or at the same time.

■ Prepare for the visit in a practical way

- Make sure you set aside enough time for your visit. Don't rush the process.
- Make sure you have your badge indicating that you are an independent custody visitor. It is also useful to have a pamphlet that explains what the independent custody visitor scheme is.
- Take along your ID.
- Make sure you have the cell phone that you have been given specifically for this work. Ensure that it is fully charged and take along a charger and two-pronged plug just in case you need to recharge the phone.
- Don't take a handbag or laptop with you. These will hinder you, as you will have to carry them around.
- Wear comfortable, smart-casual clothes. High heels may prove to be uncomfortable as you walk around the cells. Take a cardigan with you in case it is cold.
- Don't visit if you have a cold or flu that you could pass on.

■ **Go in pairs**

You must conduct the visit together with a colleague. It is also preferable to have both a male and a female in the team. Assign a team leader and agree on your roles. One could, for instance, conduct the interviews and the other complete the records.

■ **At the station**

- Introduce yourself to all the police officials at the police station when you arrive. Offer your ID, badge, etc.
- Have an initial discussion with the head of the police station.
- Explain what you are doing.
- Don't rush the process.
- Remain polite at all times.
- Tour the station.
- Interview detainees.
- Check the custody and other registers as well as relevant documents.
- Conduct a final brief with the head of the facility.

As we go through the questionnaire, you will encounter, and consider, a number of documents that are relevant to the police custody regulatory environment, including the Occurrence Book, the Custody Register, the Notice of Constitutional Rights, and a range of SAPS Standing Orders and National Instructions. These are provided in the annexures. However, the most important document, and the one with which you should be the most familiar prior to conducting your first visit, is:

Standing Order (General) 361: Handling of persons in the custody of the service from their arrival at the police station.

This is the Standing Order with which the police must comply from the moment that they arrest someone. It also applies to their conditions while in custody.

The Standing Orders defines a person in custody as:

a person who has been arrested and who is in the custody of the Service and who has not yet been handed over or handed back to the Department of Correctional Services or any other institution for detention.



THE INDEPENDENT CUSTODY VISITOR QUESTIONNAIRE

Introduction

- The questionnaire has been made available via a cell phone-based application (app).
- As we work through this section of the training, you will be asked to access the app for the first time.
- The app will be on your dedicated cell phone that may only be used for this purpose.
- There is a PDF copy of the questionnaire in Annexure 3 to this training manual if you do not have access to the app during this training.

Using the app

- All the information you collect is confidential.
- You have to answer each question chronologically.
- You must answer all the questions.
- There are 'Further information' text boxes at the end of every section of the app. These give the independent custody visitor an opportunity to provide additional contextual information as required.
- At the end, you must submit the form. We explain the submission process at the end of this section.
- **Never** use 'Submit' before the survey is complete. There is no 'Undo', 'Reverse' or 'Cancel' option for 'Submit'.

STRUCTURE OF THE VISIT

Independent custody visitors are expected to conduct their visits using the app and by answering the questions sequentially.

The structure of the visit is as follows:

- Arrive and introduce yourself to the station commander/officer in charge of the police station at the time of the visit. Information about the time and place of your visit, and verification of the presence of a commanding officer, will be recorded on the app.



DISCUSS: No authorised/designated official present

You arrive at the station unannounced and ask for the station commander. You are told that the station commander and the acting station commander are not there. All the other officials there refuse to sign as the designated officer. What do you do?

Completing Section A: Station detention facilities – basic information

The basic information collected in Section A includes information about: the number of cells; whether these cells are overcrowded; whether regulations regarding the separation of particular categories of detainees are being complied with; and vulnerable or at-risk detainees. The questions relate specifically to the requirements of the relevant Standing Orders and National Instructions. Information is obtained by putting these questions directly to the SAPS member who has been designated to provide you with such information. Ideally, this will be the officer in charge of custody management at the time of your visit.

Completing Section B: Station detention facilities – visual inspection

Section B gives the independent custody visitor an opportunity to verify the information received from the designated SAPS official in Section A through an actual visual inspection of the detention facilities. Again, the questions relate directly to requirements in the Standing Orders with respect to conditions of detention, the separation of detainees, and the safe custody of vulnerable or otherwise at-risk detainees. The section also includes additional questions regarding the use of restraints in respect of detainees in cells.



ACTIVITY

Read section 13 of the Standing Order and familiarise yourself with the minimum standards of conditions of detention.

CASE STUDY Person in custody who is under the influence or who is mentally ill



While on a visit to a police station's cells, you see a person with both hands cuffed behind his back and his legs cuffed and chained to a bed. He is mumbling and it seems to you that he is either mentally ill or very drunk and suffering withdrawal symptoms. Read Standing Order 350 below and indicate:

- *How police officials should have dealt with this person in terms of the use of restraints;*
- *What should have been recorded in the Occurrence Book;*
- *To what extent the person should have been visited by police officials or by medical professionals; and*
- *How you would record this on the questionnaire.*

Standing Order (General) 350 dealing with the use of restraining measures

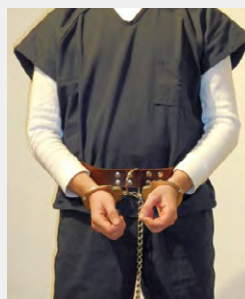


It is worth reading the whole Standing Order, which deals with the use of restraining measures during arrest, while in custody and when being transported. We have summarised the main points here relating to when the person is in custody.

What are restraining measures?

Restraining measures are generally handcuffs or leg cuffs. These can be used in different ways, depending on the extent to which the member thinks the person may be violent or try to escape.

A member must decide whether or not he or she should make use of handcuffs only or handcuffs and leg irons when restraining a person in custody.



The purpose of restraining measures

Restraining measures are intended to:

- Restrict the number of escapes from police custody; and
- Protect members against persons in custody.

When to use restraining measures

The following factors need to be considered:

- The nature and seriousness of the offence;
- Whether there are reasonable grounds to suspect that a person will attempt to escape;
- Where the behaviour (unruliness) of the person makes it difficult to restrain him or her; and
- If necessary for the safe custody of a person or other detainees, or to prevent a person from damaging property.

Ways in which a person in custody must/may be handcuffed

Members must decide, depending on the circumstances, in which way to apply restraining measures.

- Normally, **one clasp** of the cuffs is placed around each one of **the person's wrists and is locked**.

One clasp of the cuffs can also be placed around one of the person's wrists and be locked, **while the other clasp is placed around the other wrist** and the point thereof passed through the first clasp and locked. This method will curtail any excessive free movement between the person's wrists.

- A person in custody **must be handcuffed with his or her hands behind his or her back**. The person's hands must **not be handcuffed in front** of his or her body.
- A police official must **never handcuff himself or herself** to a person in custody.
- If a person is **uncontrollable**, his or her ankles must be secured by means of **leg irons**.
- If it is necessary to place the person in custody under further restraint, the **handcuffs and/or leg irons must be linked by means of a suitable strong cord or belt**.
- To further restrain a person in custody, **the handcuffs may be locked to the leg irons**.
- When dealing with **hardened criminals**, a member may also handcuff a **person to a suitable fixed object** (e.g. the luggage rack of a compartment in a train).

Completing Section C: Notice of Constitutional Rights

The Notice of Constitutional Rights is a book for people in custody detailing their rights. It may also be called 'SAPS 14'. To complete Section C, the independent custody visitor must ask to be shown SAPS 14 and must answer questions regarding the availability of the register for inspection, and whether copies of the register have been signed.

The importance of the Notice of Constitutional Rights, or SAPS 14, is that it provides verification that a person in custody has been notified of their rights while in custody.

The following are key features of the Notice of Constitutional Rights:

- Everyone admitted into police custody must receive this notice.
- They must receive an original copy with the book and serial number of the notice.
- The notice must record a reason for the detention (charge).
- The charge must be explained to the person.

If no one speaks the language of the person, the member must try to find someone who can speak that language, or, if no such person can be found, use a language that they think the detainee may understand.

- The station commander must ask the person in custody to fill in the relevant details and sign for the notice (giving the date, time, etc.).
- If the person is illiterate, the police official dealing with him or her must sign on his or her behalf, and the illiterate person must affix his or her thumbprint.
- If a person refuses to sign, a third person must sign as a witness that the rights concerned have been explained.
- An original copy must be given to the detainee.
- The second copy of the notice remains in the Occurrence Book.

Completing Section D: The Occurrence Book, SAPS 10 (OB)

The Occurrence Book (OB) is a very important part of an independent custody visitor’s survey. It should record everything that happens in a police station. You need to spend time reviewing the Occurrence Book and uploading a photo of it if it is available. The information obtained from the OB verifies whether SAPS officials at the police station are complying with their obligation to record information as required by the Standing Orders. This includes information in relation to key human rights issues such as access by detainees to persons such as lawyers and family, the proper procedure for conducting searches, special provisions made for detainees who are under 18 or who are otherwise vulnerable or at risk, and the use of restraints.

OCCURRENCE BOOK

1.	Monthly serial no.				
2.	FULL NAME AND SURNAME OF PERSON				
3.	AGE				
4.	GENDER				
5.	ARREST	5.1 Date	5.2 Time (brought in)	5.3 Offence	5.4 CAS number (if available)
6.	MEDICAL PARTICULARS	6.1 SAPS 70	6.2 OB number		
7.	CONSTITUTIONAL RIGHTS	7.1 Book no	7.2 Notice no		
8.	DETAINED	8.1 Date	8.2 Time	8.3 SAPS 22 receipt number	8.4 SAPS 13 receipt number
9.	LEGAL REPRESENTATION				
10.	NOTICE TO NEXT OF KIN				
11.	INVESTIGATION	OB number Out/Back			
12.	SUSPECT CHARGED	12.1 Date	12.2 Time	12.3 OB number	
13.	SENTENCED PRISONER	13.1 Date sentenced	13.2 Date sentence lapses		
14.	RELEASE	14.1 Date of release	14.2 Time of release	14.3 Reason for release	
15.	MEALS	15.1 Brought 15.2 OB number forward			
16.	REMARKS				

Below is a scan of what the OB looks like:

The image shows a scan of a SAPS Occurrence Book form. The top section includes fields for 'MONTH/MAAND' and 'YEAR/JAAR'. Below this is a large table with columns for: 1. Monthly serial no., 2. Full name and surname, 3. Age, 4. Gender, 5. Arrest (with sub-columns for date, time, and offence), 6. Medical particulars, 7. Constitutional rights, and 8. Detained (with sub-columns for date, time, and receipt numbers). The bottom section of the form is divided into three main areas: 9. Investigation, 10. Suspect charged, and 11. Sentenced prisoner, each with further sub-columns for specific details like dates, times, and reasons.

CASE STUDY Person under the influence declining the right to consult with a lawyer



You see in the OB that a man has been arrested for drunk driving after killing a pedestrian. The man is still in custody when you are there and you can see that he is still very drunk. The OB records that he declined the right to consult with a lawyer. What do you do?

Persons under the influence of alcohol or any substance with a narcotic effect



If a person in custody appears to be under the influence of alcohol or any substance with a narcotic effect, and the community service centre commander is of the opinion that such person is not able to understand the information contained in the Notice of Constitutional Rights, the notice must not, at that stage, be issued to the person. An entry must be made in the OB which reflects the fact that the person was not issued with the Notice of Constitutional Rights, as required, and the reasons therefor.

However, it remains the responsibility of the community service centre commander to ensure that such person is issued with the Notice of Constitutional Rights as soon as he or she is in a condition to understand the information contained in the notice.

Completing Section E: Custody Register (SAPS 14)

The **Custody Register** records all the information about people in custody up until the time of their release. You need to have access to this register in order to check that the information in it corresponds with what you observed in the cells when completing Section B.

Completing Section F: Complaints by persons in custody and responses thereto

To complete this section, you will need to ask the station commander (or person delegated to provide you with information at the time of the visit) a number of questions regarding complaints made by persons in custody, and how the police station has handled these complaints. This includes the most common types of complaint received, how they have been resolved, and whether SAPS members have been following procedure and the law with regard to the reporting of complaints of torture and other ill-treatment.

Torture is defined in the Prevention and Combating of Torture of Persons Act 13 of 2013 ('The Anti-Torture Act') and in the United Nations Convention against Torture (UNCAT). For torture to have been committed, four elements must be present:



- There must have been an **act** (or omission) causing severe physical or mental pain to the victim;
- It must have been **intentional** (i.e. not accidental or resulting from a mistake);
- It must have been committed by a **public official** or with a public official's consent or encouragement when acting in an official capacity (failure by a public official to report the act is included); and
- It must have been for a **specific purpose**, for instance to obtain information or a confession or to punish, intimidate or coerce the victim or a third party based on discrimination.

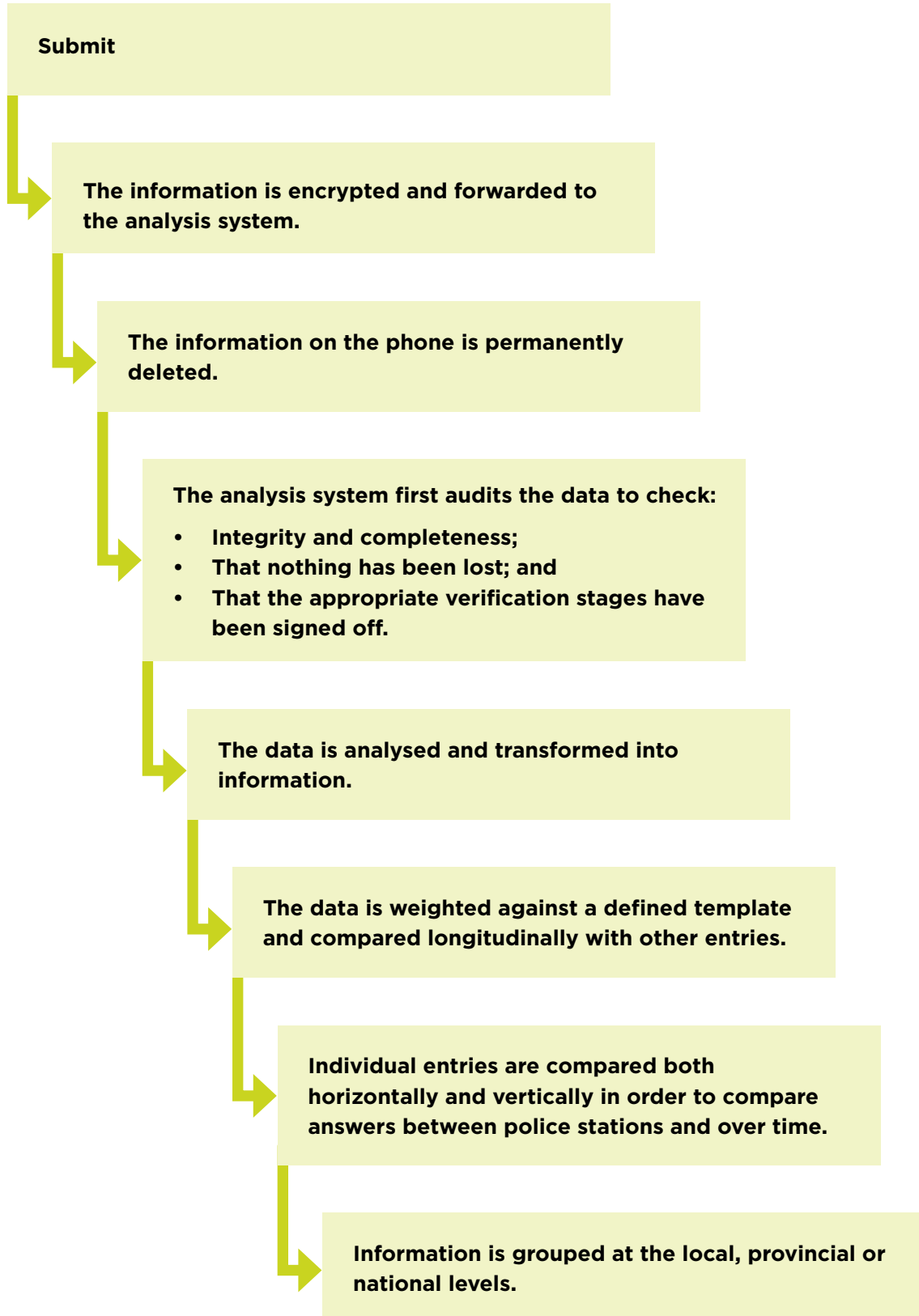
Completing Section G: Final observations and comments

The final section of the questionnaire allows you to record your impressions of the visit, including whether your visit was facilitated by the SAPS in a helpful and knowledgeable manner, and whether information and registers were provided in good time and were in order. It also includes signature boxes for both you and the officer in charge to verify that the visit happened and has been completed.

SUBMITTING THE SURVEY

What happens when you 'Submit'?

The following diagram sets out what happens:





MODULE 6

Evaluation



We would like to know whether you feel that the following aspects of your knowledge on independent custody visitors have been enhanced as a result of this course. Please rate your understanding of the various aspects by comparing the knowledge and understanding you had when you came onto the course with what you have now that you have completed the course:

Aspect	What I knew before this course (Nothing/A little/A lot)	What I know now (Nothing/A little/Much more than before)
Using the questionnaire to monitor policy custody visits		
International, African and South African standards regarding police custody		
Ethical issues related to being an independent custody visitor monitoring police custody		
How the independent custody visitor scheme fits in with other oversight bodies		
The SAPS Standing Orders on police custody		

Is there anything that you found especially useful in this training?

Is there anything you'd like to know more about?

Thank you for your responses.



ANNEXURES

Annexure 1

Code of Conduct for
Independent Custody Visitors



Annexure 2 (Relevant Standing Orders and National Instructions) and Annexure 3 (Independent Police Custody Visit questionnaire) are included in an Annexures publication accompanying this Training Manual.

1. GENERAL PROVISIONS

Independent Custody Visitors play an active role in promoting the rights of persons in police custody through monitoring the conditions of detention and providing oversight of the South African Police Service (SAPS) detention facilities.

This Code of Conduct is binding on all Independent Custody Visitors, who are required to sign it prior to commencing their duties. It is the Independent Custody Visitor's responsibility to ensure that they are familiar with, and that their actions comply with, the provisions of this Code of Conduct.

This Code of Conduct applies to Independent Custody Visitors' individual conduct and regulates their interaction with members of the South African Police Service, and detainees. All Independent Custody Visitors are responsible for encouraging, advocating and promoting the dissemination of the Code of Conduct and have a role in implementing, monitoring and enforcing its standards.

2. PURPOSE

This Code of Conduct sets out the professional standards of conduct expected in the performance of duties by Independent Custody Visitors. It serves to regulate the behaviour of Independent Custody Visitors to ensure uniformity and consistency in the performance of their duties.

3. VALUES

The Independent Custody Monitoring Scheme is centred on the promotion and protection of the human rights of persons in custody. The actions and decisions of Independent Custody Visitors should be premised on a human rights-based approach to their work, and, specifically, be committed to the following values:

3.1 Integrity

To perform all duties with integrity, which includes adherence to the principles found in this Code of Conduct, and avoiding situations in which the duties of the Independent Custody Visitors can be influenced financially or in any other way.

3.2 Objectivity

To make decisions on merit and record all information in an honest, transparent and accurate manner.

3.3 Confidentiality

To respect the confidentiality of detainees.

3.4 Honesty

To record information accurately and to declare any private or other conflicting interests.

4 PERFORMANCE OF DUTIES

In the performance of duties, an Independent Custody Visitor should:

- 4.1 Act in a manner that will uphold and promote the aims and objectives of the Independent Custody Monitoring Scheme;
- 4.2 Treat all persons with respect and dignity;
- 4.3 Exercise judgement fairly and impartially in observing and assessing the treatment of persons in custody and adherence by officials to the regulatory framework;
- 4.4 Conduct all visits and interact with all South African Police Service members, detainees, or other persons present at the station without prejudice or discrimination, directly or indirectly, against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- 4.5 Be punctual in the execution of duties and appointments with the detention facilities;
- 4.6 Project an image of professionalism, and dress in clothes that are appropriate for the detention environment;
- 4.7 Uphold the values of this Code of Conduct by ensuring that personal and professional conduct is of the highest standard;
- 4.8 Safeguard and make responsible use of information and resources to which they have been given access;
- 4.9 Record observations and information in an honest, transparent and accurate manner;
- 4.10 Honour the confidentiality of conversations with detainees and consider all records, documents and discussions as being confidential;
- 4.11 Perform all duties and conduct all private affairs in a manner that avoids conflicts of interest;
- 4.12 Refrain from engaging in any transaction or action that is in conflict with or infringes on the performance of official duties;
- 4.13 Refrain from acting in a manner that will jeopardise the safety of a person in custody; and
- 4.14 Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of the Independent Custody Monitoring Scheme.

5. RELATIONSHIPS WITH THE SOUTH AFRICAN POLICE SERVICE AND DETAINEES

5.1 Relationship with members of the South African Police Service

An Independent Custody Visitor should:

- 5.1.1 Honour and respect the policies of the police station and act in compliance with them in the performance of all duties;
- 5.1.2 Cooperate with the Station Commander and other members of the South African Police Service in the performance of all duties; and
- 5.1.3 Use appropriate channels to raise any issues of concern during the performance of duties;

5.2 Relationship with detainees

An Independent Custody Visitor should:

- 5.2.1 Put the detainees' rights first in the performance of duties;
- 5.2.2 Refrain from making any promises or committing to personally assist any detainee;
- 5.2.3 Refrain from abusing the position of Independent Custody Visitor to promote personal or financial gain;
- 5.2.4 Respect and protect every detainee's right to dignity, and all rights enshrined in the Constitution of South Africa; and
- 5.2.5 Follow all lawful directives, instructions and standing orders when dealing with persons in custody.

6. COMPLIANCE WITH THIS CODE OF CONDUCT

Failure by Independent Custody Visitors to comply with this Code of Conduct may amount to misconduct, without prejudice to any criminal sanctions that may apply under the laws of South Africa.

