

# MODEL FOR INDEPENDENT OVERSIGHT OF SECURE CARE CENTRES IN SOUTH AFRICA



CENTRE FOR  
CHILD LAW



UNIVERSITEIT VAN PRETORIA  
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Global Campus  
of Human Rights

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# GLOSSARY

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<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCL</b>	Centre for Child Law
<b>CRC</b>	Convention on the Rights of the Child
<b>CYC</b>	Child and Youth Care
<b>CYCC</b>	Child and Youth Care Centre
<b>CYCW</b>	Child and youth care worker
<b>DQA</b>	Developmental Quality Assessment
<b>HOD</b>	Head of Department
<b>HOI</b>	Head of Institution
<b>IDP</b>	Individual Development Plan
<b>IPID</b>	Independent Police Investigative Directorate
<b>JICS</b>	Judicial Inspectorate for Correctional Services
<b>MDT</b>	Multi-disciplinary Team
<b>MEC</b>	Member of the Executive Council
<b>NPM</b>	National Preventive Mechanism
<b>OMO</b>	Office of the Military Ombud
<b>OHO</b>	Office of the Health Ombud
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>SACCP</b>	South African Council for Social Service Professions
<b>SAHRC</b>	South African Human Rights Commission
<b>SCC</b>	Secure Care Centre
<b>SPT</b>	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



# FOREWORD BY PROFESSOR MANFRED NOWAK

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The UN Global Study on Children Deprived of Liberty gathered data and research outputs on all settings where children were detained on the order of a court or other body, and were unable to leave at will. Children in the administration of justice is a crucially important area, and this accounts for at least 1 410 000 children who are locked up at any given moment, around the world. Included among them are the approximately 970 children who were in secure care centres in South Africa during the visits of the National Preventive Mechanism and the Centre for Child Law to undertake the baseline study that informs this model. The project was funded through a partnership agreement between the Global Campus of Human Rights and the Right Livelihood Foundation.

South Africa's 2018 response to the Global Study questionnaire indicated that although South Africa had done well in managing to drastically reduce the number of children in prison, there were still a considerable number of children detained in secure care centres. It revealed for the first time a "snapshot" figure of 948 in secure care, and that information galvanised South African role players into action. Since the ratification of the Optional Protocol to the Convention Against Torture (OPCAT) the South African Human Rights Commission (SAHRC) has co-ordinated the National Preventive Mechanism (NPM). This team has been monitoring secure care centres (SCCs) in South Africa. The Centre for Child Law had for some years been concerned about the rights of children in these centres. Together they joined forces to undertake an important and timely project, in which they visited SCCs throughout South Africa, interviewed numerous staff members and large numbers of children. The information from that study has been compiled in a separate report and is available on the websites of the organisations concerned. What we now know is that there are more, not fewer, children in SCCs in South Africa than there were reported to be in 2018. Furthermore, the majority of these are awaiting trial, many are children undergoing residential diversion, and a relatively small number of them are serving a sentence. This breakdown is concerning and warrants further investigation.

This model is an output of the same project, informed by what was learned during the baseline study. It presents a model to guide the process of independent oversight of the SCCs. Providing oversight under OPCAT in relation to child detainees requires a specialised approach. Under the guidance of international law, the South African Constitution and South African law, the model sets out the principles for child rights-compliant oversight, and provides practical guidance for visits, including enhanced participation by children themselves in a manner that also provides protection against the risk of reprisals. The aims of the model are to promote prevention of torture and cruel, degrading and inhuman treatment, but also to establish a procedure for dealing with abuses that may be uncovered through visits, and to consistently strive for the improvement of the system of secure care for children.





# INTRODUCTION

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## 1.1 Purpose of this document

This document sets out a model for the oversight of Secure Care Centres in South Africa, to strengthen child rights consistent practice. These centres accommodate children who have been referred by orders of the Child Justice Court, who are awaiting trial, undergoing residential diversion or serving a sentence.

## 1.2 The requirements under OPCAT and other legal frameworks

The **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** places an obligation on States to take effective measures to prevent torture and other cruel, inhuman, or degrading treatment or punishment in its jurisdiction.

The **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** obligates states parties to establish National Preventive Mechanisms (NPMs). These are independent bodies with the mandate to carry out regular visits to all places where people, including children, are or may be deprived of their liberty. They report on their observations, make recommendations to prevent torture and other cruel, inhuman or degrading treatment or punishment, and they follow up on the implementation of those recommendations.<sup>1</sup>

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has provided guidelines that must be complied with by the NPM during the fulfilment of their mandate including monitoring places of secure care, including the following:

- The NPM will carry out all aspects of its mandate in a manner which avoids actual or perceived conflicts of interest.
- The NPM, its members and its staff will regularly review their working methods and undertake training to enhance their ability to exercise their responsibilities under the Optional Protocol.
- The NPM will make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate.
- The NPM will produce reports following their visits as well as produce an Annual Report and any other forms of reports which it deems necessary. When appropriate, reports will contain recommendations addressed to the relevant authorities.
- The NPM will ensure that it has the capacity to and does engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations.<sup>2</sup>

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<sup>1</sup> Defence for Children International, *Practical Guide: Monitoring places where children are deprived of liberty* (2016) 43.

<sup>2</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, 9 December 2010, CAT/OP/12/5.



**The NPM is tasked with an important role in the prevention of ill-treatment of children deprived of their liberty, to strengthen their protection and to contribute to the full respect for their rights.**

The NPM is tasked with an important role in the prevention of ill-treatment of children deprived of their liberty, to strengthen their protection and to contribute to the full respect for their rights.<sup>3</sup> There is an obligation to carry out this role professionally, with a pragmatic visiting methodology, knowledge of standards set out in international and national child rights legal framework, and an understanding of the issues affecting children, as well as the necessary skills, sensitivity, and awareness to interview children about their experiences.<sup>4</sup>

## 1.3 Secure Care Centres in South Africa

The South African Human Rights Commission (SAHRC) as the national human rights institution has been assigned the responsibility to coordinate the NPM and has also taken on the responsibility for the oversight of Secure Care Centres.

Secure Care Centres in South Africa are Child and Youth Care Centres, that offer a secure care programme for children who are referred there by Child Justice Courts.

The **Child Justice Act 75 of 2008** provides for three instances in which children in conflict with the law may be placed in residential care in SCCs:

- **Awaiting trial:** Section 29 of the Act states that a presiding officer may order that a child who is alleged to have committed an offence be detained in a Child and Youth Care Centre after considering certain factors.
- **Diversion:** Section 53(4)(b) of the Act states that children who have committed schedule 2 and 3 offences may be ordered to undergo level two diversion options which, among other options, include compulsory attendance at a specified centre or place for a specified vocational, educational, or therapeutic purpose, which may include a period or periods of temporary residence. However, it should be noted that the primary approach to diversion should be non-custodial, and deprivation of liberty in such circumstances should be in rare circumstances.
- **Sentence:** Section 76(1) of the Act provides that a Child Justice Court that convicts a child of committing an offence may sentence the child to compulsory residence in a Child and Youth Care Centre that provides a programme referred to in section 191 of the Children's Act (a secure care programme).

3 Preamble, OPCAT.

4 Defence for Children International (2016) 7.

The Child Justice Act concludes with chapters about appeals and reviews, expungement of criminal records, legal representation, and general provisions. However, it does not provide any normative guidance for the treatment of children in secure care. That guidance falls under the **Children's Act 38 of 2005**.

Section 191(2) of the **Children's Act** provides that a Child and Youth Care Centre may be registered to provide for the reception, development and secure care of children referred by the Child Justice Act. These are referred to as Secure Care Centres (SCCs).

The regulations to the Children's Act (regulations 73 to 90) provide detailed guidance on the running of Child and Youth Care Centres (including SCCs).

Secure Care Centres in South Africa fall under the Department of Social Development. They accommodate children who are referred by the child justice courts, awaiting trial, sentenced and "residential" diversion. There are 30 SCCs spread across South Africa's 9 provinces.

## CHILDREN IN SECURE CARE CENTRES



### AWAITING TRIAL

Section 29 of the  
Child Justice Act

"A presiding officer may order the detention of a child who is alleged to have committed any offence in a specified child and youth care centre."



### DIVERSION

Section 53(4)(b) of the  
Child Justice Act

"Level two diversion options include ... compulsory attendance at a specified centre or a place for a specified vocational, educational or therapeutic purpose, which may include a period of periods of temporary residence."



### SENTENCE

Section 76(1) of the  
Child Justice Act

"A child justice court that convicts a child of an offence may sentence him or her to compulsory residence in a child and youth care centre providing a programme referred to a section 191 (2) (j) of the Children's Act"



## 1.4 The necessity for a specialized model

### A | Children are different

Children deprived of their liberty are in a situation of dependence and imbalance of power.<sup>5</sup> They cannot protect themselves to the same degree that adults can when deprived of their liberty. The power differential is very strongly in favour of staff/adults. Child rights specific legal frameworks have been developed internationally and nationally to address these particular vulnerabilities and needs of children.

For instance, children do not communicate in the same way as adults do about what is happening to them, and this reticence may be linked to their past experiences or to their perceptions that the complaints will never reach the authorities because they do not trust “the system”.<sup>6</sup> They generally may lack trust in adults, and this may include the NPM visiting team with whom they are unlikely to have sufficient time to build connections. Children may not understand the purpose of “visits” and may assume that visitors have the power to change something. If unfulfilled, this expectation, adds to their distrust. For these reasons, a specialised approach to explaining the purpose of the visits, interviewing, and interacting with children is required, which is clarified further below.

Because the children are dependent on the adults in the centre to communicate with anyone outside of the centre the model includes a mechanism to report abuse or rights violations directly to external domestic mechanisms such as the NPM, South African Human Rights Commission (SAHRC), or Children’s Commissioner.

### B | A different rights framework exists for children

As indicated above, children have special rights for a reason, and these should be centre stage in the monitoring process.

**The UN Convention on the Rights of the Child (CRC)** is the only United Nations international instrument focused specifically on children’s rights.



... children do not communicate in the same way as adults do about what is happening to them, and this reticence may be linked to their past experiences or to their perceptions ...

<sup>5</sup> Defence for Children International (2016) 26.

<sup>6</sup> Report of the Ombudsman for Prisons and Probation “Why do women and young people in custody not make formal complaints?”. [chrome-extension://efaidnbmnibpcajpcgclefindmkaj/https://www.ppo.gov.uk/app/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints\\_final.pdf](https://www.ppo.gov.uk/app/uploads/2015/03/efaidnbmnibpcajpcgclefindmkaj/https://www.ppo.gov.uk/app/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints_final.pdf).

The UN CRC sets out the following guidelines that are also applicable to the monitoring of places of secure care:



The best interests of the child shall be a primary consideration in all actions concerning children (Article 3).



The survival and development of the child is to be ensured by the State to the maximum extent possible (Article 6).



All appropriate measures are to be taken to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse. This should include measures for the prevention and for the identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment. (Article 19).



Children who are deprived of their liberty or cannot be allowed to remain in the family environment to preserve their best interests are entitled to special protection and assistance by the State, including through the provision of alternative care (if necessary, in suitable institutions for the care of children). (Article 20).



No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a)).



No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b)).



Every child deprived of liberty should be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons of his or her age (Article 37(c)).



Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. (Article 37(d)).

**The Bill of Rights in the South African Constitution** provides that everyone has inherent human dignity and the right to have their dignity respected and protected (Section 10), the right to life (Section 11), freedom and security of the person (Section 12). Children specifically have the right to be protected from maltreatment, neglect, abuse and degradation (Section 28(1)(d)), not to be detained except as a measure of last resort, detention only for the shortest appropriate period, kept separately from adults and be treated in a manner, and kept in conditions, that take account of the child's age (Section 28(1)(g)).

The Children's Act 38 of 2005 provides for the running of Child and Youth Care Centres, which includes Secure Care Centres. The Act, regulations and standards include the following principles that are to be complied with in all proceedings, actions or decisions in matters concerning children (emphasis added).<sup>7</sup>

- The best interests of the child is to be considered as the paramount consideration in matters concerning the child.
- Respect for children's inherent dignity.
- Children must be treated fairly and equitably.
- Children must be protected from unfair discrimination.
- Recognition for children's need for development and to engage in play and other recreational activities appropriate to the child's age.
- Recognition of a child's disability and the need to create enabling environments to respond to their special needs.

The above rights-based approach to monitoring requires placing children's rights as a starting point for monitors, including the NPM, to use as the basis for fulfilling their mandate to ensure the effective upholding of the rights, as well as safeguard them and ensure that they are not violated or abused.<sup>8</sup> A rights-based approach aims to strengthen the children's capacity to call for their rights to be respected and claim redress in instances of violations.<sup>9</sup> It also seeks to build capacity of duty bearers to respect, protect and guarantee children's rights and address the complexities inherent in deprivation of liberty<sup>10</sup> and aims to hold duty bearers accountable.<sup>11</sup>

There are laws in South Africa requiring reporting of certain rights violations of children by persons or professionals who know about or receive them. These include mandatory reporting of child abuse in terms of section 110 of the Children's Act 38 of 2005 and sexual offences in terms of section 54 of the Sexual Offences Act. This requires heightened knowledge of these obligations. The NPM is likely to uncover such violations in the course of its work and as such, need to be aware of these obligations.

## C | The purpose of secure care differs from other forms of incarceration

Secure care for children is deliberately set up as a safe, *therapeutic environment* where children are receiving educational, developmental, and therapeutic programmes based on an individual assessment of their needs, with the goal of achieving positive developmental outcomes and reintegrating into the community without re-offending. Beyond an actual sentence to secure care, activities and actions in secure care may not be punitive.

Secure care as a service should be in a constant state of development and reflection, and monitoring will form an important component in this. This monitoring model is based on the assumption that the State in each province will have adopted an Organisational Development Plan (ODP) for each Secure Care Centre (in accordance with section 211(3)), which accords with an overarching vision for improvement in secure care.

<sup>7</sup> Children's Act 38 of 2005 at section 6(2).

<sup>8</sup> Defence for Children International (2016) 29.

<sup>9</sup> Defence for Children International (2016) 30.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.



# THE PROPOSED MODEL

Both the NPM and Government have an obligation to monitor Secure Care Centres and ensure that children are safe and that they receive all necessary care, and the centres are implementing a non-punitive, educational, and therapeutic approach. Ultimately the government is accountable for the implementation of international conventions, the law, child rights, and practice standards and all services in relation to these. The government monitors its own implementation of secure care using a process referred to as the Developmental Quality Assurance (DQA).

Under the authority of OPCAT, the NPM does the independent monitoring of these centres, under their obligation “to regularly examine the treatment of persons deprived of their liberty ... with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman and degrading treatment or punishment”. If the NPM uncovers violations of rights, it has obligations under the Children’s Act and the Sexual Offences Act, and more broadly under the Constitution and the CRC, to report and refer this knowledge timeously, with a view to effectively follow up by other bodies. Furthermore, the South African Human Rights Commission has powers and obligations under sections 13 to 16 of the South African Human Rights Commission Act, 40 of 2013 to investigate and resolve suspected rights violations.

This model for the monitoring of secure care proposes the two processes of monitoring be dovetailed without undermining the independence of the NPM.

## The NPM

### 1. Foundational Components

#### 1.1 The purpose of monitoring secure care for children

1. To monitor and strengthen the protection against torture and other cruel, inhuman, or degrading treatment or punishment.<sup>12</sup>
2. To regularly examine the treatment of children deprived of their liberty in Secure Care Centres.<sup>13</sup>
3. To strengthen the protection of children in Secure Care Centres and contribute to the shared responsibility to ensure full respect for their rights.
4. To monitor and make recommendations to relevant authorities with the aim of improving the treatment and other conditions and to prevent torture, inhuman and degrading treatment and punishment,<sup>14</sup> and to enter into dialogue with them on possible implementation measures.<sup>15</sup>
5. To monitor implementation of and improvements in non-punitive, educational, and therapeutic approaches toward children in the centres.

<sup>12</sup> Article 19(a), OPCAT.

<sup>13</sup> Preamble, OPCAT.

<sup>14</sup> Article 19(b) OPCAT.

<sup>15</sup> Article 22 OPCAT.

6. To hold the government accountable for the full implementation of the rights of children deprived of their liberty in Secure Care Centres, within a framework of Constitutional and legal obligations, and the obligations under OPCAT, CAT and the CRC.

## 1.2 Monitoring principles

1. Child rights based: The approach and process fundamentally focus on the implementation of the rights of children as detailed in the introduction of this document.
2. Child centred: Each child's wellbeing and development is at the heart of the monitoring process and the visiting team will either have expertise on children, their needs, and their development, or access this expertise from a consultant (as referenced in OPCAT).
3. Developmental: the approach taken will focus on improvement toward goals and standards, and the empowerment of people working in government and at the Centre to improve service delivery. Other than with respect to the exposure of rights abuses, the approach must not include punitive action or attitudes.
4. The team's competency in children's rights, the Children's Act, the Child Justice Act and secure care practice and standards are essential components of monitoring secure care.
5. Mutual respect will be evident between the NPM, Government Departments, and Centre management and staff.

## 2. Monitoring

### 2.1 The team

To comply with Article 18(2) of the OPCAT, it is essential that the experts of the NPM have the required capabilities and knowledge to undertake the specialised work involved in monitoring secure care. It is further recommended that:

- At least one member of the NPM visiting team should have received specialised training about secure care standards and practice, and the legal frameworks that apply to children.
- If no member of the NPM visiting team is appropriately trained, an expert should be included in the visiting team.
- Provincial SAHRC officials who will be monitoring secure care should also receive specialised training.
- The size and composition of a team that is selected to visit a particular Secure Care Centre will be decided based on the number of staff and children at the centre, the gender of the children accommodated at the centre, and the likelihood of complex issues being present, based on what was reported and what recommendations were made after the previous visit.



**Each child's wellbeing and development is at the heart of the monitoring process and the visiting team will either have expertise on children, their needs, and their development ...**

## 2.2 Increasing protection

This is an essential component of the model, which seeks to increase protection for children in secure care. Children in Secure Care Centres are vulnerable to actions being taken against them within the centre and to this being hidden from scrutiny because of these being locked centres. As children, they are less able to protect themselves against abuses and to stand up for their rights.

For these reasons, children cannot be asked to talk freely and disclose abuses or neglect without (a) knowing that something will be done urgently to stop this and prevent any further abuses, and (b) knowing that reporting of abuses and neglect will not result in reprisals.

It is essential to keep a balance between



The risk of reprisals should not become a bar to disclosure and is not a justification for failing to report such incidents to and by the NPM. Where the NPM assesses that there is a risk of reprisals arising from its visits, it will request the authorities to put in place a timely and effective process to mitigate the risk. The model suggests several ways children can be protected between, during, and after visits:

### A | Protecting children during visits

Firstly, the NPM will prepare a pamphlet with information on who they are and why they conduct visits, what broad areas will be under review at the centre, and that no one shall be punished for providing information to the NPM. A version for children, which includes their rights, will also be prepared. These documents will be provided to the department, all management, and staff prior to any visits and handed out again during the visit. The children's version should be displayed on notice boards in the centre and will be handed out at the visit.

**To maximise their participation,** All children will, as far as possible, be given an opportunity to give input into the process. **A survey** is used with children instead of questioning individuals or small groups of children. The centre is given sufficient notice that this will be done during the visit, and all children are freed up from school and/or activities. The children are divided into groups where there are large numbers or one group with small numbers. The survey form will be designed for use by children in line with the principles of the SAHRC child-friendly complaints handling procedures. It is confidential from all staff, management, and the department. The NPM team members or SAHRC member supervising the survey are available to assist if children struggle to understand, or to write. The survey form will be available in the language of the children in the centre, children will be given a choice of which language they want to use, and the completed survey form will be read by a person who understands that language.



If the SAHRC provincial representative is available, they may be requested to visit the centre and carry out the survey ahead of the visit, provided the visit is announced.

A process for the survey will be developed by the NPM, with due consideration of the SAHRC child-friendly complaints handling procedures, in collaboration with the SAHRC provincial offices, and will include processes that ensure that:

- Interactions with children are carried out in an ethical manner by trained individuals, and that the children's expectations are well managed;
- The information from the survey is read either before or on the day of the visit, so that any reported abuses can be dealt with or referred for rapid follow up;
- The information from the survey is fed into the report.

The pamphlet for children will indicate that children may ask to speak to the NPM team while they are at centre, if they have something they want to discuss, and members of the NPM team will make themselves available to hold interviews on request, during the visit. The NPM may also initiate interviews with any child.

## **B | Protecting Children within the Centre**

Centre Manager (HOI), Department of Social Development (DSD) and all Social Workers (statutory obligation) are responsible and accountable for implementing the regulations regarding protection and complaints and ensuring that they are dealt with, and no reprisals occur.

- Locked box for written complaints with access by the HOI only, which is reviewed every 24 hours and follow up on complaints are made appropriately, as well as recorded into the complaints register. The complaints register should also be digitised.
- For those who struggle with writing, a verbal complaint to the HOI may be made to the SW or HOI who writes it down.
- The complaints register, which is confidential, is held by the HOI and is reviewed by both the Developmental Quality Assurance (DQA) team and the NPM team.
- A written procedure (approved by the NPM) must be given to all staff indicating the legal framework regarding complaints, how complaints are made, how they are required to support the complaints procedure, and a warning regarding reprisals. A children's version must be provided to children on arrival and should be displayed on notice boards, containing guidelines on how to practically make a complaint.

The NPM will emphasise during dialogues<sup>16</sup> with the DSD that social workers at DSD and the centres have a fundamental obligation to protect children and that they have a key role in ensuring that no child is hurt or neglected generally, including regarding reprisals. The obligations to report under the Children's Act and the Sexual Offences Act will be reiterated.

## **C | Children making a complaint to an independent person at any time**

As an ongoing development of the model, a mechanism for children to make independent complaints to the SAHRC will be articulated and developed. This will be based on the child-friendly complaints handling mechanisms, with the adjustments that are necessary to make it applicable and accessible for children in secure care. Children will then be made aware of this mechanism.

16 As envisaged in article 22 of OPCAT.



**The core methodology is thorough planned and substantial annual visits of 2 days to each centre (depending on the number of staff, children at the centre and the size of the visiting team)**

The end point will be a seamless process in which children can:

- Report at any time to the SAHRC, or
- Take the opportunity to complain during the survey or request an interview (in which case the matter is referred to the SAHRC and/or to other authorities in the event of reportable incidents).

To ensure the consistent safety of children it is important to monitor the government's approach and practice regarding the appointment of managers and staff with the appropriate attitudes and qualifications and encourage that all staff are receiving continued in-service training and professional/clinical supervision.

## **2.3 The monitoring of improvements**

### **Visits**

The core methodology is thorough planned and substantial annual visits of 2 days to each centre (depending on the number of staff, children at the centre and the size of the visiting team), with the possibility of one unannounced visit every 2 years in addition. The unannounced visits could be carried out by a suitably trained NPM visitor or staff member from the provincial SAHRC office.

The Provincial Department will have compiled an organisational development plan for each centre, as envisaged by section 211(3) of the Children's Act. Visits are intended to monitor the implementation of the organisational development plan for each centre and ensure that necessary improvements are identified and reported, as well as followed up if the visit is not the first visit.

### **Phase 1: Preparation**

Each visit requires planning and gathering of basic information from DSD

- The latest version of the organisational development plan.
- The latest report from the DQA monitoring and another other internal monitoring processes.
- Number of CYCWs and SWs.
- Management – names and positions.
- Number of children awaiting trial, sentenced, and on diversion. This should be disaggregated with regard to age gender, offence categories, length of stay.
- Request the presence of probation officers at the visit.
- Provide roster of announced visits ahead of time to facilitate planning.
- NPM will advise DSD to engage with the Department of Education regarding aspects falling under their mandate.

## Phase 2: Visit

Standardised Questionnaires will be used with the different groups to be interviewed. Some areas of questions will be unique to professions and others would be the same for all managers and staff. These will be based on child rights, regulations, and standards of practice.

The following approach will be followed, as far the circumstances allow:

1. The management group of the centre will preferably be interviewed in a focus group.
2. The HOI should be interviewed individually, as far as possible.
3. The CYCWs will be interviewed, preferably individually, if the numbers allow it and with due regard that they continue to have duties throughout the day as they are on duty.
4. All SWs will be interviewed, as well as other therapists.
5. Educators will be formally engaged in a focus group or interviewed rather than simply observed or informally engaged.
6. There will be a discussion with the probation officer/s if present.
7. Records will be reviewed for at least 50% of the children. Records to be perused will include:
  - 7.1. Legal documents (charge sheet and detention order/diversion order/sentence order), probation officers report). These will be perused for irregularities, e.g., incorrect referral for awaiting trial detention, lengthy delays, over-use of residential diversion, incorrect sentencing orders (especially s 76(3) of Child Justice Act, and check whether staff are aware of the special provisions of 76(3) and the obligations it imposes on them). Irregularities may need to be referred to the Department of Justice and Constitutional Development, or the Inter-sectoral Committee for Child Justice.
  - 7.2. The child's full developmental assessment and IDP, the progress reports against the IDP.
  - 7.3. Reports pertaining to contact with family, visits from probation officers, progress at school, and progress with family reunification.
8. Review of programmes, frequency, content.
9. Review of recreational resources, activities, and frequency.
10. Review of complaints register and discussion with HOI on this.
11. Review of critical incidents register and discussion with HOI on this.

The NPM will strike a careful balance between site inspection to assess safety, health, care, and the assessment of the general wellbeing of children, including the risk of torture, inhuman or degrading treatment. There is an understanding that greater focus should be on the treatment of children, and the services provided to them.

In all areas, strengths and aspects for improvement will be identified. This is inherent in a developmental approach.

The NPM should incorporate time into the visit plan to have a debriefing meeting with the management staff at the end of the visit. Where there are urgent child protection concerns and/or practical considerations preventing feedback to management, an appropriate Departmental official must be notified telephonically and followed up with an email on the same day as the visit.

### Phase 3: Follow-up and reporting

- Report immediate protection concerns to Provincial DSD officials and follow up on the actions requested.
- Any allegations of serious abuse warranting further independent investigation to be officially referred to SAHRC provincial office or any other body or institution as the NPM may deem appropriate.
- Any mandatory reporting to be acted upon timeously, in accordance with the law.
- Develop a brief report and recommendations, and due date for feedback, on any urgent issues for attendance by DSD or DBE or any relevant state functionary.
- Prepare a report on the visits for DSD, (and any other relevant government departments).
- Provide feedback and liaise through dialogue with the organisational development plan for each centre during the period between visits.
- Assist in problem solving where cross-departmental issues occur.
- Share information regularly with the Inter-sectoral Committee for Child Justice on the process of monitoring secure care centres and seek report back on how the issues brought to its attention have been resolved.
- Clearly identify progress and challenges in secure care monitoring and the trends/outcomes in the annual reports to government and in international reports under OPCAT, and other relevant treaties.
- Identify systemic changes needed and provide these in annual reports and at other opportunities.

## 2.4 Special measures for public health emergencies

The NPM will work with DSD to develop a protocol to ensure that if the country is faced with a public health crisis in the future, DSD will be able to ensure appropriate care and services for children in Secure Care Centres, bearing in mind international law, the Constitution and relevant legislation. Such protocol should follow the guidelines provided by the UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child.

In the event of such a crisis the NPM will make every effort to increase its monitoring frequency, including through cooperating with civil society and other partners.

## 2.5 Holding government accountable for implementation of child rights, the law, and practice standards for secure care

The NPM will work with the SAHRC more broadly to hold provincial governments accountable for improvements in secure care through:



Ensuring that the urgent actions and changes needed are included in the organisational development plan of each centre, and are duly implemented.



The NPM will set due dates when giving recommendations and follow up at the time of those due dates, or clearly transfer this follow up responsibility to the SAHRC or other relevant bodies.



Ensuring that any reprisals following a visit are adequately dealt with.







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