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**Effectiveness of National Preventive Mechanisms in  
prevention of torture: the case of interconnectedness and  
cooperation**

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## **ABSTRACT**

Twelve years after the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the designated African National Preventive Mechanisms (NPMs) are struggling to achieve effectiveness in conducting monitoring visits to places of deprivation of liberty to preventing torture and ill-treatment. In a bid to understand what makes NPMs effective, this thesis employed a comparative study between two European and African NPMs, selected for their different organisational structure, and analysed how their structures, independence, powers, working methods, and cooperation with other international monitoring bodies and stakeholders influenced their effectiveness. The NPMs' and the international monitoring bodies' reports, NPM-related national legislation of the case studies, torture-related UN and regional conventions, and publications by the Subcommittee for the Prevention of Torture (SPT) and Committee for the Prevention of Torture (CAT) were analysed, and an interview conducted with the Slovene Deputy-Ombudsperson, who is also the head of the Slovene NPM. This thesis finds that, while there are many factors that make an NPM effective, they cannot be isolated from each other and the general working environment of the NPM. Therefore, just as national monitoring to prevent torture should adopt a holistic approach, implementing not only law but incorporating different measures suitable to the environment of the places of deprivation of liberty, a similar approach needs to be adopted to ensure NPMs effectiveness in Africa by looking at all factors relating to an NPM.

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## **ABBREVIATIONS**

ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
APF	Asia Pacific Forum
APT	Association for the Prevention of Torture
CAT	Committee against Torture
CCE	Children's Commissioner for England
CI	Social Care and Social Work Improvement Scotland or Care Inspectorate
CJINI	Criminal Justice Inspection Northern Ireland
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CPTA	Committee for the Prevention of Torture in Africa
COE	Council of Europe
CQC	Care Quality Commission
CSO(s)	Civil Society Organisation(s)
CSSIW	Care and Social Services Inspectorate Wales
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
GANHRI	Global Alliance for National Human Rights Institutions
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services
HMICS	Her Majesty's Inspectorate of Constabulary for Scotland
HMIP	Her Majesty's Inspectorate of Prisons
HMIPS	Her Majesty's Inspectorate of Prisons for Scotland
HIW	Healthcare Inspectorate of Wales
HRA	Human Rights Act
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee for the Red Cross
ICVA	Independent Custody Visiting Association
ICVS	Independent Custody Visitors Scotland
IMB	Independent Monitoring Boards
IMB-NI	Independent Monitoring Boards for Northern Ireland

IPCA	Independent Police Conduct Authority
IRC	Immigration Removal Centre
IRTL	Independent Reviewer of Terrorism Legislation
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
MDAC	Mental Disability Advocacy Centre
MWCS	Mental Welfare Commission for Scotland
NHRC	National Human Rights Commission
NHRI	National Human Rights Institute
NIPBICVS	Northern Ireland Policing Board Independent Custody Visiting Scheme
NGO(s)	Non-Governmental Organisation(s)
NPM(s)	National Preventive Mechanism(s)
OFSTED	Office for Standards in Education, Children's Services and Skills
OHCHR	Office of the High Commissioner for Human Rights
ONLPL	Observateur Nationale des Lieux de Privation de Liberté
OPCAT	Optional Protocol to the Convention for the Prevention of Torture
OSCE	Organisation for Security and Co-operation in Europe
RQIA	Regulation and Quality Improvement Authority
SHRC	Scottish Human Rights Commission
SPT	Subcommittee for the Prevention of Torture
UDHR	Universal Declaration of Human Rights
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<i>ibid</i>	in the same place
s/ss	section/sections
p/pp	page/pages
art/arts	article/articles
para/paras	paragraph/paragraphs
etc	et cetera
ie	that is

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# INTRODUCTION

## 1. BACKGROUND OF THE STUDY

Torture is a subject that receives a great deal of attention, and rightly so. It is a *jus cogens* norm of international law and the prohibition of torture was first recognised by the Universal Declaration of Human Rights (UDHR)<sup>1</sup>, and later by the successive human rights instruments. Torture is ‘an attack on the very essence of a person’s dignity’<sup>2</sup> therefore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>3</sup> absolutely prohibits State Parties’ derogation from their obligation to prevent it.

However, terrorism has shaken the world to the core so that States once perceived to be defenders of rule of law and human rights, are now stepping back from their human rights obligations by reinterpreting them. Louis-Philippe Rouillard begins his article with, "when human rights clash with the necessities of State security, it becomes difficult to view torture from a dispassionate view",<sup>4</sup> which is a reflection of our unfortunate reality where human rights are portrayed as being in conflict with the security of a State while, to the contrary, these two concepts are very much interlinked.<sup>5</sup> UN High Commissioner Zeid Ra’ad al Hussein, leading the Office of the High Commissioner for Human Rights (OHCHR), expressed his disappointment that human rights are today seen as “tiresome constraints” by politicians.<sup>6</sup>

Recurrent terror attacks, reports of radical Islamist groups’ abhorrent treatment of hostages, and the refugee crisis repeatedly bring human rights, particularly torture, to the spotlight. According to ICRC’s *People on War* survey, people’s perceptions on torture are changing with more people believing that it is acceptable to torture enemy combatants in certain

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<sup>1</sup> Universal Declaration on Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 5

<sup>2</sup> APT, APF, and OHCHR, ‘Preventing Torture :An Operational Guides for the National Human Rights Institutions’ (May 2010) <<https://www.apt.ch/en/resources/national-human-rights-institutions/?cat=24>> p v

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT)

<sup>4</sup> Rouillard Louis-Phillipe, ‘Misinterpreting the Prohibition of Torture under International Law: The Office of the Legal Counsel Memorandum’ (2015) 21(1) American University International Law Review <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1043&context=auilr>> p 1 accessed 9 May 2018

<sup>5</sup> Human security is an approach recognised by the UN Member States as being an interlink between security, human rights and development. UNGA Res 66/290 (25 October 2012) UN Doc A/RES/66/290 <<https://undocs.org/A/RES/66/290>>

<sup>6</sup> OHCHR, ‘Statement of Zeid Ra’ad Al Hussein, UN Commissioner for Human Rights : Opening Ceremony of the 34th Session of the Human Rights Council in Geneva’ (27 February 2017) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21229&LangID=E>> accessed on 9 May 2018



circumstances to obtain information.<sup>7</sup> Unfortunately, discourse on torture is dominated by the morality of its use on terror suspects ignoring the effects of the general treatment and conditions in places of deprivation of liberty on other persons deprived of their liberty. With the changing perceptions on torture<sup>8</sup> and continuous debates on the morality of the use of torture vis-à-vis security, prevention of torture and ill-treatment has never been more important. The crucial role that the National Preventive Mechanism (NPM), the Subcommittee for the Prevention of Torture (SPT), the Committee against Torture (CAT), and the regional torture monitoring bodies play in this cannot be overstated.

## **2. RELEVANCE OF THE STUDY**

Torture is a subject of considerable research with discussions ranging from prohibition of torture to the morality of its use. Following the ratification of the UNCAT and the Optional Protocol to the UNCAT (OPCAT), which created an obligation for State Parties to prevent torture in territories under their control, the debate shifted to dissecting the components of this obligation. Much research has been done on what comprises the obligation to prevent torture and how States can fulfil it. However, there is a gap in addressing the effectiveness of National Preventive Mechanisms (NPMs), the torture monitoring bodies which State Parties are obligated by OPCAT to create to conduct visits to places of deprivation of liberty within territories under their control. This thesis aims to address this gap by conducting a comparative study analysing the organisational structure, working methods, and cooperation with other torture monitoring bodies of NPMs in the United Kingdom of Great Britain and Northern Ireland (UK), Slovenia, Mauritius, and Senegal to understand how they interpret and implement their mandate under OPCAT, their achievements and challenges, and draw from their experiences lessons that can be applied to make African NPMs effective in monitoring and preventing torture.

These NPMs were selected because of their different organisational structures to understand if a particular structure affects effectiveness. The focus is on Africa because, in relation to the number of States that have ratified OPCAT, it has the least number of NPMs. While 22 States have ratified OPCAT to-date, only six have designated NPMs, and Mauritius and Senegal were

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<sup>7</sup> ICRC, 'People on War: Perspectives from 16 Countries' (December 2016) <<https://www.icrc.org/en/document/people-on-war>> accessed on 10 May 2018

<sup>8</sup> Adam Goldman and Peyton Craighill, 'New polls finds majority of Americans think torture was justified after 9/11 attack' (*Washington Post*, 16 December 2014) <[https://www.washingtonpost.com/world/national-security/new-poll-finds-majority-of-americans-believe-torture-justified-after-911-attacks/2014/12/16/f6ee1208-847c-11e4-9534-f79a23c40e6c\\_story.html?noredirect=on&utm\\_term=.fedb23eb9af7](https://www.washingtonpost.com/world/national-security/new-poll-finds-majority-of-americans-believe-torture-justified-after-911-attacks/2014/12/16/f6ee1208-847c-11e4-9534-f79a23c40e6c_story.html?noredirect=on&utm_term=.fedb23eb9af7)> accessed on 9 May 2018

selected because information on their NPMs was relatively accessible. The study will be limited to the Council of Europe (COE) and the African Commission on Human and Peoples Rights (ACHPR) as the mandate of their monitoring bodies are similar to that provided for under OPCAT. The role of the European Court of Human Rights (ECtHR) and the African Court on Human and Peoples' Rights (ACtHPR) in the prevention of torture through their reactive mandate cannot be not dismissed however, as they do not conduct monitoring visits, they will not be featured. Additionally, the powers of the ACtHPR are severely limited as only 30 States have ratified the convention creating and establishing its jurisdiction<sup>9</sup> and only eight State Parties have accepted its jurisdiction thereby allowing its citizens to file complaints directly to the court.<sup>10</sup>

Although the UNCAT provides for prevention of torture and the CAT asks prevention-related questions during State Report reviews, SPT will be the main focus as it is the body created by OPCAT with the mandate to monitor conditions of persons deprived of their liberty and collaborate with State Parties and NPMs.

### **3. RESEARCH HYPOTHESIS**

International law absolutely prohibits the use of torture and State Parties to the UNCAT have the primary responsibility to prevent torture. Under the OPCAT, the 88 State Parties<sup>11</sup> are required to establish NPMs and grant them independence and the necessary resources to conduct regular monitoring visits to all places of deprivation of liberty. According to Article 4 of the OPCAT, NPMs' are envisioned to conduct visits to places of deprivation of liberty, similarly to the SPT. While this thesis recognises that State Parties to OPCAT have the freedom to create any kind of NPM, in accordance with their circumstance, it aims to understand how the selected NPMs' structures have enabled or hindered the fulfilment of their mandate by analysing their preventive activities and working methods, their achievements and challenges.

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<sup>9</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004)

<sup>10</sup> African Union, 'List of Countries which have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights' (15 June 2017) <<https://au.int/sites/default/files/treaties/7778-sl-protocol-to-the-african-charter-on-human-and-peoplesrights-on-the-estab.pdf>>; ACtHPR, 'Republic of Tunisia signs African Court Declaration to allow NGOs and individuals to access the Human And Peoples' Rights Court directly' (18 April 2017) <<http://en.african-court.org/index.php/news/press-releases/item/145-republic-of-tunisia-signs-african-court-declaration-to-allow-ngos-and-individuals-to-access-the-human-and-peoples-rights-court-directly>>

<sup>11</sup> OHCHR, 'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (30 April 2018) <<https://www.ohchr.org/Documents/HRBodies/OPCAT/StatRatOPCAT.pdf>> accessed on 10 July 2018

The research also seeks to analyse whether cooperation of NPMs and the SPT with each other and with the regional torture monitoring bodies ie the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), the Committee for the Prevention of Torture in Africa (CPTA) and the Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur), and other stakeholders has contributed to effective prevention of torture. As the aim of this thesis is to empower African NPMs, the research will propose general recommendations that be adopted to improve their effectiveness. In conclusion, therefore, this thesis aims to understand what makes an NPM effective in monitoring to prevent torture and ill-treatment and what can be done to make African NPMs effective.

#### **4. RESEARCH METHODS AND STRUCTURE OF STUDY**

The research methodologies employed in this thesis are legal, comparative, descriptive, analytical, and qualitative.

The legal methodology is used to analyse the legal regimes of torture at the international, regional, and national level in UK, Slovenia, Senegal, and Mauritius. The research relies on treaties, particularly OPCAT, CAT General Comments, and SPT publications relating to NPMs and refers to the human rights instrument of the Council of Europe (COE) and the African Union (AU).

The main secondary sources are the NPMs' annual reports, SPT annual reports, publications by Association for the Prevention of Torture's (APT), some of which are older than SPT, and academic journals.

This thesis is divided into four chapters. Chapter 1 analyses the concept of prevention of torture and ill-treatment according to CAT, SPT, and scholars and explores the different NPM structures, powers of an NPM, and the concept of independence. Chapter 2 analyses the NPMs in UK, Slovenia, Senegal, and Mauritius paying attention to their structure, preventive activities, independence, and their challenges and achievements. Chapter 3 looks at how the SPT and NPMs cooperate with each other and the different ways they cooperation with the regional monitoring bodies and other stakeholders. Finally, chapter 4 concludes and makes general recommendations that could be applied to improve the effectiveness of all African NPMs.

# CHAPTER 1

## 1 CONCEPT OF PREVENTION AND HOW IT WORKS

### 1.1 BACKGROUND OF PREVENTION UNDER THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The UDHR was the first human rights document to prohibit the use of torture but it was not legally binding on States. The International Covenant on Civil and Political Rights (the ICCPR),<sup>12</sup> a legally binding treaty, also prohibited torture, however, these two documents merely prohibited torture without defining it. The UNCAT was the first to define<sup>13</sup> and obligate State Parties to take necessary measures to prevent torture<sup>14</sup> and all other acts amounting to cruel, inhuman, or degrading treatment or punishment (ill-treatment).<sup>15</sup>

The UNCAT is an important instrument that provides for torture prevention measures such as, but not limited to, criminalisation and punishment of torture,<sup>16</sup> education and training of civil and military law enforcement personnel, medical personnel, and public officials involved in custody, interrogation, or treatment of persons deprived of their liberty,<sup>17</sup> systemic review of interrogation rules, instructions, methods, and practices,<sup>18</sup> prompt and impartial investigation on suspicion of torture,<sup>19</sup> individual's right to file a complaint when one has experienced torture with assurance of protection from intimidation and prompt and impartial examination of such allegations,<sup>20</sup> right to redress for victims of torture,<sup>21</sup> and legal provision that evidence obtained through torture shall be inadmissible before judicial tribunals.<sup>22</sup>

The Committee for the Prevention of Torture (CAT) states, in its General Comment No. 2, that the obligation to prevent torture is wide-ranging<sup>23</sup> and State Parties to UNCAT are free to choose the measures to fulfil their obligations provided that they are effective and consistent

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<sup>12</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 7

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT) art 1

<sup>14</sup> *ibid* art 2 (1)

<sup>15</sup> *ibid* art 16

<sup>16</sup> *ibid* art 4

<sup>17</sup> *ibid* art 10 (1)

<sup>18</sup> *ibid* art 11

<sup>19</sup> *ibid* art 12

<sup>20</sup> *ibid* art 13

<sup>21</sup> *ibid* art 14

<sup>22</sup> *ibid* art 15

<sup>23</sup> CAT, 'General Comment No. 2 on the Implementation of Article 2 by State Parties' (24 January 2008) UN Doc CAT/C/GC/2 <<http://www.refworld.org/docid/47ac78ce2.html>> para 3 (General Comment No. 2)

with the object and purpose of the Convention.<sup>24</sup> It recommends some baseline preventive measures such as “maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment”.<sup>25</sup> However, due to advancements in methods of torture and ill-treatment, CAT admits that its understanding and recommendations of effective preventive measures are continuously evolving<sup>26</sup> therefore, State Parties should employ a process of trial and error in selecting the best preventive measures to adopt and revise them when necessary.

Regrettably, the adoption of UNCAT did not prevent torture and ill-treatment by State Parties as reports indicated that the practice was still prevalent in dictator regimes around the world.<sup>27</sup> There was, therefore, need to rectify the situation. Costa Rica prepared the initial draft of OPCAT<sup>28</sup> in 1980<sup>29</sup> but it could not be discussed as UNCAT had not been adopted. It was tabled again and adopted in 2002 and came into force in 2006. OPCAT is an innovative human rights instrument developed to provide practical tools for State Parties to fulfil their obligation of preventing torture under Article 3 of UNCAT by creating two torture monitoring system with preventive mandates<sup>30</sup> as opposed to reactionary.<sup>31</sup> Other things that make OPCAT unique are its emphasis on cooperation between the monitoring bodies, the State Parties to OPCAT and other stakeholders, the complementarity of the SPT and NPMs mandate, and the triangular

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<sup>24</sup> *ibid* para 6

<sup>25</sup> *ibid* para 13

<sup>26</sup> *ibid* para 4

<sup>27</sup> The Economist, ‘The challenge of the past’ (22 October 1998) <<https://www.economist.com/the-americas/1998/10/22/the-challenge-of-the-past>> accessed on 11 July 2018; Michael T. Kaufman, ‘Idi Amin, Murderous and Erratic Ruler of Uganda in the 70’s, Dies in Exile’ (17 August 2003) <<https://www.nytimes.com/2003/08/17/world/idi-amin-murderous-and-erratic-ruler-of-uganda-in-the-70-s-dies-in-exile.html>> accessed on 11 July 2018; Giles Tremlett, ‘Franco repression ruled as a crime against humanity’ (17 October 2008) <<https://www.theguardian.com/world/2008/oct/17/spain>> accessed on 11 July 2018

<sup>28</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006) A/RES/57/199 (OPCAT)

<sup>29</sup> APT, ‘History of the OPCAT’ < <https://apt.ch/en/history-of-the-opcat-1/>> accessed on 24 May 2018

<sup>30</sup> Art 1 OPCAT

<sup>31</sup> Arts 20 and 22 (3) UNCAT

relationship created between the SPT, State Parties and NPMs.<sup>32</sup> The OPCAT also does not allow State Parties to make reservations.<sup>33</sup>

## 1.2 CONCEPT OF PREVENTION ACCORDING TO SPT

OPCAT provides for two torture monitoring bodies: SPT, the UN treaty body, and NPMs. SPT's mandates include conducting visits to places of deprivation of liberty within State Parties' territories to strengthen the protection of persons deprived of their liberty,<sup>34</sup> advising State Parties on the formation of NPMs,<sup>35</sup> and maintaining communication with them.<sup>36</sup> NPMs, which are established by State Parties, will be discussed later.

The SPT published a document intending to present its approach to the concept of prevention however, its approach was not clearly explained instead, the document made heavy references to CAT's General Comment No. 2. It then stated that 'it is not possible to devise a comprehensive statement of what the obligation to prevent torture and ill-treatment entails *in abstracto*'.<sup>37</sup> It added that prevention should embrace all possible things that could contribute to reducing the occurrence of torture and ill-treatment.<sup>38</sup>

Visits to places of deprivation of liberty is an important component of the preventive mandate because it acts as a deterrent to practices of torture where officials usually have absolute control of its environment. According to the former Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (UN Special Rapporteur on Torture), Manfred Novak, exposing places of detention to public scrutiny is the only way to break the vicious cycle of torture, thereby making security personnel operate in a transparent manner and

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<sup>32</sup> APT and Inter-American Institute of Human Rights, 'Optional Protocol to the UN Convention against Torture: Implementation Guideline' [October 2010] < [https://www.apr.ch/content/files\\_res/opcat-manual-english-revised2010.pdf](https://www.apr.ch/content/files_res/opcat-manual-english-revised2010.pdf) > pp 12 - 14

<sup>33</sup> Art 30 OPCAT

<sup>34</sup> *ibid* Art 4

<sup>35</sup> *ibid* Art 11 (b) (i)

<sup>36</sup> *ibid* Art 11 (b) (ii)

<sup>37</sup> SPT, 'The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (30 December 2010) UN Doc CAT/OP/12/6

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en)>

para 3

<sup>38</sup> *ibid* para 3

accountable to external monitoring.<sup>39</sup> In view of this, SPT conducts four types of visits: country visits, Follow-up visits, NPM advisory visits and OPCAT advisory visits.<sup>40</sup>

Country visits give the SPT an opportunity to have a first-hand experience of the conditions and treatment of persons deprived of their liberty by visiting and interviewing them. SPT does not require consent from a State Party to conduct a visit in its territory because State Parties, by ratifying the OPCAT, grant it access<sup>41</sup> and objections can only be made on compelling grounds such as national defence, public safety, natural disaster, or serious disorder at the place to be visited but, not a declared state of emergency.<sup>42</sup> In practice, however, SPT gives notice of an impending visit to allow the State Party to make practical arrangements and to be able to provide it with information it may require during the visit.<sup>43</sup> The outcome of the visit is a confidential report identifying the effective preventive safeguards, gaps observed, and recommendations of how the State Party can strengthen its torture prevention safeguards to increase protection of persons deprived of their liberty. This report is aimed at facilitating continuous dialogue.<sup>44</sup>

Follow-up visits allow the SPT to monitor the implementation of its recommendation and the preventive safeguards adopted by the State Party. One of SPT's mandates is to advise State Parties so as to strengthen the capacity and mandate of their NPMs, therefore it introduced NPM Advisory visits.<sup>45</sup> After such a visit, the SPT prepares two reports, one addressed to the State Party and the other to the NPM. Since 2012, the SPT has carried out eleven advisory visits.<sup>46</sup> Finally, the SPT conducts OPCAT Advisory visits to guide State Parties on the implementation of their obligations under the OPCAT.<sup>47</sup>

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<sup>39</sup> UN Special Rapporteur on Torture, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' (14 August 2006) UN Doc A/61/259 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/468/15/PDF/N0646815.pdf?OpenElement>>

<sup>40</sup> OHCHR, 'The SPT in Brief' <<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>>

<sup>41</sup> Art 12 (a) OPCAT

<sup>42</sup> *ibid* art 14 (2)

<sup>43</sup> SPT, 'Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties under article 11 (a) of the Optional Protocol' (4 February 2015) UN Doc CAT/OP/5 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/5&Lang=en)> para 5

<sup>44</sup> *ibid* para 33

<sup>45</sup> Art 11 (b) (iv) OPCAT

<sup>46</sup> SPT, 'Optional Protocol of the Convention against Torture (CAT-OP)' <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical)> accessed on 25 May 2018. The NPM Advisory visits were made in 2012 to Senegal, Moldova, and Honduras, in 2013 to Germany and Armenia, in 2014 to Malta and Ecuador, in 2015 to Turkey and Netherlands, in 2016 to Cyprus and in 2017 to Macedonia.

<sup>47</sup> OHCHR, 'OPCAT advisory visits' <<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AdvisoryVisits.aspx>>

### 1.2.1 CREATION OF NPMs

As mentioned above, NPMs are monitoring bodies created by State Parties to operate within their territories. They play an important role in prevention for many reasons, key among them is that their presence within State Parties' territories allows them to make as many visits as possible without travel constraints and they have opportunities to influence national policies. Additionally, they have better knowledge and understanding of the legal, cultural, economic, political, and social situation which is useful when proposing practical recommendations. These are some of the challenges facing SPT which must cope with, among other challenges, human and monetary resources as noted in its First Annual Report<sup>48</sup> and uncooperative governments as was witnessed during its recent planned visit to Rwanda.<sup>49</sup>

Within one year of ratifying the OPCAT, a State Party is required to maintain, designate, or establish an NPM<sup>50</sup> whose mandate and powers should be set out in constitutional or legislative text.<sup>51</sup> The process should be open and consultative to ensure that the resulting NPM is suitable for the legal, political, economic, social, and cultural reality of the country. Therefore, there is no 'one size fits all'<sup>52</sup> structure however, State Parties have adopted the following five approaches:

#### i. Designation of a National Human Rights Institution

National Human Rights Institutions (NHRIs) are established, in accordance with the Principles relating to the Status of National Institutions (the Paris Principles), with the competence to promote and protect human rights.<sup>53</sup> Owing to their broad mandate,<sup>54</sup> some NHRIs conduct visits to places where persons may be deprived of their liberty to monitor their treatment and level of respect of their human rights, therefore, its staff have experience to rely on if the NHRI

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<sup>48</sup> SPT, 'First Annual Report of The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (14 May 2008) UN Doc CAT/C/40/2 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f40%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f40%2f2&Lang=en)> paras 47, 50, 51, and 54

<sup>49</sup> CNBCAFRICA, 'Prevention of Torture: UN human rights body suspends visit citing obstructions' (20 October 2017) <<https://www.cnbcfrica.com/apo/2017/10/20/prevention-of-torture-un-human-rights-body-suspends-rwanda-visit-citing-obstructions/>> accessed on 24 May 2018

<sup>50</sup> Art 17 OPCAT

<sup>51</sup> SPT, 'Guidelines on National Preventive Mechanism' (9 December 2010) UN Doc CAT/OP/12/5 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en)> para 7

<sup>52</sup> Murray Rachel, 'National Preventive Mechanism Under the Optional Protocol to the Torture Convention: One Size Does Not Fit All' (2008) *Netherlands Quarterly of Human Rights* 26 (4), pp 485–516

<sup>53</sup> OHCHR, 'Principles relating to the Status of National Human Rights Institutions' (adopted on 20 December 1993) (the Paris Principles) <<https://www.un.org/ruleoflaw/files/PRINCI~5.PDF>> para 1

<sup>54</sup> *ibid* para 2



is designated as an NPM. However, the designation of an NHRI could be problematic because if it continues engaging in its other activities, resulting from its broad mandate, alongside that of an NPM then, it is likely to pay less attention to the NPM's work, thereby affecting its effectiveness. Consequently, the SPT is of the opinion that an NHRI would not be able to fulfil an NPM mandate without structural changes, which means creating a separate NPM department within the NHRI and allocating it its own budget and staff to enable it to function effectively.<sup>55</sup> A structural change would also ensure that members of the NPM are drawn from diverse professional backgrounds such as medicine, prison and police administration, and psychologist<sup>56</sup> and not limited to lawyers, academicians, Members of Parliament, or religious thinkers as provided for in the Paris Principles.<sup>57</sup>

Another benefit of this structure is that, if an NHRI has already established a reputation of challenging the government, protecting, and promoting human rights, then its designation would be welcomed as it is reputable. Having a good reputation is advantageous because the NHRI already has the trust of the public and stakeholders, which often takes time to establish, therefore it will save time and immediately begin spreading public awareness of its additional role as an NPM and conducting monitoring visits. On the other hand, if it has not been performing well, then its designation as an NPM is a cause for great concern. Examples of countries that have adopted this approach are Tunisia and Mauritius.

## **ii. Designation of an Ombudsperson**

Another popular choice for State Parties for an NPM is the Office of the Ombudsperson which is already charged with safeguarding public interest by investigating complaints received relating to violation of citizens' rights by a State. Like the NHRI, the Office of the Ombudsperson needs to undergo structural changes to separate the complaints department from the NPM and allocate it a separate budget. Proceeding to perform the NPM mandate without separation would presents challenges such as gaining trust, confidentiality, and the lack of diverse expertise of the staff. It is challenging to gain the trust of authorities when they think that they may be prosecuted for their or the institution's shortcomings yet the NPM cannot fulfil its mandate without establishing dialogue with them. The Ombudsperson office also needs additional measures to protect information collected during visits to places of deprivation

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<sup>55</sup> SPT, 'Analytical Assessment tool for national preventive mechanisms' (25 January 2016) UN Doc CAT/OP/1/Rev.1 <[http://www.ohchr.org/Documents/HRBodies/OPCAT/CAT-OP-1-Rev-1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/OPCAT/CAT-OP-1-Rev-1_en.pdf)> para 14

<sup>56</sup> Art 5 (2) OPCAT

<sup>57</sup> Paris Principles (n 5353) Para 1 (Composition and guarantees of independence and pluralism)

of liberty and it cannot share or use such information to file complaints with the consent of the persons deprived of their liberty. The expertise of its staff may be limited to legal matters therefore a structural change would enable it to hire staff with diverse qualifications relevant to the NPM's mandate. The Danish Ombudsperson articulated these shortcomings when the Danish Parliamentary Ombudsman was designated as an NPM by refusing the new mandate and stating that the office lacked the necessary human and financial resources to fulfil the OPCAT mandate. It was therefore appointed to work together with the Danish Institute for Human Rights and DIGNITY (Danish Institute Against Torture), which would provide the necessary expertise.<sup>58</sup> With this collaboration, the Danish structure changed to an Ombuds Plus Institution.

### **iii. Ombuds Plus Institution**

An Ombuds Plus structure is one where an Ombudsperson's Office is designated to be an NPM working in collaboration with Non-Governmental Organisations (NGOs) or Civil Society Organisations (CSOs)<sup>59</sup>. As mentioned above, Denmark adopted this structure as well as Slovenia, which is a case study in the subsequent chapter. This model is an excellent way of cooperating with stakeholders who provide expertise in various areas and the contacts they have with relevant authorities<sup>60</sup> but, it also presents challenges of independence which are discussed later.

### **iv. Designation of Multiple Institutions**

Where there exist, bodies monitoring different places of deprivation of liberty such as prisons, mental health centres, asylum centre etc, then the State Party may opt to designate all these monitoring bodies to work together as an NPM. New Zealand adopted this structure and designated four institutions: The Office of the Ombudsman, Independent Police Conduct Authority, Children's Commissioner, and the Inspector of Service Penal Establishment,<sup>61</sup> and the UK which currently has twenty-one institutions.<sup>62</sup>

### **v. Creation of a new specialised institution**

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<sup>58</sup> APT, 'Denmark- NPM Designation' < [https://apt.ch/en/opcat\\_pages/npm-designation-18/](https://apt.ch/en/opcat_pages/npm-designation-18/)> accessed on 20 May 2018

<sup>59</sup> Murray Rachel, 'Challenges and Good Practices of NMPs Operating in Different Organisational Structure: Briefing Paper' < [https://helsinki.hu/wp-content/uploads/Murray\\_briefing\\_paper.pdf](https://helsinki.hu/wp-content/uploads/Murray_briefing_paper.pdf) > p 3

<sup>60</sup> *ibid* 3

<sup>61</sup> APT, 'New Zealand- NPM Designation' < [https://apt.ch/en/opcat\\_pages/npm-designation-49/#npm-designated-46](https://apt.ch/en/opcat_pages/npm-designation-49/#npm-designated-46) > accessed on 20 May 2018

<sup>62</sup> APT, 'United Kingdom- NPM Designation' < [https://apt.ch/en/opcat\\_pages/npm-designation-85/#npm-designated-18](https://apt.ch/en/opcat_pages/npm-designation-85/#npm-designated-18) > accessed on 20 May 2018

Finally, State Parties can create a new specialised institution which fulfils the requirements of the OPCAT and the SPT's Guidelines on National Preventive Mechanisms. This provides the State Party with an opportunity to foster robust, inclusive, and transparent discussion<sup>63</sup> on which structure the NPM should adopt and the drafting of the NPM legislation to ensure that its membership is gender-balanced and inclusive of minorities. Regardless, this specialised institution faces the challenge of establishing its credibility, contacts with authorities and stakeholders, and the dynamics of working as a team to be able it to function effectively.<sup>64</sup> Countries that have adopted this structure include France, Germany, and Senegal which is a subject of this research.<sup>65</sup>

### 1.2.2 POWERS OF NPMs

OPCAT recommends that an NPM be granted similar powers to the SPT to be able to fulfil its mandate. The NPM needs to have access to all places of detention and facilities, access to all information concerning the number of persons deprived of their liberty, their treatment, and the opportunity to privately interview them, the right to freely choose places to visit and whom to interview, and to maintain communication with SPT.<sup>66</sup> It can also make recommendations to authorities to ensure that the treatment and conditions of persons deprived of their liberty do not amount to torture or ill-treatment and propose change in legislation.<sup>67</sup>

An interesting point to note is that, while OPCAT allows State Parties to object to an SPT visit on compelling grounds,<sup>68</sup> a similar provision relating to NPMs does not exist giving the impression that such objections do not apply to them. Accordingly, they can visit places of detention regardless of the situation, which is a positive thing because it allows NPMs to observe how authorities treat persons deprived of their liberty when they are under pressure. The decision of the powers of NPMs however, solely rests on State Parties. Such is the case with the protection of persons and organisations which communicate with the NPM from intimidation or sanction.<sup>69</sup> The responsibility of passing legislation, instituting, and

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<sup>63</sup> Guidelines on National Preventive Mechanisms, para 16

<sup>64</sup> Murray Rachel, 'National Preventive Mechanism Under the Optional Protocol to the Torture Convention: One Size Does Not Fit All' (2008) *Netherlands Quarterly of Human Rights* 26 (4), p 488

<sup>65</sup> APT, 'Specialised Institutions (15)' < <https://apt.ch/en/opcat-database/?kid=5>> The information on this website has not been updated to indicate that Burkina Faso has, to-date, not yet created an NPM and was listed by the SPT as non-compliant, as of 28 February 2018,

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22729&LangID=E>>

<sup>66</sup> Art 20 OPCAT

<sup>67</sup> *ibid* art 19

<sup>68</sup> *ibid* art 14 (2)

<sup>69</sup> *ibid* art 21 (1)

implementing regulations relating to their protection rests on State Parties and where there is no political will, the work of the NPM is adversely affected. The SPT has stated that it does not assess the level of conformity of an NPM with OPCAT requirements<sup>70</sup> but hopes that the Guidelines on National Preventive Mechanisms, which is based on its experience on issues arising during country visits, guides both State Parties and the NPMs. It nevertheless, assists State Parties to comply with their obligations by giving them advice. Confidentiality is a principle of the SPT therefore it does not disclose its communications with State Parties, although, it would have been interesting to observe how the SPT handles situations where NPMs are not granted the powers necessary to fulfil their mandate.

### **1.2.3 INDEPENDENCE OF NPMs**

Independence is an essential principle because it ‘goes to the heart of an effective’ human rights institution.<sup>71</sup> Article 18 of OPCAT and the Paris Principles emphasise on independence.<sup>72</sup> OPCAT requires that the NPM has both functional and independent personnel. Functional independence relates to the freedom to decide its workplan and having sufficient financial resources. Although Article 18 only requires “necessary resources”, SPT has clarified this by stating that the resources need to be sufficient for the effective functioning of the NPM in accordance with the requirements of the Convention.<sup>73</sup> De Beco and Murray state that adequate resources means that an institution has enough funds to pay for its own premises and staff salaries, to have well-functioning communication and internet, and to implement its mandated activities.<sup>74</sup> The independence of NPMs members also needs to be assured in two ways. Firstly, members need to have security of tenure meaning that details relating to their appointment, term in office, ways of removal from office and other employment details have to be in writing.<sup>75</sup> This would enable them to perform their duties without fear of job security. Secondly, members should be granted privileges and immunity<sup>76</sup> to enable them to conduct their work independently without fear of retribution.

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<sup>70</sup> Guidelines on National Preventive Mechanisms, para 2

<sup>71</sup> Gauthier de Beco and Rachel Murray, *A Commentary on the Paris Principles on National Human Rights Institutions* (Cambridge University Press 2015) 82

<sup>72</sup> Paris Principles, ‘Composition and guarantees of independence and pluralism’ paras 1-3

<sup>73</sup> Guidelines on National Preventive Mechanisms, para 11

<sup>74</sup> Gauthier (n 71) 86

<sup>75</sup> *ibid* para 9

<sup>76</sup> Art 35 OPCAT; Guiding Principles for National Preventive Mechanisms, para 26

Murray<sup>77</sup> asserts that assessing the independence of a potential NPM is not easy and it presents a dilemma relating to NHRIs designations. The Global Alliance for National Human Rights Institutions (GANHRI) awards accreditation on the level of compliance with the Paris Principles from ‘A’ to ‘C’, with ‘A’ meaning that the NHRI has a high degree of autonomy and compliance.<sup>78</sup> However, she notes that while some NHRIs have good accreditation, they are not effective therefore their designation as NPMs would not do much good. On the other hand, the designation of an NHRI with a poor accreditation would only endorse it.<sup>79</sup>

Steinerte<sup>80</sup> states that financial independence is crucial and that existing institutions that previously visited places of detention before being designated as NPMs need additional funding to function effectively in their new mandate. She states that State Parties, the SPT, and NPMs play a role in safeguarding the independence of NPMs. NPMs need to safeguard their perceived and actual independence by performing balancing acts in their interactions with government officials, CSOs, and NGOs while fending off interference. NPMs do not conform to traditional institutions created under human rights law because they are created by governments therefore, it is expected that they would have ‘smoother’ dialogue with government officials who are often suspicious of NGOs but at the same time, because of the open, transparent, and inclusive process of establishing them together with their independence, NPMs are expected to have the support of NGOs and other stakeholders. However, if they are perceived to be too close to government authorities then they lose the trust of NGOs and if government authorities perceive them to be driving NGOs agenda, then they also lose their confidence. For this reason, Steinerte describes the independence of NPMs as ‘a jewel with a myriad of facets ... which sheds a different light depending on the angle one is examining it from, the angle of States Parties, the NPMs or the SPT’<sup>81</sup> and ‘a multi-faceted concept which very much depends on the context in which NPM operates’.<sup>82</sup> However, when independence is attained, it enables the NPM to act as a bridge between the government and NGOs to the benefit of persons deprived of their liberty.<sup>83</sup>

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<sup>77</sup> Murray Rachel, ‘National Preventive Mechanism Under the Optional Protocol to the Torture Convention: One Size Does Not Fit All’ (2008) *Netherlands Quarterly of Human Rights* 26 (4), p 488

<sup>78</sup> GANHRI, ‘GANHRI Sub-Committee on Accreditation (SCA)’ <<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>> accessed on 20 May 2018

<sup>79</sup> Murray (n 7777) p 498

<sup>80</sup> Steinerte Elina, ‘The Jewel in the Crown and Its Three Guardians: Independence of National Preventive Mechanisms Under the Optional Protocol to the UN Torture Convention’ *Human Rights Law Review* (2014) (14) < <https://academic.oup.com/hrlr/article-abstract/14/1/1/667044> > pp 1-29

<sup>81</sup> *ibid* 26

<sup>82</sup> *ibid* 29

<sup>83</sup> Gauthier (n 71) 82

### 1.3 REGIONAL INSTRUMENTS

As this thesis focuses on NPMs in Europe and Africa, their regional torture conventions and monitoring bodies are discussed briefly. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the ECPT)<sup>84</sup> was the first to introduce a monitoring body, which the SPT mirrors. The Convention has been ratified by all 47 members of the Council of Europe (COE) and non-members are welcomed to ratify it. It established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT).

In Africa, the African Charter on Human and Peoples' Rights (the African Charter) established the African Commission on Human and Peoples Rights (ACHPR), operational since 1987, with the mandate to promote and protect human rights.<sup>85</sup> As the ACHPR is empowered to create subsidiary mechanisms, it first created the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur) and later, the Committee for the Prevention of Torture in Africa (CPTA).

#### 1.3.1 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

The CPT is the oldest torture monitoring body and is composed of members representing each Member State of the COE, acting in their personal capacity.<sup>86</sup> Members have diverse professional backgrounds such as law, psychology, criminology, medicine, psychiatry, social service and sociology as is evident from its current composition.<sup>87</sup> It was established with the mandate to visit and examine conditions of persons deprived of their liberty to strengthen their protection from torture and ill-treatment.<sup>88</sup> Through its visits, it adopts a proactive approach and does not have judicial powers, which solely rest with the European Court of Human Rights

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<sup>84</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (entered into force 1 February 1989) < <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a67f> > ETS No.126 (the ECPT)

<sup>85</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) < <https://au.int/en/treaties/african-charter-human-and-peoples-rights> > (the African Charter) art 30

<sup>86</sup> Art 4 ECPT

<sup>87</sup> COE, 'CPT Members' < <https://www.coe.int/en/web/cpt/cpt-members#%223705287%22%5B41%5D%223706581%22%5B01%5D%22> > accessed on 29 May 2018

<sup>88</sup> *ibid* art 1

(ECtHR).<sup>89</sup> The CPT usually notifies a State Party to the ECPT of its intention to visit together with some of the places it intends to visit and in return, the State Party is required to grant it access to travel within its territory without restriction, information of all places where persons deprived of their liberty may be held and unlimited access to these places.<sup>90</sup> Although it does not require consent, State Parties may object to a visit at the dates proposed by CPT or propose other dates due to a number of reasons listed in Article 9 of the ECPT.<sup>91</sup> The CPT does not visit places regularly visited by the International Committee for the Red Cross (ICRC).<sup>92</sup> Following its visit, the CPT sends a confidential report to the State Party detailing its observations and recommendations.<sup>93</sup> It has become practice for State Parties to consent to the publication of their reports. When a State Party does not cooperate or refuses to implement its recommendations, the CPT may make a public statement.<sup>94</sup> Thus far, the CPT has issued public statements against Turkey, Russia, Greece, Bulgaria, and most recently Belgium in 2017.<sup>95</sup>

Similar to the SPT, the CPT has devised detailed standards and tools, organised according to the type place of deprivation of liberty such as police custody, prisons, immigrations detention, psychiatric and social care institutions, and juvenile centres.<sup>96</sup>

### **1.3.2 SPECIAL RAPPOREUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING IN AFRICA**

The mechanism of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur) was created in 1996 to examine conditions of persons deprived of their liberty in prisons within Africa. Its mandate was expected to be for two years but has been renewed since then.<sup>97</sup> Its mandate was also extended to cover other detention centres such as reform centres, police cells, and detainees awaiting trial as well as to conduct research on prison conditions, communicate with State Parties to the African Charter on their penal system, receive individual complaints on prison conditions and provide training for law enforcement

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<sup>89</sup> Apostolovski Veronika, Kicker Renate, Mostl Markus, Vivona Maddalena, 'Bringing Home the Human Rights Standards: The Role of National Preventive Mechanisms' (2017) European Training and Research Centre for Human Rights and Democracy < [http://etc-graz.eu/typo3/fileadmin/user\\_upload/ETC-Hauptseite/Projekte/Bringing Home Human Rights Research Paper 2016.pdf](http://etc-graz.eu/typo3/fileadmin/user_upload/ETC-Hauptseite/Projekte/Bringing Home Human Rights Research Paper 2016.pdf) > p 20

<sup>90</sup> Art 8 ECPT

<sup>91</sup> Acceptable justifications are national defence, serious disorder where persons are deprived of their liberty, medical condition of a person or an urgent interrogation in progress relating to a serious crime.

<sup>92</sup> Art 17 (3)

<sup>93</sup> Art 11

<sup>94</sup> Art 10 (2)

<sup>95</sup> COE, 'Public Statements' < <https://www.coe.int/en/web/cpt/public-statements> > accessed on 30 May 2018

<sup>96</sup> COE, 'Standards and Tools' < <https://www.coe.int/en/web/cpt/standards> > accessed on 30 May 2018

<sup>97</sup> ACHPR, 'Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa' < <http://www.achpr.org/mechanisms/prisons-and-conditions-of-detention/> > accessed on 28 May 2018

personnel, police, prison guards, administrators, and lawyers to improve prison condition.<sup>98</sup> The Special Rapporteur may conduct country visits but with the consent of the State Party and there have been instances when State Parties have refused to respond to requests for visit within their territories.<sup>99</sup>

The Special Rapporteur has conducted 44 country visits to monitor prisons and detention conditions.<sup>100</sup> It has also published its Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa, to provide guidance to State Parties to respect the rights of persons subjected arrest or detention to improve their treatment, and the Toolkit to Support the Implementation of the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, to provide practical implementation tools.<sup>101</sup>

### **1.3.3 COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA**

The ACHPR adopted the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)<sup>102</sup> to provide practical guidelines for State Parties to implement their obligations to prohibit and prevent torture and ill-treatment under Article 5 of the African Charter. This resolution created the Follow-up Committee to implement these guidelines however, its name was changed to the Committee for the Prevention of Torture (CPTA).<sup>103</sup> The CPTA is composed of Commissioners and expert in the field of torture<sup>104</sup> and its mandate includes developing strategies for the implementation of the Robben Island Guidelines, organising seminars to support partners, disseminating and promoting the implementation of the Robben Island Guidelines, and presenting progress reports to the ACHPR at every Ordinary Session. To that effect, the CPTA publishes its reports twice a year for the two Ordinary Sessions of the

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<sup>98</sup> ACHPR, 'Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa' (2012) < [http://www.achpr.org/files/sessions/52nd/inter-act-reps/185/activty\\_report\\_prisons\\_eng.pdf](http://www.achpr.org/files/sessions/52nd/inter-act-reps/185/activty_report_prisons_eng.pdf) > pp 5-6

<sup>99</sup> ACHPR, 'Inter-Session Activity Report of Honourable Commissioner Med S.K. Kaggwa, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa' (April 2016) < [http://www.achpr.org/files/sessions/58th/inter-act-reps/258/58os\\_inter\\_session\\_report\\_kaggwa\\_eng.pdf](http://www.achpr.org/files/sessions/58th/inter-act-reps/258/58os_inter_session_report_kaggwa_eng.pdf) > p 7

<sup>100</sup> ACHPR (n 98) p 7

<sup>101</sup> ACHPR, 'Inter-Session Activity Report of Honourable Commissioner Med S.K. Kaggwa, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa' (November 2017) < [http://www.achpr.org/files/sessions/61st/inter-act-reps/287/eng\\_comm\\_kaggwa\\_prisons\\_cond\\_of\\_detention\\_policing\\_61os.pdf](http://www.achpr.org/files/sessions/61st/inter-act-reps/287/eng_comm_kaggwa_prisons_cond_of_detention_policing_61os.pdf) > pp 7-8

<sup>102</sup> ACHPR, 'Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa' (October 2002) <<http://www.achpr.org/sessions/32nd/resolutions/61/>> ACHPR/Res.61(XXXII)02

<sup>103</sup> ACHPR, 'Resolution on the Change of Name of the Robben Island Guidelines Follow-Up Committee' to the "Committee for the Prevention of Torture in Africa" and the Reappointment of the Chairperson and Members of the Committee' (November 2009) < <http://www.achpr.org/sessions/46th/resolutions/158/> > ACHPR/Res158(XLVI)09

<sup>104</sup> <http://www.achpr.org/mechanisms/cpta/#> ; <http://www.achpr.org/sessions/46th/resolutions/158/>



ACHPR and its reports highlight its activities, the ratification status of UNCAT and OPCAT by African States, positive and negative developments in the prevention of torture, and thematic research on torture. As of June 2018, the CPTA had only conducted three monitoring visits: to Mauritania,<sup>105</sup> Western Saharawi,<sup>106</sup> and The Sudan.<sup>107</sup>

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<sup>105</sup> CPTA, 'Report of the Promotion Mission of the Committee for the Prevention of Torture in Africa to the Islamic Republic of Mauritania' (26 March – 01 April 2012) < [http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion\\_mission-2012/mission\\_report\\_mauritania\\_cpta\\_eng.pdf](http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion_mission-2012/mission_report_mauritania_cpta_eng.pdf) >

<sup>106</sup> CPTA, 'Report of the Fact-Finding Mission to the Sahrawi Arab Democratic Republic' (24-28 September 2012) < [http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion\\_mission-2012/mission\\_report\\_sahrawi\\_cpta\\_eng.pdf.pdf](http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion_mission-2012/mission_report_sahrawi_cpta_eng.pdf.pdf) >

<sup>107</sup> CPTA, 'Report of the Joint Promotion Mission to the Republic of The Sudan' (22-28 May 2015) <[http://www.achpr.org/files/news/2016/08/d227/sudan\\_mission\\_report.pdf](http://www.achpr.org/files/news/2016/08/d227/sudan_mission_report.pdf) >

## CHAPTER 2

### 2 NATIONAL PREVENTIVE MECHANISMS

This chapter analyses the NPMs in UK, Slovenia, Senegal, and Mauritius. It focuses on their structure, preventive activities, independence, how they cooperate with the SPT, the CPT or the ACHPR, and other stakeholders, their achievements and challenges, and a brief conclusion.

#### 2.1 UNITED KINGDOM (UK)

The UK ratified the UNCAT in 1988 and the OPCAT in December 2003.<sup>108</sup> However, it was not until 2009 that it designated its NPM for several reasons. Firstly, there were existing monitoring bodies therefore the government had to ascertain whether they were OPCAT compliant. UK has a long history of monitoring prisons with its early form being traced back to the reign of Queen Elizabeth I (1558-1603).<sup>109</sup> Prison reform, however, can be traced back to John Howard (1726-1790) who, during his time as the High Sheriff of Bedfordshire and shocked by the conditions he witnessed, travelled across Europe comparing prisons and published ‘The State of the Prisons in England and Wales: With Preliminary Observations, and an Account of Some Foreign Prisons.’<sup>110</sup>

Secondly, the UK government had to liaise with the other devolved governments on their monitoring systems and finally, decide on the coordination of the NPM members.<sup>111</sup>

##### 2.1.1 NMP STRUCTURE

The UK has the distinct feature of having designated the most number of member to form an NPM with the total currently standing at 21 and they are as follows:<sup>112</sup>

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<sup>108</sup> OHCHR, ‘Status of Ratification Interactive Dashboard’ <<http://indicators.ohchr.org/>>

<sup>109</sup> UK NPM, ‘Monitoring Places of Detention: Third Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2011 – 31 March 2012’ (February 2013) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-3rd-Annual-Report-2011-12.pdf>> p 35

<sup>110</sup> BBC, ‘John Howard (1726-1790)’ <[http://www.bbc.co.uk/history/historic\\_figures/howard\\_john.shtml](http://www.bbc.co.uk/history/historic_figures/howard_john.shtml)> accessed on 10 June 2018

<sup>111</sup> UK NPM, ‘Monitoring Places of Detention: First Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2009 – 31 March 2010’ (February 2011) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/06/NPM-1st-Annual-Report-2009-10.pdf>> p 9

<sup>112</sup> NPM, ‘Members’ <<https://www.nationalpreventivemechanism.org.uk/members/>> accessed on 2 June 2018; NPM (n 111) pp 22-61 and 63

## **United Kingdom**

- i. Independent Reviewer of Terrorism Legislation (IRTL)<sup>113</sup>

## **England and Wales**

- ii. Her Majesty's Inspectorate of Prisons (HMIP)
- iii. Independent Monitoring Boards (IMB)
- iv. Independent Custody Visiting Association (ICVA)
- v. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)
- vi. Care Quality Commission (CQC)
- vii. Healthcare Inspectorate of Wales (HIW)
- viii. Children's Commissioner for England (CCE)
- ix. Care and Social Services Inspectorate Wales (CSSIW)
- x. Office for Standards in Education, Children's Services and Skills (OFSTED)
- xi. Lay Observers in England and Wales

## **Scotland**

- xii. Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)
- xiii. Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)
- xiv. Scottish Human Rights Commission (SHRC)
- xv. Mental Welfare Commission for Scotland (MWCS)
- xvi. Social Care and Social Work Improvement Scotland or Care Inspectorate (CI)
- xvii. Independent Custody Visitors Scotland (ICVS)

## **Northern Ireland**

- xviii. Independent Monitoring Boards for Northern Ireland (IMB-NI)
- xix. Criminal Justice Inspection Northern Ireland (CJINI)
- xx. Regulation and Quality Improvement Authority (RQIA)
- xxi. Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS)

The HMIP is the coordinator of the NPM and it promotes cohesion, facilitates communication and joint activities among members whilst respecting their independence and ability to set their

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<sup>113</sup> It was designated as an NPM on 11 January 2017. NPM, 'Background' <<https://www.nationalpreventivemechanism.org.uk/about/background/>> ; UK Parliament, 'Optional Protocol to the Convention Against Torture (OPCAT):Written statement - HCWS408' (12 January 2017) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-01-12/HCWS408/>>

own priorities.<sup>114</sup> The NPM members holds biannual business meetings.<sup>115</sup> The NPM has a steering committee comprised of rotating membership of one representative from each of the four nations, and the Chief Inspector of the HMIP, who initially acted as the chairperson. The steering committee supports the HMIP and the coordinator,<sup>116</sup> who is appointed to represent the interests of the members, in decision-making in the period between the business meetings and developing the NPM's business plan.<sup>117</sup> In May 2016, the NPM decided to appoint a chairperson, independent of the NPM members, to advice and support it. This position is currently part-time, *pro-bono*, and for a fixed term of two years.

The NPM has three sub-groups. The children and young people's sub-group<sup>118</sup> and the mental health network allow concerned members to meet, work together on common priorities, and share information and good practices.<sup>119</sup> The Scottish sub-group, comprised of Scottish members, enables them to coordinate and peer-review themselves.<sup>120</sup>

Another distinctive feature of UK's NPM is the membership of lay monitoring bodies which work with unpaid volunteer community members namely, the ICVA, ICVS, IMB, IMB-NI, and the Lay Observers. Other professional institutions use lay monitors such as CI and HIW which involve users of their services and carers by training them and allowing them to interview other users and carers then preparing reports based on their own experience.<sup>121</sup>

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<sup>114</sup> UK NPM, 'Monitoring Places of Detention: Second Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2010 – 31 March 2011' (February 2012) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-2nd-Annual-Report-2010-11.pdf>> p 8

<sup>115</sup> UK NPM, 'Monitoring Places of Detention: Eighth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2016 – 31 March 2017' (February 2018) <[https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122\\_NPM\\_AR2016-17\\_v4\\_web.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122_NPM_AR2016-17_v4_web.pdf)> p 11

<sup>116</sup> The other roles of the Coordinator are to liaises with all members, share information, supports them on policy and human rights, and liaises with the SPT and other stakeholders; NPM (n 109) 8

<sup>117</sup> *ibid* 13

<sup>118</sup> UK NPM, 'Monitoring Places of Detention: Fourth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2012 – 31 March 2013' (February 2014) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-4th-Annual-Report-2012-13.pdf>> p 15

<sup>119</sup> UK NPM, 'Monitoring Places of Detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 – 31 March 2015' (February 2016) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf>> p 12

<sup>120</sup> *ibid* 60

<sup>121</sup> NPM (n 109) 41

## 2.1.2 PREVENTIVE ACTIVITIES

Each member of the NPM has a different mandate and place of deprivation of liberty that they can visit (*Table 1*). For some members, monitoring is their core function while for others, it is just one of their broader mandates.<sup>122</sup> Lay monitoring members, whose core function is monitoring, can therefore conduct more visits in contrast to the professional institutions whose visits are only cyclical. For example, IMB has 1,750 members who are required to conduct an average of three visits per month<sup>123</sup> therefore, IMB records numerous visits. ICVA, in the period 2015-2016, conducted 9,400 visits while RQIA only conducted 70 visits. Owing to the frequent visits, lay monitors' reports paint a picture an establishment throughout the year rather than a snapshot.<sup>124</sup>

Following a visit, NPM members immediately make recommendations to the institutions and these are included, together with their observations, in their annual reports. If the recommendations are not implemented, they are repeated in the subsequent reports. Members also publish thematic reports, individually or jointly (eg in June 2013, the HMICFRS, HMIP, CQC, and HIW published 'A criminal use of police cells? The use of police custody as a place of safety for people with mental health needs').<sup>125</sup>

The NPM's annual reports, which highlight activities of all members, have thematic focus. Its Second Annual Report focused on the use of force and restraints across the different places of deprivations of liberty after members observed a general lack of knowledge of their use among staff members and lack of safeguards to monitor the appropriateness of their use. It proposed regular accredited training of staff on control and restraint techniques,<sup>126</sup> the recording and auditing of use of force and restraints to assess trends, communication with the detainee on what was happening, during the process of using force, with the aim of de-escalating the situations, the use of video recordings, and the elimination of blanket restraint policies to ensure that its use was in proportion to the risk posed and as a last resort.<sup>127</sup>

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<sup>122</sup> *ibid* 15

<sup>123</sup> IMB, 'Person specification' < <https://www.imb.org.uk/join-now/person-specification/> > accessed on 5 June 2018

<sup>124</sup> NPM (n 109) 36

<sup>125</sup> UK NPM, 'Monitoring Places of Detention: Fifth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2013 – 31 March 2014' (February 2015) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-5th-Annual-Report-2013-14.pdf>> p 24

<sup>126</sup> The CJINI noted that the lack of training of female staff led to a male officer's involvement in a strip search of a woman under restraint. NPM (n 109) 25

<sup>127</sup> NPM (n 109) 20-25

Table 1. Members of the UK NPM and their monitoring mandates

Detention Setting	Jurisdictions			
	England	Wales	Scotland	Northern Ireland
Prisons	HMIP with CQC & OFSTED	HMIP with HIW	HMIPS with CI, SHRC & MWCS	CJINI, HMIP with RQIA
	IMB			IMB-NI
Police Custody	HMICFRS, HMIP, & CQC		HMICS & SHRC	CJINI with RQIA
	ICVA		ICVS	NIPBICVS
Court Custody	HMIP		HMIPS & SHRC	CJINI
	Lay Observers			
Children (All detention settings)	CCE		CI	
Children in Secure Accommodation and Young Offenders Institutions (YOI)	OFSTED (jointly with HMIP in relation to secure training centres) & CCE	HIW	CI & MWCS	RQIA
		CSSIW		CJINI
Detention Under Mental Health Law	CQC	HIW	MWCS & SHRC	RQIA
Deprivation of Liberty and other Safeguards in Health and Social Care	CQC	HIW	CI, SHRC, & MWCS	RQIA
		CIW		
Immigration and Detention	HMIP, CQC, OFSTED, & CCE	HMIP		HMIP & CJINI
	IMB			
Military Detention	HMIP & IMB			
Customs Custody Facilities	HMICFRS, HMIP, & HMICS			
Detention under Terrorism Act	IRTL			
Overseas escorts	HMIP & IMB			

Sources: UK NPM, *Introducing UK's National Preventive Mechanism*, <[https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2014/07/NPM-factsheet-1\\_Introducing-the-UK-NPM.pdf](https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2014/07/NPM-factsheet-1_Introducing-the-UK-NPM.pdf)> p 2; UK NPM Annual Reports from 2009 – 2017

The NPM's Sixth Annual Report was on the use of isolation and solitary confinement and it resulted in the publication of a guidance published in January 2017.<sup>128</sup>

The NPM has been pragmatic in interpreting and implementing its mandate. From its first report, it revealed the gaps in the protection of persons deprived of their liberty it had observed while monitoring and engaged with the government to fix the situation by either expanding the mandate of an NPM member or designating an existing monitoring institution as an NPM. This led to HMIP being granted powers to monitor military detention within UK territories and the Lay Observers, ICVS, and IRTL being designated as NPM members. The NPM has also adopted a wide interpretation of 'place of detention' to include process of escorting people, under state control, to or between places of deprivation of liberty.<sup>129</sup>

The NPM has not been shy in publishing its observations resulting from its monitoring activities. Following the death of Angolan man, during deportation, the Home Secretary extended IMB's mandate to joining the HMIP in monitoring overseas escorts from immigration removal centres (IRCs).<sup>130</sup> They both noted that while the deportation process was already stressful for detainees, the situation was sometimes made worse by some escort staff who used inappropriate language in their presence and the staff had not received accredited training on the use of force in an aircraft during deportation.<sup>131</sup> They also described the use of 'reserve' detainees as inhumane whereby chartered flights were sometimes overbooked leading to cancellation of some detainees' transfers after they had prepared themselves to leave or deporting others without giving them sufficient notice.<sup>132</sup> Likewise, the NPM has recognised effort made by authorities and acknowledged progress made in protecting persons deprived of their liberty from torture and ill-treatment.

The NPM and its members submit proposals on government policies as documented in the NPM's annual reports. Its members are also working to protect people and organisations which cooperate with them from retaliation by adopting the necessary policies. The HMIP and MIB

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<sup>128</sup> NPM, 'Monitoring Places of Detention: Eighth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2016 – 31 March 2017' (February 2018) <[https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122\\_NPM\\_AR2016-17\\_v4\\_web.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122_NPM_AR2016-17_v4_web.pdf)> p 29

<sup>129</sup> NPM, 'Monitoring Places of Detention: Third Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2011 – 31 March 2012' (February 2013) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-3rd-Annual-Report-2011-12.pdf>> pp 26-30

<sup>130</sup> *ibid* 31

<sup>131</sup> The HMIP monitored two flights; one to Nigeria and another to Jamaica. In one of the flights, an escort staff used offensive and racist language within the hearing of the detainees and made sweeping generalisations about national characteristics. NPM (n 129) 32

<sup>132</sup> NPM (n 129) 33

worked together with the Prison and Probation Ombudsman to implement its 2013 protocol preventing sanction in prisons.<sup>133</sup>

Although the NPM has acknowledged that majority of vulnerable prison population were black and minority community members, it is unfortunate that until now, it has not conducted any study to find ways of mitigating their circumstances. There is still non-compliance with gender balance and non-inclusion of minority groups. In the period 2016-2017, only two members achieved gender balance, yet the NPM has not created any initiative to attempt to resolve this.

### **2.1.3 INDEPENDENCE**

A key indicator of an NPM's independence is the inclusion of its mandate and powers in legislation. The NPM proposed that the UK government set its status under the Prisons and Courts Bill, which was before the Parliament at the time, however this proposal was not adopted. The lack of statutory guarantees and guarantees of independence does not give its work a secure basis.<sup>134</sup> Additionally, while individuals performing statutory functions, under English public law, enjoy immunity, NPM members do not because the NPM does not derive its powers from a legislation.<sup>135</sup>

Another challenge of the NPM's independence is the process of budget allocation, appointment and unsecure tenure of some heads of the NPM members. The Public Accounts Committee expressed concern that decision of the appointment of the Chief Inspectors of HMIC (which is under the Home Office) and HMIP (which is under the Ministry of Justice), their tenure, and the allocation of their budget rested on the respective Cabinet Secretaries rather than on Parliament or the Cabinet. It stated that this arrangement posed a threat on the independence of the NPM and proposed that the Cabinet Secretaries of these Ministries reconsidered this arrangement so that powers of appointment and budget allocation were transferred to Parliament.<sup>136</sup> This report was published after it emerged that the Minister of Justice had declined to automatically renew the five-year contract of the Chief Inspector of HMIP, as he had done for the previous Chief Inspectors, because of his outspoken report which attributed the Ministry of Justice's cut on public spending to the 'worst state' of prisons in England and

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<sup>133</sup> NPM (n 119) 54

<sup>134</sup> NPM (n 128) 5

<sup>135</sup> Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016) 139

<sup>136</sup> House of Commons Public Accounts Committee, 'Inspection in home affairs and justice: Fifty-third Report of Session 2014–15' (23 March 2015)

<https://publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/975/975.pdf> > p 7



Wales.<sup>137</sup> Later, the appointment of a new Inspector was halted after it was revealed that two members appointed by the Minister to be part of the selection panel were activists of the Conservative government and therefore not impartial.<sup>138</sup> Ultimately, the government rejected the Public Accounts Committee's recommendation.<sup>139</sup>

During UK's periodic review before the CAT, it expressed concern about the government's practice of seconding official working in places of deprivation of liberty to work with the NPM and its impact on its actual and perceived independence.<sup>140</sup> Although the UK government responded that this practice did not affect the NPM's independence, the CAT recommended that the government end the practice. The NPM later responded to the CAT stating that while some members' mandate fell entirely within OPCAT, the mandate of others such as CQC, OFSTED, RQIA, and SHRC were far much wider however, it would work to make a clear distinction of the human resources applied to NPM activities and to the broader mandate. Members also committed themselves to work towards reducing their reliance on seconded staff in NPM activities.<sup>141</sup> The NPM later prepared a guideline on independence called 'Ensuring the independence of NPM personnel'<sup>142</sup> and its members undertook to report annually on their progress in reducing reliance on seconded staff. In the period 2014-2015, only four members used seconded staff.<sup>143</sup>

The NPM evaluates itself using the SPT's self-assessment tool for NPMs<sup>144</sup> which it converted into a questionnaire<sup>145</sup> to be filled by members. Results indicated that while members had the necessary powers required by OPCAT, there was low compliance in gender balance and

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<sup>137</sup> HMIP, 'HM Chief Inspector of Prisons for England and Wales Annual Report 2014-15' (Crown 2015) <[https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR\\_2014-15\\_TSO\\_Final1.pdf](https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf)> ; BBC, 'Prisons 'in worst state for a decade', inspector warns' (14 July 2015) <<https://www.bbc.com/news/uk-33517116>> accessed on 8 June 2018

<sup>138</sup> Travis Alan, 'Appointment of new prisons inspector halted amid criticism of selection panel' (19 March 2015) <<https://www.theguardian.com/politics/2015/mar/19/appointment-of-new-prisons-inspector-halted-amid-criticism-of-selection-panel>>

<sup>139</sup> NPM, 'Monitoring Places of Detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 – 31 March 2015' (February 2016) <<https://s3-eu-west-2.amazonaws.com/npm-production-19n0nag2nk8xk/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf>> p 18

<sup>140</sup> CAT, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)' CAT/C/GBR/CO/5 (24 June 2013) <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En)> para 14

<sup>141</sup> NPM (n 125) 60-61

<sup>142</sup> NPM (n 139) 73-75

<sup>143</sup> *ibid* 54

<sup>144</sup> SPT, 'Analytical self-assessment tool for National Preventive Mechanisms (NPM): A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM' (6 February 2012) UN Doc CAT/OP/1 <[http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalToolsNPM\\_en.doc](http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalToolsNPM_en.doc)>

<sup>145</sup> NPM (n 125) 65-70

inclusion of minority communities in their preventive activities, insufficient follow-up of cases of torture or ill-treatment, and prevention of reprisals among others. NPM members agreed to conduct self-assessment exercises annually<sup>146</sup> however in the subsequent years there has been a decline in the number of members conducting the self-assessment. In 2014-2015 period, only 16 members completed the process while in the 2016-2017 period, 17 members completed it.

In the past, lay visitors in England and Wales were introduced to the persons deprived of their liberty by the custody officer. This, however, did not perceive them as independent but when they introduced the self-introduction policy, the percentage of prisoners that refused to speak to them dropped from 18% to 7%.<sup>147</sup>

#### **2.1.4 COOPERATION WITH SPT, CPT, AND OTHER STAKEHOLDERS**

The UK ratified the ECPT in 1988 and since then, the CPT has carried out 20 visits, both periodic and ad-hoc visits.<sup>148</sup> The CPT's seventh periodic visit in September 2012 was its first after the creation of the NPM while the following visit was in April 2016. The NPM collaborated with the CPT by providing it with information, advice, and contacts to enable it to effectively conduct its visits.<sup>149</sup>

The NPM maintains communication with SPT. They both held their first joint-meeting in June 2013 to consider the strengths and weaknesses of the UK NPM model, lessons that could be learnt in general and to analyse the extent it was fulfilling its OPCAT obligations.<sup>150</sup> Whenever UK has come under review before other UN Treaty Bodies, NPM members concerned with the mandate of the Treaty Body have submitted shadow reports.<sup>151</sup>

While the NPM members were already known for their individual monitoring work, they still had to raise awareness, among stakeholders, of OPCAT and their collective role as an NPM.<sup>152</sup> The NPM shares its knowledge with visiting delegations seeking to understand the UK system

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<sup>146</sup> *ibid* 38-40

<sup>147</sup> NPM (n 139) 37

<sup>148</sup> COE, 'The CPT and the United Kingdom' < <https://www.coe.int/en/web/cpt/united-kingdom> > accessed on 3 June 2018

<sup>149</sup> NPM, 'Monitoring Places of Detention: Eighth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2016 – 31 March 2017' (February 2018) <[https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122\\_NPM\\_AR2016-17\\_v4\\_web.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/6.4122_NPM_AR2016-17_v4_web.pdf)> p 69

<sup>150</sup> NPM, 'Monitoring Places of Detention: Fifth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2013 – 31 March 2014' (February 2015) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-5th-Annual-Report-2013-14.pdf>> p 31

<sup>151</sup> NPM (n 149) 67-69

<sup>152</sup> NPM, 'Monitoring Places of Detention: Second Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2010 – 31 March 2011' (February 2012) < <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-2nd-Annual-Report-2010-11.pdf> > p 13

such as from Japan, Ethiopia, Bahrain, Ukraine, Senegal, Kosovo, and Russia to mention a few. The NPM held discussions with the Independent Police Conduct Authority (IPCA), one of five members of the New Zealand NPM, on their challenges in coordination and the benefits of having member organisations with expertise in monitoring different types of detentions. IPCA also shadowed an HMIP and HMIC joint visit to a police custody.<sup>153</sup>

It is also willing to cooperate with other NPMs as it participated in the European NPM project, a network created to facilitate sharing of information and good practices among NPMs and to support each other in the implementation of OPCAT.<sup>154</sup> The NPM works closely other partners such as Bristol University, APT, and Open Society Foundations (Justice Initiative).

### **2.1.5 ACHIEVEMENTS AND CHALLENGES**

Since its designation, the NPM has identified gaps in monitoring places of deprivation of liberty and brought them to the government's attention. In Northern Ireland, 'non-designated' police stations were not within the mandate of NIPBICVS,<sup>155</sup> however, following discussions with authorities, they were brought under its mandate.<sup>156</sup> It also participated in consultations with the Scottish government on the future of policing, resulting in the inclusion of independent custody visiting in Chapter 16 of the Police and Fire Reform (Scotland) Act (2012) which makes explicit provision for visit by ICVS and SPT.<sup>157</sup> On the negative side however, grounds for refusal of a visit under this Act are not clearly defined as they are determined by the Scottish Ministers.<sup>158</sup> Additionally, thanks to its dialogue with state officials, the UK government extended the application of OPCAT to the Isles of Man, a Crown Dependency where its authorities later designated an NPM with three members.<sup>159</sup>

Despite these positive developments, the UK NPM faces numerous challenges. Key among them, the lack of statutory backing which adversely affects its independence, and to which it expressed its wish for the government to resolve it with the same enthusiasm it had in promoting the NPM internationally.<sup>160</sup> The financial resources allocated to HMIP to coordinate

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<sup>153</sup> *ibid* 16

<sup>154</sup> *ibid*

<sup>155</sup> NPM (n 139) p 35

<sup>156</sup> NPM, 'Monitoring Places of Detention: Fourth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2012 – 31 March 2013' (February 2014) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-4th-Annual-Report-2012-13.pdf>> p 19

<sup>157</sup> Police and Fire Reform (Scotland) Act 2012, Chapter 16, arts 93-96

<sup>158</sup> Art 94 (4) (1) Police and Fire Reform (Scotland)

<<http://www.legislation.gov.uk/asp/2012/8/part/1/chapter/16/enacted>>

<sup>159</sup> NPM (n 150) 11

<sup>160</sup> NPM (n 149) 5

the NPM are also ‘unsuitable’ for coordinating its complex structure<sup>161</sup> and to enable frequent collective work among members.<sup>162</sup> To overcome this, NPM members agreed to make modest financial contributions to the central costs of the NPM,<sup>163</sup> however the UK government later implemented wide public spending cuts that significantly reduced their resources while at the same time legislative developments and policy proposals affecting them were being introduced.<sup>164</sup>

Legal aid was greatly affected by spending cuts introduced in December 2013 through the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in areas such as Immigration and private family law,<sup>165</sup> and resulted in a sharp increase in violence and self-injury in prisons<sup>166</sup> and family courts being swamped by unrepresented litigants.<sup>167</sup> Two charity organisations, however, took the matter to court and on 10 April 2017, the Court of Appeal ruled that the cuts on legal aid were inherently unfair. The government then ordered a review of LASPO<sup>168</sup> and later withdrew its appeal application to the Supreme Court, making the judgment final.<sup>169</sup>

While detainees and prisoners within the UK enjoy protection through the monitoring work of the NPM, the same cannot be said of those outside its geographical boundaries.<sup>170</sup> The NPM’s Second Annual Report reported that HMIP had discussed with the Ministry of Defence regarding the possibility of carrying out independent inspections of UK-run detention facilities

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<sup>161</sup> *ibid* 79

<sup>162</sup> NPM (n 152) 11

<sup>163</sup> NPM (n 139) 53

<sup>164</sup> NPM (n 156) 12

<sup>165</sup> Amnesty International, ‘Cuts that Hurt: The impact of legal aid cuts in England on access to justice’ (Amnesty International UK, London, 2016) <[https://www.amnesty.org.uk/files/aiuk\\_legal\\_aid\\_report.pdf](https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf)> p 8

<sup>166</sup> The Guardian, ‘Violence and self-harm in UK prisons continue to surge’ (26 October 2017) <<https://www.theguardian.com/society/2017/oct/26/uk-prisons-violence-self-harm-continues-to-surge>> accessed on 5 June 2018; NPM, ‘Monitoring Places of Detention: Seventh Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2015 – 31 March 2016’ (February 2017) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2017/01/NPM-annual-report-corrected.pdf>> p 16 - the NPM expressed concern at increase of 31% in assault, 26% in serious assaults, 27% in self-harm and 28% in self-inflicted deaths in the year 2015. In the period 2016-2017, there was a further increase from the previous year of 17% in self-harm incidences, 20% in assaults, 22% in serious assaults and 34% in self-inflicted harm; NPM (n 149) 13

<sup>167</sup> The Guardian, ‘Impact of cuts to legal aid to come under review’ (31 October 2017) <<https://www.theguardian.com/law/2017/oct/31/impact-of-cuts-to-legal-aid-to-come-under-review>> accessed on 5 June 2018

<sup>168</sup> The Guardian, ‘Ministry of Justice abandons court battle on prisoners’ legal aid’ (7 November 2017) <<https://www.theguardian.com/law/2017/nov/07/ministry-of-justice-abandons-court-battle-on-prisoners-legal-aid>> 5 June 2018

<sup>169</sup> Howards League for Penal Reform, ‘Green light for Court of Appeal ruling on prisoners’ access to justice’ (7 November 2017) <<https://howardleague.org/news/green-light-for-court-of-appeal-ruling-on-prisoners-access-to-justice/>> accessed on 5 June 2018

<sup>170</sup> Richard Carver (n 135) 107

in Afghanistan but the government at the time did not believe that OPCAT applied extra-territorially.<sup>171</sup> This was despite the fact that UK soldiers had been accused of participating in the torture and ill-treatment of prisoners in Iraq, a matter that came to light after the death of Baha Mousa who was beaten to death by British soldiers in 2003. An initial autopsy by the military doctor only recorded small amount blood on the nose and no further injuries, however, a subsequent autopsy recorded 93 injuries including cuts and bruises on his body.<sup>172</sup> The Baha Mousa inquiry recommended that HMIP should conduct independent inspection of the UK's Afghanistan detention facilities. HMIP actively sought the inclusion of this power into the Armed Forces Bill but much to its disappointment, the government responded that it no longer intended to put the inspection of military detention onto a statutory footing.<sup>173</sup>

The Conservative government's manifestos of 2010 and 2015 were to pull out of the European Convention on Human Rights (ECHR) and breaking links with the ECtHR by replacing the implementing Act, the Human Rights Act (HRA), with the British Bill of Rights because it jeopardised national security and bound the hands of Parliament.<sup>174</sup> This was because courts are empowered to issue 'declaration of incompatibility' if they found that a UK legislation breached the HRA.<sup>175</sup> This was the case in December 2004 when the House of Lords ruled that indefinite detention of international terror suspects under Part 4 of the Anti-Terrorism Crime and Security Act 2001 was a breach of their right to liberty under Article 5 of the ECHR.<sup>176</sup> These manifestos were met with opposition from the human rights community and the devolved governments of Wales, Scotland and Northern Ireland. In Northern Ireland's case, this move would have constituted a breach of treaty since the ECHR is a key component of the Good Friday Agreement,<sup>177</sup> the peace accord that ended The Troubles.<sup>178</sup> To date however, the

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<sup>171</sup> NPM (n 152) 46

<sup>172</sup> Richard Carver (n 135) 107

<sup>173</sup> NPM (n 139) 19

<sup>174</sup> Stone Jon, 'Plans to replace Human Rights Act with British Bill of Rights will go ahead, Justice Secretary confirms' (22 August 2016) < <https://www.independent.co.uk/news/uk/politics/scrap-human-rights-act-british-bill-of-rights-theresa-may-justice-secretary-liz-truss-a7204256.html> > accessed on 7 June 2018

<sup>175</sup> Kemp Susan, 'The New UK Government Wants to Scrap the Human Rights Act. Does the Act Matter, And Can Anything Be Done to Save It?' (27 May 2015) < <https://www.ejiltalk.org/the-new-uk-government-wants-to-scrap-the-human-rights-act-does-the-act-matter-and-can-anything-be-done-to-save-it/> > accessed on 8 June 2018

<sup>176</sup> Richard Carver (n 135) 121

<sup>177</sup> The Northern Ireland Peace Agreement

< [https://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB\\_980410\\_Northern%20Ireland%20Agreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB_980410_Northern%20Ireland%20Agreement.pdf) > pp 7, 18-21

<sup>178</sup> BBC, 'What was the Good Friday Agreement?' (10 April 2018)

< <http://www.bbc.co.uk/newsround/14118775> > accessed on 8 June 2018

UK government has not put forward proposals of the British Bill of Rights and has not held any consultations with stakeholders, including the NPM.<sup>179</sup>

The UK NPM has done an impressive work monitoring and coordinating all its members. Its mandate is more important than ever, considering the flow of migrants and refugees into Europe and Brexit. It is paramount that the NPM is able to disagree with government policies without members or their leaders being ‘punished’ and this should be addressed through separating the NPM members from government agencies and granting the NPM powers enshrined in law. The membership of lay monitoring bodies has made a significant impact by ensuring that issues are addressed as soon as they arise. There is, however, need to achieve the gender balance and include minority and vulnerable groups in the NPM activities.

## 2.2 SLOVENIA

Slovenia ratified the UNCAT in 1993 and the OPCAT in 2007.<sup>180</sup> Its Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment designated an NPM.<sup>181</sup>

### 2.2.1 STRUCTURE

The NPM, an Ombuds Plus model, is composed of the Human Rights Ombudsman (Ombudsman) and the NGOs registered in Slovenia with humanitarian organisations status.<sup>182</sup> The Ombudsman selects the NGOs through annual public tenders, after which they sign a declaration to work according to its instructions and respect confidentiality regulations on the protection of personal and confidential information.<sup>183</sup> They conduct monitoring work using their own staff who are trained for individual fields of monitoring.

In 2013, the NPM admitted that its seconded staff were overburdened by the duties of the NPM and their other duties at the Ombudsman Office therefore in 2015, as a trial and in accordance with OPCAT,<sup>184</sup> it underwent an organisational change which separated the NPM department

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<sup>179</sup> NPM (n 139) 18

<sup>180</sup> APT, ‘Slovenia - OPCAT Situation’ < [https://apt.ch/en/opcat\\_pages/opcat-situation-66/](https://apt.ch/en/opcat_pages/opcat-situation-66/)> accessed on 10 June 2018

<sup>181</sup> Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Official Gazette RS no. 114/06 – International Treaties no. 20/06) <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/Opcijski\\_Protokol\\_dvostr.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Opcijski_Protokol_dvostr.pdf)>

<sup>182</sup> *ibid* arts 4-5(1)

<sup>183</sup> *ibid* arts 5 (2) and (3)

<sup>184</sup> SPT, ‘Guidelines on National Preventive Mechanisms’ (9 December 2010) UN Doc CAT/OP/12/5 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en)> para 32

from the Ombudsman's Office. This proved a success and the status quo was maintained through an amendment to the Human Rights Ombudsman Act, which made the NPM a separate department, with its own budget, and place it under the leadership of the Deputy-Ombudsperson<sup>185</sup> who is assisted by four NPM members.

Monitoring is conducted in groups, appointed by the Deputy-Ombudsperson, consisting of NPM representatives and the NGOs staff. The Deputy-Ombudsperson decides the place and time of monitoring according to the programme created in collaboration with the partner NGOs.<sup>186</sup> Monitors from NGOs do not receive a salary but are remunerated for the reports they produce, a small symbolic payment for each hour spent in monitoring, reimbursements for travel, food and accommodation costs, and compensation for loss of earnings,<sup>187</sup> paid from the NPM's budget.<sup>188</sup>

### 2.2.2 PREVENTIVE ACTIVITIES

The NPM is empowered to visit all detention facilities in the country.<sup>189</sup> It conducted its first visit and a total of 35 visits in 2008. Although most visits are unannounced, where the visit will be conducted over several days, the NPM gives notice to avoid interfering of the institutions' programmes.<sup>190</sup> If the NPM does not have the required expertise within, it hires external experts such as social workers, psychologists, and sociologists.<sup>191</sup>

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<sup>185</sup> Human Rights Ombudsman, 'Report of the Human Rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2017' (April 2018) p 6

<sup>186</sup> Human Rights Ombudsman, 'Report of the Human Rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2008' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/DPM\\_porocilo\\_za\\_let\\_2008\\_-\\_zadnje.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/DPM_porocilo_za_let_2008_-_zadnje.pdf)> p 11

<sup>187</sup> Human Rights Ombudsman, 'Rules on the Reimbursement of Costs and other Rewards to persons from organisations that perform tasks or exercise authorities under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (Official Gazette RS, no. 17/2008 of 19.02.2008) <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/reimbursement.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/reimbursement.pdf)>

<sup>188</sup> Art 5 (4) Act of Ratification

<sup>189</sup> Human Rights Ombudsman, 'Diagram of Slovenian NPM's Operation' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/skica-DPM-ANG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/skica-DPM-ANG.pdf)>; Human Rights Ombudsman, 'Implementation of the Duties and Powers of the NPM in 2013' (June 2014) <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Porocilo\\_DPM\\_za\\_let\\_2013\\_-\\_dvostransko.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Porocilo_DPM_za_let_2013_-_dvostransko.pdf)> p 9

<sup>190</sup> Human Rights Ombudsman '2010 Report: National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/DrzavniPreventivniM-2010-web2.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/DrzavniPreventivniM-2010-web2.pdf)> p 7

<sup>191</sup> Human Rights Ombudsman, 'Report of the Human rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2009' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/DPM\\_porocilo\\_-\\_okt2010\\_WEB.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/DPM_porocilo_-_okt2010_WEB.pdf)> p 15

The NPM conducts its visits in a thorough manner, paying close attention to every detail relating to the environment and the treatment within the place of deprivation of liberty and this is evident in its reports which include observations on the conditions of the holding rooms and furniture, diet including storage of the food, lighting, access to health of the persons deprived of their liberty, hygiene including frequency of showers and access to hot water, condition of isolations centres, right to work, staffing of the institutions, education, the right to work, contact with the outside world including frequency of visits, visitation conditions and telephone rights as well as complaints procedure.<sup>192</sup>

Its reports also contain complaints monitors received, responses received from staff members and its recommendations. The NPM and the NGOs representatives that participate in a visit prepare the final report which includes recommendations from all the monitors and if a medical expert was present, their report is attached to the report.<sup>193</sup>

The NPM has observed that overcrowding in prisons is a big problem in Slovenia and has continued to highlight it in its reports urging authorities to resolve the issue. In one case, it observed that the conditions of detention of arrested persons were worse compared to convicted persons and it reminded authorities that arrested persons were protected by the presumption of innocence therefore their condition had to be improved.<sup>194</sup> The NPM also expressed concern about the disproportionate ratio of prison staff and health care personnel to persons deprived of their liberty. It noted that this led to prison guards being overburdened quickly and to poor-quality health services.<sup>195</sup>

Final reports are sent to the concerned institution or the superior body which is given a period of 30 days to respond. The response is expected to contain measures it will adopt to remedy the concerns raised. Afterwards, the NPM and the authorities have continuous dialogue to ensure implementation of its recommendations which are also used to review progress made by the institutions.<sup>196</sup> The NPM has been vocal when it faced challenges relating to the implementation of its recommendations. While monitoring secure institutions in 2008, it noted that secure homes kept people in the homes involuntarily without seeking a court order as

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<sup>192</sup> Human Rights Ombudsman '2011 Report: National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'

<[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/Porocilo\\_DPM\\_za\\_letno\\_2011.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocilo_DPM_za_letno_2011.pdf)> p 19

<sup>193</sup> *ibid* 11

<sup>194</sup> Ombudsman (n 186) 19

<sup>195</sup> *ibid* 25

<sup>196</sup> Ombudsman (n 191) 11



required by law.<sup>197</sup> During their monitoring in 2010, monitors found the issue persisting,<sup>198</sup> leading them to report that they hope for better cooperation from the Ministry of Health, among other government departments, to ensure implementation of the NPM's recommendations.<sup>199</sup> The format of its reports has changed over the years making it more reader-friendly. The 2015 and 2016 reports contained clear distinction of the NPM observations, staff response, its recommendations, and level of implementation.

The NPM has also monitored a military facility which it did so in 2012, for the first time, and noted that although no person had been detained there since 2004, the conditions were not perfect therefore, it prepared and submitted its report containing recommendations and the Ministry of Defence responded indicating timelines for implementing each recommendation.<sup>200</sup>

The NPM makes recommendations on change in government policy and legislation. It expressed reservation on the introduction of tasers in the amendments to the Police Tasks and Powers Act proposing that its use be limited to cases of serious or imminent danger and as an alternative to other deadly means such as guns.<sup>201</sup> While the NPM has not published thematic reports relating to its mandate, the Deputy-Ombudsperson, Ivan Šelih, informed me during an interview that from 2018, the NPM planned to adopt thematic monitoring and reporting, similar to the UK NPM.<sup>202</sup> The NPM reports do not highlight the situation of vulnerable people in places of deprivation of liberty, however, it is expected that thematic monitoring and reporting will address this issue. Although the NPM has the powers to monitoring deportation, the Deputy Ombudsperson stated that it was not yet the focus of the NPM.

### 2.2.3 INDEPENDENCE

Unlike the UK NPM, the powers of the Slovene NPM are enshrined in law. The Human Rights Ombudsman office was created by the Slovene Constitution, to protect human rights and fundamental freedoms,<sup>203</sup> and the implementing Human Rights Ombudsman Act. In turn, the

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<sup>197</sup> Ombudsman (n 186) 49

<sup>198</sup> Ombudsman (n 190) 57

<sup>199</sup> *ibid* 9

<sup>200</sup> Human Rights Ombudsman '2012 Report: National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/DPM\\_porocilo\\_2012.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/DPM_porocilo_2012.pdf)> pp 127-133

<sup>201</sup> Ombudsman (n 185) 10-13

<sup>202</sup> Interview with Ivan Šelih, Deputy-Ombudsperson, Human Rights Ombudsman (Ljubljana, Slovenia, 19 June 2018)

<sup>203</sup> Constitution of the Republic of Slovenia <<http://www.us-rs.si/en/about-the-court/legal-basis/constitution/>> art 159

Human Rights Ombudsman Act was amended making the NPM a separate department.<sup>204</sup> The process of nomination, term of office and vacation from office of the Ombudsperson and the Deputies is provided for in the Act.<sup>205</sup> The Ombudsperson is required to be independent, impartial, and autonomous.<sup>206</sup> The Ombudsman Office has been proactive in protecting its independence and impartiality as evidenced in 2016 when it rejected an amendment to the Act Amending the Integrity and Prevention of Corruption Act which would have made the Office a member of a commission, appointed by the President, to establish the non-fulfilment of the condition of suitable personal qualities of high officials within the Commission for the Prevention of Corruption, because its membership would create a conflict of interest in relation to its mandate.<sup>207</sup> It also remarked that prison officials and police officers are aware of its mandate and powers therefore it does not face difficulties when conducting monitoring visits.<sup>208</sup>

The separation of the NPM's preventive mandate from the reactionary mandate of the Ombudsman office has also strengthened its independence and made it more organised and better prepared for monitoring visits. Consequently, it conducted more visits than in the previous years; 39 visits in 2014, which increased progressively to 67 visits in 2015 and 80 visits in 2016 and 2017.<sup>209</sup> The NPM recruits its own independent staff, however, the Deputy-Ombudsperson is seconded and performs other duties within the Ombudsman Office.<sup>210</sup>

#### **2.2.4 COOPERATION WITH SPT, CPT, AND OTHER STAKEHOLDERS**

According to the Deputy-Ombudsperson, the NPM communicates with SPT and sometimes seeks their opinion on practises they are not sure about or challenges they encounter. It also reported to SPT about its operation and received its comments and proposals to improve its working methods. Although SPT has not visited Slovenia, it has already been a subject of CPT monitoring visit twice, in 2012 and 2017, whereby the NPM met and held discussions with CPT at the introductory and concluding meetings.<sup>211</sup>

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<sup>204</sup> *Ibid* (n 185)

<sup>205</sup> Human Rights Ombudsman Act <<http://www.varuh-rs.si/index.php?id=91&L=6>> arts 11-22

<sup>206</sup> *ibid* arts 4 and 9

<sup>207</sup> Human Rights Ombudsman, 'Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016' (September 2017) <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP2016\\_VARUH\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf)> p 83

<sup>208</sup> Ombudsman (n 190) 6

<sup>209</sup> Ombudsman (n 185) 6

<sup>210</sup> Interview with Ivan Šelih (n 202)

<sup>211</sup> CPT, 'Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee

The NPM participated in the exchange of ideas and methods of operation within the European Project of the NPM. It has organised and carried out study visits with other NPMs<sup>212</sup> and is one of the founding members of the South-East Europe NPM Network (SEE NPM Network), which aims to improve the effectiveness of the members by establishing cooperation, exchanging of experience, and conducting joint activities.<sup>213</sup> It has also presents its Ombuds Plus model to interested countries eg Serbia, Bosnia and Herzegovina, Kosovo, and Georgia<sup>214</sup> and shared knowledge with States preparing to establish their NPMs such as Ukraine.<sup>215</sup>

It has worked with stakeholders such as APT, the European Commission, the Council of Europe, Hungarian Helsinki Committee and Mental Disability Advocacy Centre (MDAC).<sup>216</sup> Nationally, according to the Deputy-Ombudsperson, the NPM organises a monthly NGO meeting based on different themes related to its mandate and invites NGOs experienced in that area to exchange ideas.<sup>217</sup> The NPMs conclusion is that the inclusion of NGOs has increased the transparency of its monitoring activities and guaranteed higher quality implementation of the State Party's obligations after ratification of OPCAT.<sup>218</sup>

## 2.2.5 ACHIEVEMENTS AND CHALLENGES

From 2008 to 2017, the NPM has conducted 480 monitoring visits.<sup>219</sup> Since its operation, it has noted significant improvements in places of deprivation of liberty due to its recommendations such as placing of fresh beddings in detention rooms, placing brochures showing the rights of arrested persons in police detention rooms, surveillance camera not being installed to monitor toilets, cleanliness and constant training for staff in nursing homes, the setting up of a computer room to allow people detained in Alien Centres to have access to internet and their emails among other positive developments.<sup>220</sup> In its 2016 report, it provided

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for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 6 February 2012' (19 July 2013) <<https://rm.coe.int/1680697db3>> p 7; CPT, 'Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 4 April 2017' (20 September 2017) <<https://rm.coe.int/pdf/168074adf9>> p 9

<sup>212</sup> Ombudsman (n 200) 13

<sup>213</sup> Human Rights Ombudsman, Report on the Implementation of the Tasks Of The National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2013' (June 2014) <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Porocilo\\_DPM\\_za\\_letu\\_2013\\_-\\_dvostransko.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Porocilo_DPM_za_letu_2013_-_dvostransko.pdf)> p 19

<sup>214</sup> Ombudsman (n 186) 11

<sup>215</sup> Ombudsman (n 200) 149

<sup>216</sup> Ombudsman (n 192) 71-77; Ombudsman (n 200) 141

<sup>217</sup> Interview with Ivan Šelih (n 202)

<sup>218</sup> Ombudsman (n 186) 53

<sup>219</sup> Ombudsman (n 185) 6

<sup>220</sup> Ombudsman (n 192) 15; Ombudsman (n 200) 33, 35, 77-79, 101

statistics of the rate of implementation of its recommendations by the various institution and government authorities (*Table 2 below*).

*Table 2. Statistics on the implementation of the Slovene NPM recommendations*

<b>RECOMMENDATIONS</b>						
<b>INSTITUTIONS VISITED</b>	<b>No. of locations</b>	<b>Realised</b>	<b>Accepted</b>	<b>Rejected</b>	<b>No data</b>	<b>Total</b>
Police stations	34	107	66	27	4	204
Aliens Centre	1	4	8	3	0	15
Psychiatric hospitals	5	21	26	7	12	66
Social care institutions	24	84	59	3	40	186
Special social care institutions	3	0	5	1	17	23
Prisons	7	56	44	8	0	108
Residential treatment institutions	4	11	36	6	6	59
Entry and reception centres for refugees/migrants	2	4	2	5	3	14
<b>TOTAL</b>	<b>80</b>	<b>287</b>	<b>246</b>	<b>60</b>	<b>82</b>	<b>675</b>

*Source: Human Rights Ombudsman 2016 NPM Report, p 10-11*

In my view, its biggest achievement has been its ability to conduct as many visits as it does with very few staff members and the effective coordination and collaboration with NGOs. The NPM has been able to step back and critique its working methods leading to the separation of the NPM department from the Ombudsman Office. The NPM is visible because its reports and information relating to its work are easily accessible on the internet. The Deputy-Ombudsperson informed me that the release of NPM reports are announced through the Ombudsman Office's press release, then launched in a press conference and copies are later sent to all state institutions, foreign consulates and embassies in Slovenia, the CPT, and the SPT.

Full implementation of the NPMs recommendation remains a challenge. The Deputy-Ombudsperson informed me that government ministries were usually ready to implement the NPM's recommendations. The challenge, however, arose when implementation involved collaboration between two or more ministries. Because of this, he stated that there was greater need for more cooperation between government institutions.

The Deputy-Ombudsperson also stated that inadequate financial resources remained an obstacle for the NPM in hiring external professional experts to participate in its visits as the

money allocated is only enough to pay NPM and NGOs staff. He stated that while preparing its initially budget, the NPM was not fully aware of the exact cost of procuring external experts and now it is restricted by government policy from making a huge budgetary increment at once. Although the NPM takes some extra funding from the Ombudsman budget, it is not enough.

In conclusion, the work of the Slovene NPM is impressive. My interview with the Deputy-Ombudsperson revealed that cooperation of the NPM with the CPT and SPT left a lot to be desired. In this case, the NPM's communication with CPT was limited to the context of a CPT country visit and such communication took place before and during the visit, in the form of exchange of information, and after the visit when the CPT was presenting its preliminary findings to the government officials and the NPM. Afterwards, there was no communication between these two monitoring bodies. In relation to SPT, although the NPM could contact the SPT through the Focal Point, the Deputy-Ombudsperson felt that the SPT could be more involved in supporting the NPM with its mandate.

## **2.3 MAURITIUS**

Mauritius ratified the UNCAT in 1992 and the OPCAT in 2005. It later designated its NHRI, the National Human Rights Commission (NHRC), a quasi-judicial body, as its NPM in October 2007<sup>221</sup> pending legislative amendments on the existing Protection of Human Rights Act to give it legal grounding.<sup>222</sup> The National Preventive Mechanism Act (NPM Act) was adopted in 2012.

### **2.3.1 STRUCTURE**

Even though the NPM Act was adopted in 2012, it was not until June 2014<sup>223</sup> when the NPM was created as a separate division from the Human Rights, which has a reactive mandate, and the Police Complaints divisions of the NHRC as envisage by law.<sup>224</sup> The NPM is composed of four members:<sup>225</sup> The Chairperson of the NHRC, the deputy appointed to head the NPM, both

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<sup>221</sup> Republic of Mauritius' Notification of the designation of an NPM (19 May 2010) <[https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Notification\\_NPM\\_Mauritius19.05.2010.pdf](https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Notification_NPM_Mauritius19.05.2010.pdf)>; APT, 'Mauritius - NPM Designation' <[https://apt.ch/en/opcat\\_pages/npm-designation-42/#process-by-year-57](https://apt.ch/en/opcat_pages/npm-designation-42/#process-by-year-57)>

<sup>222</sup> UN Working Group on the Universal Periodic Review, 'National Report Submitted in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 \*Mauritius' (30 October 2008) UN Doc A/HRC/WG.6/4/MUS/1

<[https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MU/A\\_HRC\\_WG6\\_4\\_MUS\\_1\\_E.PDF](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MU/A_HRC_WG6_4_MUS_1_E.PDF)> p 11

<sup>223</sup> NHRC, 'Annual Report of the National Human Rights Commission Mauritius for the year 2014 (March 2015) <<http://nhrc.govmu.org/English/Documents/Annual%20Report/annual-rep-2014.pdf>> pp 41-42

<sup>224</sup> The Protection of Human Rights (Amendment) Act 2012 (Act No 19 of 2012) <<http://mauritiusassembly.govmu.org/English/acts/Documents/2012/act1912.pdf>> s 3 (3)

<sup>225</sup> National Preventive Mechanism Act 2012 (Act No 21 of 2012) <<http://mauritiusassembly.govmu.org/English/acts/Documents/2012/act2112.pdf>> s 3 (4)

of whom must be legal practitioners,<sup>226</sup> and two members, one selected from a list submitted by NGOs involved in social works in prison while the other is required to have knowledge and experience in a field relevant to the mandate of the NPM.<sup>227</sup> The two members work part-time.<sup>228</sup>

### 2.3.2 PREVENTIVE ACTIVITIES

The powers of the NPM are similar to those provided for under Article 20 of the OPCAT.<sup>229</sup> The NPM conducts visits to places of deprivation of liberty where it conducts interviews with persons detained, observes their condition, and communicates their immediate observations to the authorities in these institutions. As opposed to preparing reports, the NPM sends letters indicating its findings and recommendations.<sup>230</sup> It then follows-up on these recommendations through telephone calls for specific recommendations, letters for general recommendations, and monitoring visits.<sup>231</sup>

The NPM's visits, thus far, have been limited to prisons, mental health centre, police stations, and juvenile detention centres. It observed poor ventilation,<sup>232</sup> overcrowding and smelly toilets<sup>233</sup> as some of the problems in prisons and police stations. It was alarmed by the lack of rehabilitation programmes and access to education in a youth rehabilitation centre<sup>234</sup> and that girls who attempted to escape from the rehabilitation centre were referred to a mental health centre for suicidal behaviour or gross misconduct.<sup>235</sup> Children of imprisoned foreign women also had no access to education.<sup>236</sup> Access to health care was not good because the prisoners were required to pay for their medicine and when one required specialised care but could not afford it, the prisoner was left to suffer without treatment. Those taken to hospital remained chained and under constant watch of a prison guard, even in during consultation with the

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<sup>226</sup> s 3 (5) Protection of Human Rights Act

<sup>227</sup> s 3 (5) NPM Act

<sup>228</sup> NHRC, 'Annual Report of the National Human Rights Commission Mauritius for the year 2015 (April 2016) <<http://nhrc.govmu.org/English/Documents/annrep2015.pdf>> p 59

<sup>229</sup> s 5 NPM Act

<sup>230</sup> NHRC (n 223) 41

<sup>231</sup> NHRC (n 228) 60

<sup>232</sup> NHRC, 'Annual Report of the National Human Rights Commission Mauritius for the year 2016 (March 2017) <[http://nhrc.govmu.org/English/Documents/Annual%20Report/AR\\_National%20Human%20Rights.pdf](http://nhrc.govmu.org/English/Documents/Annual%20Report/AR_National%20Human%20Rights.pdf)> p 30

<sup>233</sup> *ibid* 31

<sup>234</sup> NHRC (n 223) 42

<sup>235</sup> *ibid* p 43; NHRC (n 228) 62-63

<sup>236</sup> *ibid* p 44; NHRC (n 228) 66

doctor.<sup>237</sup> It noted with concern that in some police stations, detainees were only allowed 10 to 30 minutes outside of their cell to exercise.<sup>238</sup>

It also observed that there was a significant number of foreigners serving prison sentences who could not benefit from prison transfer because their governments had not signed a treaty with Mauritius.<sup>239</sup> The NPM however, regularly communicated with the Prime Minister's Office and the relevant embassies to ensure prisoners' reunification with their families in their countries of origin.<sup>240</sup>

The NPM engages in sensitization programmes, aimed at high school students, NGOs, the police, and prison officials, to spread awareness of OPCAT and its mandate.<sup>241</sup> Since June 2015, the NPM has had the powers to investigate complaints made by detainees.<sup>242</sup>

The NPM makes recommendations to the government regarding legislation or policies. It has proposed an amendment to the Dangerous Drug Act<sup>243</sup> to allow persons convicted for offences under this Act, except those convicted under section 34 which passes a short one-year sentence,<sup>244</sup> the right to apply and be granted parole for good behaviour because long sentences without parole was too harsh.<sup>245</sup> It noted that because such persons did not have the right to parole, they were reluctant to work in prison creating tension and risk of violence. The NPM also recommended that segregation in places of deprivation of liberty should be regulated and limited by the law following complaints that authorities misused it.<sup>246</sup>

Interestingly, the Mauritian NPM appears to perform tasks that are outside the mandate prescribed by OPCAT. Almost as if it is quasi-judicial body, it can receive complaints from persons deprived of their liberty, conduct investigations,<sup>247</sup> and summon any person before it to produce documents or give evidence relating to a complaint.<sup>248</sup> It makes recommendations to the Commission on the Prerogative of Mercy and Parole Board, for their consideration, on

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<sup>237</sup> NHRC (n 228) 65

<sup>238</sup> NHRC (n 232) 31

<sup>239</sup> *ibid* 46

<sup>240</sup> *ibid* 73

<sup>241</sup> NHRC (n 223) 41

<sup>242</sup> ACHPR, 'Sixth to Eighth Combined Periodic Report of The Republic of Mauritius on The Implementation of the African Charter on Human and Peoples' Rights (May 2009-December 2015)' (March 2016) <[http://www.achpr.org/files/sessions/59th/state-reports/6th-2009-2015/staterep6\\_mauritius\\_2009\\_2015\\_eng.pdf](http://www.achpr.org/files/sessions/59th/state-reports/6th-2009-2015/staterep6_mauritius_2009_2015_eng.pdf)> Part II, p 5

<sup>243</sup> The Dangerous Drugs Act 2000 (Act No 41 of 2000)

<<http://apps.who.int/medicinedocs/documents/s18370en/s18370en.pdf>>

<sup>244</sup> The classification of dangerous drugs is provided for under section 3 and listed in Schedules I, II, III, and IV

<sup>245</sup> NHRC (n 223) 45; NHRC (n 228) 65 and 71

<sup>246</sup> NHRC (n 232) 39

<sup>247</sup> S 4 (b) NPM Act 2012

<sup>248</sup> NHRC (n 228) 59-60

early release of some prisoners.<sup>249</sup> It also intervened in the transfer of three women who did not want to be moved from the female wing to the open prison leading to the prison administration acceding to its request.<sup>250</sup> The NPM has been involved in ensuring access to legal aid for detainees by contacting Presiding Magistrates and the Ministry of Social Security.<sup>251</sup> It also receives requests for social aid from detainees and prisoners and informs them of their eligibility.<sup>252</sup> Finally, the NPM make enquiries into complaints of unjustified detention of some detainees awaiting trial.<sup>253</sup>

### **2.3.3 INDEPENDENCE**

The NHRC has been accredited an 'A' by the GANHRI meaning that it is deemed to have complied with the Paris Principles, of which one of the conditions is that the NHRI has to be independent.<sup>254</sup> True to that, the Protection of Human Rights Act requires the NHRC to be independent<sup>255</sup> and it provides for the appointment, term of office, and vacation from office of the NPM members.<sup>256</sup>

While the functions of the NPM are separated from the reactive mandate of the Human Rights divisions on paper, the NHRC reports portray a blurred reality where the NPM has the mandate to receive complaints and conduct investigations. While it is stated that human resource of the NPM is separate and its members enjoy immunity as required by SPT,<sup>257</sup> not much information is provided on this subject in NHRC reports. There is also no information on how the budget of the NPM is allocated, information which is crucial.

### **2.3.4 COOPERATION WITH SPT, ACHPR, AND OTHER STAKEHOLDERS**

The SPT conducted its first country visit to Mauritius in 2007 and submitted its report to the State Party. The State Party responded to SPT's report however the reports remain confidential as it did not lift the veil of confidentiality.<sup>258</sup> In 2011, CAT recommended in its Concluding

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<sup>249</sup> NHRC (n 223) 46-47; NHRC (n 232) 44

<sup>250</sup> NHRC (n 228) 70

<sup>251</sup> *ibid* 72

<sup>252</sup> *ibid*; NHRC (n 232) 42

<sup>253</sup> NHRC, 'Annual Report of the National Human Rights Commission Mauritius for the year 2015 (April 2016) <<http://nhrc.govmu.org/English/Documents/annrep2015.pdf>> p 74

<sup>254</sup> GANHRI, 'Accreditation status as of 26 May 2017'

<[https://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)> p 4

<sup>255</sup> s 3 (2)

<sup>256</sup> ss 3 (5) (9) and (10)

<sup>257</sup> s 9 NPM Act

<sup>258</sup> Ackermann Marilize, 'Survey of detention visiting mechanisms in Africa' (Community Law Centre 2013) Civil Society for Prison Reform Initiative <<https://acjr.org.za/resource-centre/survey-of-detention-visiting-mechanisms-in-africa>> p 6



Observations that the State Party make the SPT report public<sup>259</sup> however, the government declined stating that it contained ‘sensitive information that could undermine the smooth running and security strategies of the Prisons Department’.<sup>260</sup> Mauritius submitted its State Report before the ACHPR in 2016 where it was questioned by the CPTA and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur) on all its obligations in preventing torture and conditions in places of deprivation of liberty. The Special Rapporteur conducted a mission to prisons and places of detention in Mauritius in 2008,<sup>261</sup> however disappointingly, there is no indication of interaction between the Special Rapporteur and the CPTA with NPM Division, since its creation, in their respective inter-session reports.

The State Party worked closely with APT to preparing the draft legislation that led to the NPM Act.<sup>262</sup> The NPM has also collaborated with APT in creating a monitoring checklist to guide its monitors on what to pay attention to during visits.<sup>263</sup> In its 2014 report, it stated that it also worked with Associations of Psychologists, Prisons Medical Staff, Chairman of the Bar Council, Law Reform Commission and Diplomatic Corps in relation to prison transfers of foreign<sup>264</sup>

### 2.3.5 ACHIEVEMENTS AND CHALLENGES

In its first year, the NPM was able to conduct 60 visits,<sup>265</sup> a number that increased substantially to 111 in 2015<sup>266</sup> and 170 visits in 2016.<sup>267</sup> There have been several improvements in the conditions of detention as a result of the NPM’s recommendations such as improvement of

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<sup>259</sup> CAT, ‘Concluding observations of the Committee against Torture: Mauritius’ (15 June 2011) UN Doc CAT/C/MUS/CO/3 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMUS%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMUS%2fCO%2f3&Lang=en)> p 6

<sup>260</sup> CAT, ‘Fourth periodic reports of States parties due in 2015: Mauritius’ (20 May 2016) UN Doc CAT/C/MUS/4 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/099/08/PDF/G1609908.pdf?OpenElement>> p 11

<sup>261</sup> ACHPR, ‘Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa’ (9-22 October 2012) <<http://www.achpr.org/sessions/52nd/intersession-activity-reports/prisons-and-conditions-of-detention/>> p 7

<sup>262</sup> Republic of Mauritius’ Opening Statement before CAT during its Periodic Review (May 2011) <[http://www2.ohchr.org/english/bodies/cat/docs/statements/Statement\\_Mauritius\\_CAT46.pdf](http://www2.ohchr.org/english/bodies/cat/docs/statements/Statement_Mauritius_CAT46.pdf)> p 5

<sup>263</sup> NHRC, ‘Annual Report of the National Human Rights Commission Mauritius for the year 2014 (March 2015) <<http://nhrc.govmu.org/English/Documents/Annual%20Report/annual-rep-2014.pdf>> Annex VIII

<sup>264</sup> p 47

<sup>265</sup> NHRC (n 263) 42

<sup>266</sup> NHRC (n 253) 76

<sup>267</sup> NHRC, ‘Annual Report of the National Human Rights Commission Mauritius for the year 2016’ (March 2017) <[http://nhrc.govmu.org/English/Documents/Annual%20Report/AR\\_National%20Human%20Rights.pdf](http://nhrc.govmu.org/English/Documents/Annual%20Report/AR_National%20Human%20Rights.pdf)> p 53

ventilation and installation of fans during summer,<sup>268</sup> sanitation,<sup>269</sup> fumigation to exterminate pests.<sup>270</sup> It however noted that although the prison administration seemed willing to improve conditions of detention, insufficient budgetary allocation was an obstacle and in one case the NPM advised that a prison level be closed off, should proliferation of pests persist, until the prison had sufficient funds to renovate the wooden floors.<sup>271</sup> Additionally, all police stations in the country have initiated the installation of CCTV camera.<sup>272</sup>

Due to the NPM's intervention through the NHRC, discussion with foreign embassies, consuls and government officials have led to prisoner transfer to their countries of origin<sup>273</sup> so that they could benefit from regular visits from their family members.<sup>274</sup>

Since 2014, the NPM has been advocating for an amendment to the Dangerous Drugs Act to allow prisoners sentenced to long sentences the right to parole for good behaviour. Unfortunately, according to its 2017 report, the government had not amended the law and this reluctance to leniency towards drug offenders was attributed to the introduction of synthetic drugs into the market which was giving authorities a difficult time.<sup>275</sup>

Considering the above, it is my view that the NPM did not clearly distinguish its mandate under OPCAT thereby mixing it with the NHRC general mandate. The ability to receive complaints is a potential obstacle to gaining the trust of government authorities and prison officials and establishment of dialogue, something that SPT recognises and relentlessly advises for the clear separation of reactive and preventive mandates. I observed that the NPM was attentive to prisoners' complaints and sometimes, overstepped its powers by intervening in prison administrative matters. I would propose that the NPM expands the places of monitoring looking at all aspects of the conditions and treatment of persons deprived of their liberty and propose that its current mandate be limited that specified by OPCAT to ensure it does not lose focus of its purpose by being a 'jack of all trades and a master to none'. Furthermore, the NPM should publish more information relating to its mandate and work on the NHRC's website to increase awareness and its visibility.

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<sup>268</sup> NHRC (n 253) 61; NHRC (n 267) 38

<sup>269</sup> NHRC (n 253) 69

<sup>270</sup> NHRC (n 267) 33

<sup>271</sup> *ibid*

<sup>272</sup> NHRC, 'Annual Report of the National Human Rights Commission Mauritius for the year 2017' (April 2018) <<http://nhrc.govmu.org/English/Documents/Annual%20Report/Annual%20Report%202017.pdf>> p 100

<sup>273</sup> NHRC (n 253) 73

<sup>274</sup> NHRC (n 267) 41

<sup>275</sup> NHRC (n 272) 91

## 2.4 SENEGAL

Senegal ratified the UNCAT in August 1986 and the OPCAT in October 2006. The State Party, following national consultations, decided to create a new specialised institution. Afterwards, an OPCAT Follow-Up Committee was created in 2007 with the mandate to support the Ministry of Justice in drafting an NPM law, advocate for its adoption by Parliament, and appoint the National Observer (the Observer) to head the NPM.<sup>276</sup> The NPM law was adopted in 2009.<sup>277</sup>

### 2.4.1 STRUCTURE

The new specialised institution, the National Observer of Places of Deprivation of Liberty (*Observateur Nationale des Lieux de Privation de Liberté* or ONLPL) was created in 2009 and its first Observer appointed in 2012.<sup>278</sup> The Observer is appointed for a non-renewable five-year term and is required to have a background in the judiciary, legal practice or security forces.<sup>279</sup> He/she is assisted in by Delegate Observers (Delegates) recruited on the basis of their professional competence and in accordance with the country's Labour Code.<sup>280</sup> ONLPL has ten members with diverse profiles such as psychiatrist, lawyer, former *gendarmérie* commander, former prison director, and former NGO members.<sup>281</sup>

### 2.4.2 PREVENTIVE ACTIVITIES

The ONLPL has the power to visit, at any moment, any place of deprivation of liberty. Before conducting such a visit, the Observer must issue a mission letter to delegates carrying out the visit.<sup>282</sup> Interestingly, Senegalese legislators included a limitation similar to SPT's under OPCAT although OPCAT itself does not limit the powers of an NPM. In this case, authorities can postpone the ONLPL's visit on grounds of national defence, public security, natural catastrophe, or serious disorder in the place to be visited.<sup>283</sup> SPT expressed concern that the

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<sup>276</sup> APT, 'Senegal - NPM Designation' <[https://apt.ch/en/opcat\\_pages/npm-designation-59/](https://apt.ch/en/opcat_pages/npm-designation-59/)> accessed on 16 June 2018; DECRET n° 2011-842 du 16 juin 2011, p 1

<sup>277</sup> Loi sur l'Observateur national des lieux de privation de liberté (Loi N°03/2009)

<sup>278</sup> Ambassade de France à Dakar, 'Prévention de la torture et humanisation des lieux de privation de liberté' (11 April 2017) <<https://sn.ambafrance.org/Prevention-de-la-torture-et-humanisation-des-lieux-de-privation-de-liberte>> accessed on 16 June 2018

<sup>279</sup> Arts 1-2 Decret n° 2011-842

<sup>280</sup> *ibid* art 3

<sup>281</sup> Organisation internationale de la Francophonie, 'Les Mécanismes nationaux de prévention de la torture en Afrique francophone : enjeux, défis et perspectives (Décembre 2014) <[https://www.francophonie.org/IMG/pdf/mecanismes\\_nationaux\\_de\\_prevention\\_de\\_la\\_torture.pdf](https://www.francophonie.org/IMG/pdf/mecanismes_nationaux_de_prevention_de_la_torture.pdf)> p 24

<sup>282</sup> art 7 Decret n° 2011-842

<sup>283</sup> art 6 Loi N°03/2009

powers of the ONLPL were interpreted narrowly excluding places of deprivation of liberty under the Armed Forces jurisdiction.<sup>284</sup>

During monitoring visits, ONLPL can gather any information or interview any person necessary for its mission. Under OPCAT, an NPM should have access to all information concerning the number of persons deprived of their liberty, their treatment, and the number and location of places of deprivation of liberty.<sup>285</sup> Unfortunately, Senegal included a limitation to the power of access to information in contradiction to OPCAT so that ONLPL can be denied access to information if it is likely to undermine the national defence, the security of the state, an investigation, medical or solicitor-client privilege. In such a case, it can only access this information following the decision of a competent regional tribunal.<sup>286</sup>

Following its visits, the ONLPL sends its observations and recommendations to the concerned Ministry.<sup>287</sup> The Minister may respond to the observations if he/she finds it useful or has expressly been asked to respond. If ONLPL observes a serious violation of the rights of persons deprived of their liberty, it is empowered to write to the necessary authorities giving them a deadline to remedy the situation. If the ONLPL deems it fit, it may publish immediately its observations and the response of the authorities. Additionally, if it believes a violation of the law has occurred, it may inform the public prosecutor.<sup>288</sup>

The ONLPL conducts human rights training for security forces with focus on prevention of torture and ill-treatment, in collaboration with stakeholders such as Amnesty International Senegal and the OHCHR.<sup>289</sup> It may also propose changes to government policies or legislation.<sup>290</sup> Concerned with overcrowding in prisons, it has called for the use of alternative sentencing and for criminal chambers to be made permanent like ordinary courts as opposed to sitting once a month. The infrequent sitting of the criminal chamber leads to people being held

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<sup>284</sup> SPT, 'Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Senegal' (31 July 2013) UN Doc CAT/OP/SEN/2  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fSEN%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fSEN%2f2&Lang=en)> p 4, para 15

<sup>285</sup> Art 20 OPCAT

<sup>286</sup> Art 6 Loi N°03/2009

<sup>287</sup> *ibid* art 8

<sup>288</sup> *ibid* art 7

<sup>289</sup> Organisation internationale de la Francophonie (n 281) 78; SPT, 'Replies of the national preventive mechanism of Senegal to the recommendations and questions put forward by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its advisory visit' (3 February 2014) UN Doc CAT/OP/SEN/2/Add.1

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fSEN%2f2%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fSEN%2f2%2fAdd.1&Lang=en)> p 3

<sup>290</sup> *ibid* art 8

in remand for years before their cases are heard at the first instance resulting to a huge backlog of cases and congestion in remand centres and prisons. This unfortunate situation led to a prisoners' hunger strike and revolt.<sup>291</sup> Finally, ONLPL is expected to publish annual reports and make them public.<sup>292</sup> Unfortunately, it has not published a single report to-date.

### 2.4.3 INDEPENDENCE

The law provides that the ONLPL should be independent, receiving instructions from no one however, it was established under the Ministry of Justice as 'other offices', a concern raised by SPT during its NPM Advisory visit.<sup>293</sup> Although ONLPL has also asked to be separated from the Ministry to become an independent administrative authority, there is no information whether the State Party allowed it.<sup>294</sup>

The Observer is required to be independent<sup>295</sup> however, he/she is appointed by decree at the proposal of the Ministry of Justice which has also been a cause of concern for SPT.<sup>296</sup> To avoid conflict of interest, the office-holder should not simultaneously hold public office, conduct any other professional activity, or hold an elected office.<sup>297</sup> He/she cannot be removed from office unless upon resignation. The Observer and his delegates enjoy immunity for acts performed within ONLPL's mandate. Additionally, civil servants who assist the NPM are protected from disciplinary measures unless they are instituted at the initiative of the Observer.<sup>298</sup> There is no information on the protection accorded to people or NGOs, from retribution, for collaborating with the NPM.

The law provides ONLPL with a budget necessary to fulfil its mandate, from the State budget.<sup>299</sup> It is also allowed to receive grants from local authorities, natural or legal persons provided they are pay into the deposit accounts opened in the public treasury books.<sup>300</sup> This is

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<sup>291</sup> Le soleil, 'Situation des prisons au Sénégal : Boubou Diouf Tall pour une célérité dans la gestion des dossiers pendants' (21 Septembre 2016) <<http://lesoleil.sn/2016-03-22-23-29-31/item/55485-situation-des-prisons-au-senegal-boubou-diouf-tall-pour-une-celerite-dans-la-gestion-des-dossiers-pendants.html>> accessed on 20 June 2018

<sup>292</sup> art 9 Loi N°03/2009

<sup>293</sup> SPT (n 284)

<sup>294</sup> Organisation internationale de la Francophonie (n 281) 25

<sup>295</sup> art 6 Loi N°03/2009

<sup>296</sup> SPT (n 284); CAT, 'Observations finales concernant le quatrième rapport périodique du Sénégal' UN Doc CAT/C/SEN/CO/4

<[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SEN/CAT\\_C\\_SEN\\_CO\\_4\\_31243\\_F.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SEN/CAT_C_SEN_CO_4_31243_F.pdf)> paras 27-28

<sup>297</sup> Art 2 Loi N°03/2009

<sup>298</sup> Art 4 Decret n° 2011-842

<sup>299</sup> Art 11 Loi N°03/2009

<sup>300</sup> Arts 4 Decret n° 2011-842

a good provision that would help the NPM supplement the resources it receives from the government and increase its monitoring activities to cover more places of deprivation of liberty. This, however, needs to be treated delicately to avoid its abuse so that the independence and credibility of ONLPL is not tainted, or government authorities' trust lost. There is no information on whether the ONLPL has used this legal provision to receive grants.

#### **2.4.4 COOPERATION WITH SPT, ACHPR, AND OTHER STAKEHOLDERS**

The ONLPL is empowered to cooperate with international bodies holding the same mandate.<sup>301</sup> The SPT conducted an NPM visit to Senegal in December 2012<sup>302</sup> and a joint visit to a place of deprivation of liberty to observe how ONLPL worked. Afterwards, it prepared two reports addressed to the NPM and to the State Party including its observations and recommendations, to which ONLPL response.<sup>303</sup> Although Senegal submitted its state report to ACHPR in 2013,<sup>304</sup> there is no evidence of interaction of ONLPL with the Special Rapporteur and the CPTA since its establishment. The ACHPR Commissioners have attended similar seminars ONLPL members.<sup>305</sup>

The ONLPL communicates and shares information with other NPMs such as the Swiss NPM with whom it shared its working methods<sup>306</sup> and participated in a prison visit conducted by the French NPM.<sup>307</sup>

Senegal received immense support from NGOs such as APT and Amnesty International Senegal among others, who lobbied for the adoption of the NPM legislation in Parliament. Following its adoption, APT facilitated a workshop with stakeholders to discuss the content of the NPM law and strategies towards the selection of the National Observer.<sup>308</sup> It has continued to work with ONLPL after its creation.<sup>309</sup>

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<sup>301</sup> Art 10 Loi N°03/2009

<sup>302</sup> SPT(n 284)

<sup>303</sup> *ibid* p 5

<sup>304</sup> ACHPR, 'Combined Periodic Report of Senegal: 2004-2013' (April 2013)

<[http://www.achpr.org/files/sessions/56th/state-reports/3rd-2004-2013/senegal\\_state\\_report\\_eng.pdf](http://www.achpr.org/files/sessions/56th/state-reports/3rd-2004-2013/senegal_state_report_eng.pdf)>

<sup>305</sup> Organisation internationale de la Francophonie (n 281)

<sup>306</sup> *ibid* 63

<sup>307</sup> APT, 'Senegalese NPM in Switzerland and France to exchange good practice' (25 April 2017)

<[https://www.apr.ch/en/news\\_on\\_prevention/senegalese-npm-in-switzerland-and-france-to-exchange-good-practice/#.WP871aLW9IU](https://www.apr.ch/en/news_on_prevention/senegalese-npm-in-switzerland-and-france-to-exchange-good-practice/#.WP871aLW9IU)> accessed on 20 June

<sup>308</sup> APT, 'Senegal - NPM Designation' <[https://apr.ch/en/opcat\\_pages/npm-designation-59/](https://apr.ch/en/opcat_pages/npm-designation-59/)> accessed on 16 June 2018

<sup>309</sup> APT, 'Atelier de formation de l'ONLPL sur la mise en œuvre stratégique du mandat de MNP, Dakar, Sénégal de 27 à 28 mars 2018 <<https://apr.ch/fr/events/atelier-de-formation-de-l-onlpl-sur-la-mise-en-oeuvre-strategique-du-mandat-de-mnp-dakar-senegal/>> accessed on 20 June 2018

The ONLPL has also worked together with magistrates seeking solutions for the prison overcrowding problem and it invited them to consider using alternative sentencing as opposed to imprisonment.<sup>310</sup> It participated in similar workshops with the UNOHCHR, ICRC, and the Ministry of Justice.<sup>311</sup>

## 2.4.5 ACHIEVEMENTS AND CHALLENGES

Before the creation of ONLPL, ill-treatment was common in places of detention and this was attributed to the absence of human rights training in the education syllabus of security forces. However, thanks to ONLPL training and its unexpected visits, prison officials are more hesitant to commit acts of torture or ill-treatment due of fear of being caught.<sup>312</sup>

The ONLPL has been successful in engaging stakeholders in its activities thus winning their support. Through this strategy, partners have stepped in to support it financially by footing the costs of training sessions for members of active security forces and training schools, visits to places of deprivation of liberty and communication activities at a regional level.<sup>313</sup>

Lack of sufficient financial resources remains a major concern that was also raised by CAT,<sup>314</sup> although partners have stepped in to help to fill in the gap, and visibility. Boubou Tall, the former Observer, stated that ONLPL had overcome its visibility challenge, but I beg to differ.<sup>315</sup> Information on ONLPL is scanty. While conducting this research, I was confronted with the challenge of lack of information and it became worse when ONLPL's website was suspended.<sup>316</sup> This situation was compounded by the fact that ONLPL has never published an annual report of its activities therefore severely limiting my sources of information to general internet searches.

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<sup>310</sup> PresAfrik, 'Des peines alternatives pour lutter contre le surpeuplement dans les prisons, (ONLPL)' (15 November 2018) <[https://www.pressafrik.com/Des-peines-alternatives-pour-lutter-contre-le-surpeuplement-dans-les-prisons-ONLPL\\_a173287.html](https://www.pressafrik.com/Des-peines-alternatives-pour-lutter-contre-le-surpeuplement-dans-les-prisons-ONLPL_a173287.html)> accessed on 20 June 2018

<sup>311</sup> Ordre des avocats du Sénégal, 'Rapport de l'atelier des 10 et 11 Novembre 2015 sur le mandat de dépôt, l'aménagement des peines et les peines alternatives' (20 Janvier 2016) <<https://ordredesavocats.sn/rapport-de-latelier-des-10-et-11-novembre-2015-sur-le-mandat-de-depot-lamenagement-des-peines-et-les-peines-alternatives/>> accessed on 20 June 2018

<sup>312</sup> APT, 'Boubou Diouf Tall, Observateur national des lieux de privation de liberté du Sénégal' <<https://apt.ch/fr/resources/boubou-diouf-tall-observateur-national-des-lieux-de-privation-de-liberte-du-senegal/>> accessed on 20 June 2018

<sup>313</sup> Organisation internationale de la Francophonie (n 281) 78

<sup>314</sup> CAT, 'Concluding observations on the third periodic report of Senegal, adopted by the Committee at its forty-ninth session (29 October–23 November 2012)' (17 January 2013) UN Doc CAT/C/SEN/CO/3 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSEN%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSEN%2fCO%2f3&Lang=en)> para 23; CAT (n 296) paras 27-28;

<sup>315</sup> APT (n 312)

<sup>316</sup> ONLPL <<http://www.onlpl.sn/cgi-sys/suspendedpage.cgi>>

Legislators have also greatly limited ONLPL's powers so that it cannot visit all places of deprivation of liberty as OPCAT envisioned because state authorities may deny such a visit on grounds such as national security. Often when a government increases its security level in reaction to a threat, security forces' reaction is often exaggerated leading to human rights violation especially in places of detention which are inaccessible. It is in these times that the preventive intervention of ONLPL is most vital. The NPM law has also given authorities plenty of leeway so that they can respond to ONLPL observations and recommendations if they think it is useful. This defeats the spirit and purpose of recommendations which are meant to foster dialogue to improve conditions and treatment of persons deprived of their liberty. While matters relating to amendment of the NPM legislation cannot be repealed easily to grant ONLPL the powers it is required to have by OPCAT, one important change can be made easily and that is the publication of ONLPL annual reports. Reports serve no purpose if they are shelved and there is no accountability. The ONLP should open itself up to stakeholders and citizens to receive critique and foster dialogue which will ultimately improve its effectiveness.



## CHAPTER 3

### 3 SPT AND NPMs COOPERATION

Cooperation is indispensable in prevention of torture and ill-treatment and OPCAT acknowledged this. While the most obvious partner is State Parties to OPCAT, the focus of this chapter is on the different ways SPT and NPMs cooperation with each other and other stakeholders. One of SPT's explicit mandate is to cooperate with relevant UN mechanisms, and international, regional, and national organisation working in the same field.<sup>317</sup> However, there is no similar requirement for NPMs under OPCAT or the SPT's Guidelines on National Preventive Mechanisms but, it can be implied from the fact that State Parties are required to involve stakeholders in designating NPMs<sup>318</sup> and to ensure that the NPMs have the power to interview any persons for relevant information<sup>319</sup> and right to contact SPT.<sup>320</sup>

#### 3.1 COOPERATION WITH OTHER MONITORING BODIES

The level of cooperation between SPT and NPMs has improved over the years and according to Steinerte, this is because SPT decided to take a proactive approach to its mandate by introducing new types of visits (the NPM visits and OPCAT advisory visits) and changing its internal structures.<sup>321</sup> In 2011, in hopes of making itself more constructive and active, SPT changed its *modus operandi* and decided to assign members responsibility as Focal Point over three or four State Parties.<sup>322</sup> The State Parties were then divided into four regions assigned to SPT members divided into teams, comprising of both members from those regions and from other regions and led by a Regional Focal Point.<sup>323</sup> This change made SPT members accessible to State Parties and NPMs. Ivan Šelih, the Deputy-Ombudsperson of the Slovene NPM,

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<sup>317</sup> Art 11 (c) OPCAT

<sup>318</sup> SPT, 'Guidelines on National Preventive Mechanisms' (9 December 2010) UN Doc CAT/OP/12/5 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en)> para 16

<sup>319</sup> Art 20 (d) OPCAT

<sup>320</sup> *ibid* art 20 (f)

<sup>321</sup> Steinerte Elina, 'The Changing Nature of the Relationship between the United Nations Subcommittee on the Prevention of Torture and National Preventive Mechanisms: In Search for Equilibrium' (2013) 31(2) Netherlands Quarterly of Human Rights

<sup>322</sup> OSCE, 'Final Report of the Supplementary Human Dimension Meeting on Prevention of Torture: 10-11 April 2014 (24 June 2014)' <<https://www.osce.org/odihr/120173?download=true>> p 10

<sup>323</sup> SPT, 'Fifth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: January – December 2011' (19 March 2012) UN Doc CAT/C/48/3 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f48%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f48%2f3&Lang=en)> para 40

informed me that the NPM is now able to contact the SPT focal point easily and seek clarification or assistance for challenges it encounters during monitoring visits.<sup>324</sup>

NPMs can also meet SPT at their offices in Geneva,<sup>325</sup> an opportunity which the UK NPM took in 2013 to discuss the strengths and weaknesses of its model and the extent of meeting its OPCAT obligations.<sup>326</sup> The Slovene NPM reported its operation to SPT in 2012 and received comments and proposals to improve its working method.<sup>327</sup> According to the Slovene Deputy-Ombudsperson, the Slovene NPM sends its annual reports to SPT, however, he had the impression that SPT did not focus on the content of the report but directed question of OPCAT implementation to the NPM. He wished that it would also ask the government of Slovenia how it was cooperating with the NPM to implement OPCAT because it is the State Party to the convention and not the NPM. According to him, communication, and access to SPT members improved after the appointment of a Regional Focal Point however, adequate support for NPMs was still lacking.<sup>328</sup>

The need for more engagement is something that SPT recognises and blames its absence on the inadequacy of available human and financial resources.<sup>329</sup> In fact, it reported that it was forced to undertake less visits in 2018 as a result of these constraints<sup>330</sup> despite having increased its visits each year from three in 2011<sup>331</sup> to 10 in 2017.<sup>332</sup> It also lamented the lack of a specific provision in its budget for direct contact with NPMs leaving it dependant on generous support from NGOs, academic institutions, and other stakeholders.<sup>333</sup>

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<sup>324</sup> Interview with Ivan Šelih, Deputy-Ombudsperson, Human Rights Ombudsman (Ljubljana, Slovenia, 19 June 2018)

<sup>325</sup> SPT (n 323) para 22

<sup>326</sup> NPM, 'Monitoring Places of Detention: Fifth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2013 – 31 March 2014' (February 2015) <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/05/NPM-5th-Annual-Report-2013-14.pdf>> p 31

<sup>327</sup> Human Rights Ombudsman '2012 Report: National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <[http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/DPM\\_porocilo\\_2012.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/DPM_porocilo_2012.pdf)> p 13

<sup>328</sup> Interview (n 324)

<sup>329</sup> STP, 'Tenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (3 April 2017) UN Doc CAT/C/60/3 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f60%2f3\\_&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f60%2f3_&Lang=en)> para 59

<sup>330</sup> SPT, 'Eleventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (26 March 2018) UN Doc CAT/C/63/4 <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f63%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f63%2f4&Lang=en)> para 60

<sup>331</sup> SPT (n 329) para 44

<sup>332</sup> SPT (n 330) para 37

<sup>333</sup> SPT, 'Second Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: February 2008 to March 2009' (7 April 2009) UN Doc CAR/C/42/2

The OPCAT encourages SPT to consult and cooperate with regional monitoring bodies to avoid duplication and effectively promote OPCAT's objectives.<sup>334</sup> While the mandate and structure of SPT mirrors that of CPT, their level of cooperation, as evident in SPT's reports, has been limited to exchange of information and opinions and an agreement to share State Reports of European countries, among themselves, with prior consent.<sup>335</sup> There is no indication of further cooperation although this may be attributed to their confidentiality requirements.

The European NPMs and CPT do not conduct joint visits because information collected by CPT is subject to confidentiality under ECPT<sup>336</sup> therefore their cooperation is limited within the context of a country visits. Both the UK and Slovene NPMs were present in the pre and post-visit meetings held between CPT delegation and State authorities and they provided CPT with information and contacts to facilitate its visit. According to the Slovene Deputy-Ombudsperson, communication between the NPM and SPT has been one-way and from CPT, although he saw a cooperation opportunity in using NPMs to follow-up on CPT's recommendations.<sup>337</sup>

The SPT cooperates with the ACHPR special mechanisms and before the establishment of CPTA, it met with the Special Rapporteur on Prisons and Conditions of Detention in Africa (Special Rapporteur) to discuss common issues and collaboration.<sup>338</sup> Following CPTA's establishment, both bodies held a joint meeting where they identified potential areas of collaboration on a short-term, mid-term and long-term basis.<sup>339</sup> This resulted in an SPT member, Mari Amos, writing an article for CPTA's newsletter, Africa Torture Watch,<sup>340</sup> and

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<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f42%2f2%2fCORR.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f42%2f2%2fCORR.1&Lang=en)> para 74

<sup>334</sup> Art 31 OPCAT

<sup>335</sup> SPT, 'First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman Or Degrading Treatment or Punishment First Annual Report: February 2007 to March 2008' (14 May 2008) UN Doc CAT/C/40/2

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f40%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f40%2f2&Lang=en)> para 37

<sup>336</sup> Arts 11-12 ECPT

<sup>337</sup> Interview (n 324)

<sup>338</sup> SPT, 'Third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: April 2009 to March 2010' (25 March 2010) UN Doc CAT/C/44/2

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f44%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f44%2f2&Lang=en)> para 67

<sup>339</sup> ACHPR, 'Press Release on Meeting between Committee for the Prevention of Torture in Africa and Members of the United Nations Sub-committee for the Prevention of Torture' (5 September 2016)

<<http://www.achpr.org/press/2016/09/d315/>> accessed on 24 June 2018

<sup>340</sup> Mari Amos, 'United Nations' Tools for Torture Prevention' (May 2017) 7 Africa Torture Watch

<[http://www.achpr.org/files/special-mechanisms/cpta/7th ed. cpta newsletter may 2017 english.pdf](http://www.achpr.org/files/special-mechanisms/cpta/7th%20ed.%20cpta%20newsletter%20may%202017%20english.pdf)> pp 5-6

the publication of a compilation of torture prevention documents by SPT and CPTA.<sup>341</sup> There are even more opportunities for cooperation such as CPTA proposing states that SPT could visit. In monitoring torture and ill-treatment in the continent, CPTA receives allegation of such practises by some State Parties to the African Charter but it is unable to verify them because it requires consent to conduct a monitoring visit and the State Parties are unwilling to grant it. In this case, it can make a proposal to SPT to visit such States, if they are also State Parties to OPCAT.

The ACHPR, on the other hand, is directed by the African Charter to draw inspiration on human and peoples' rights from international law including UN.<sup>342</sup> From my observation working with ACHPR,<sup>343</sup> CPTA and the Special Rapporteur consider the reports of CAT and SPT when preparing questions for State Parties during the review of their Periodic Reports and follow-up on their recommendations. Additionally, CPTA's letters of urgent appeal also remind State Parties of their human rights obligations under the African Charter, the UN human rights conventions they are parties to and its general comments.

The CPTA and the Special Rapporteur, according to their reports, have not cooperated with the Senegalese and Mauritian NPM since their establishment. These special mechanisms face financial constraints therefore they cannot conduct monitoring visits as often as they wish to however they can cooperate with NPMs in other ways. The ACHPR grants Affiliate Status to NHRIs giving them the right to attend its public sessions and present proposals that may be put to vote by members of the commission.<sup>344</sup> Mauritius has had affiliate status since 2012<sup>345</sup> therefore it can attend the Commission's Sessions, hold meetings with the special mechanisms, make proposals or attend the side-line events of CPTA organised during the public sessions. Both NPMs can also prepare shadow reports to their country's State Periodic Reports when it is under review before the ACHPR. The ACHPR also welcomes information from partners therefore the NPMs could send updated information of their activities.

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<sup>341</sup> CPTA and SPT, 'Compilation of Documents on Torture Prevention' (December 2016) <[http://www.achpr.org/files/news/2017/05/d286/cpta\\_spt\\_compilation\\_eng.pdf](http://www.achpr.org/files/news/2017/05/d286/cpta_spt_compilation_eng.pdf)> accessed on 25 June 2018

<sup>342</sup> Art 60 African Charter

<sup>343</sup> I worked as a legal assistant under the African Union Youth Volunteer Corps (AU-YVC) from July 2016 to July 2017.

<sup>344</sup> ACHPR, 'Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa' (31 October 1998) ACHPR/31(XXIV) 98 <<http://www.achpr.org/sessions/24th/resolutions/31/>> accessed on 25 June 2018

<sup>345</sup> ACHPR, 'National Human Rights Institutions' <<http://www.achpr.org/network/nhri/>> accessed on 25 June 2018

## 3.2 COOPERATION WITH OTHER UN TREATY BODIES AND STAKEHOLDERS

The SPT cooperates with other UN bodies but more closely with CAT as their mandates are closely related. Since its establishment, it has held its sessions simultaneously with CAT once a year<sup>346</sup> and created a contact group to facilitate communication between themselves.<sup>347</sup> Also, when a State Party refuses to cooperate with SPT, CAT may, at its request, lift the veil of confidentiality and make a public statement or publish SPT's report to the State Party.<sup>348</sup> During the review of Mauritius, CAT consistently requested the State Party to make SPT's reports public. It also expressed concern about the independence of the UK NPM due to the practise of the government seconding staff working in places of deprivation of liberty to assist the NPM.

The SPT and the UN Special Rapporteur on Torture have similar mandates therefore they maintain close contact and hold discussions on issues common to their mandates and exchange ideas.<sup>349</sup> Every year on 26<sup>th</sup> June, the UN Special Rapporteur on Torture, CAT, and SPT issue a joint statement on the occasion of the International Day in Support of Victims of Torture and this year the joint statement included CPT, CPTA, and the Inter-American Commission on Human Rights.<sup>350</sup>

NPMs cooperation with other UN treaty bodies is limited. Because the UK NPM is comprised of members with different mandates, some members submit shadow reports to the treaty bodies related to their mandate. It also responded to CAT's concern of seconded staff and made changes reduce and eventually eliminate its reliance on seconded staff. While the Mauritian NHRC is capable of submitting shadow reports during the review of Mauritian State Reports, it has not done so therefore denying the NPM an opportunity to do the same.

NGOs and stakeholders such as academic institutions have supported SPT's work. Upon its creation, SPT received information and materials from APT which has vast experience in prevention of torture<sup>351</sup> and training from ICRC which is experienced in visiting places of

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<sup>346</sup> Art 10 (3) OPCAT

<sup>347</sup> SPT (n 335) para 33

<sup>348</sup> Art 16 (4) OPCAT

<sup>349</sup> SPT (n 335) para 35

<sup>350</sup> OHCHR, '26 June Joint Statement on The United Nations International Day in Support of Victims of Torture' (June 2018) <[https://www.ohchr.org/Documents/Issues/Torture/IntDay/2018/JointStatement\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Torture/IntDay/2018/JointStatement_EN.pdf)>

<sup>351</sup> SPT (n 335) para 42

deprivation of liberty.<sup>352</sup> It received financial support from APT and other partners who financed SPT meetings with CAT.<sup>353</sup> University of Bristol also facilitated the meeting between SPT and CPTA. Academic institutions have been important in promoting OPCAT in their countries.<sup>354</sup> SPT's Annual Reports also reveal that it attends meeting organised by stakeholders and this presents it with an opportunity to sensitize them about OPCAT, its work, and ways of cooperation. These stakeholders also provide SPT with information once it has announced that it will conduct a visit to a State Party thereby facilitating preparations.<sup>355</sup> Therefore, the role of stakeholders in SPT's work is invaluable and it is important that SPT continues to foster it.

NPMs interaction with stakeholders, on the other hand, has been dynamic. The Slovene NPM, which has the Ombuds Plus model, work directly with NGOs and it has admitted that this has made the NPM transparent and effective especially since it has only four members but was able to conduct 60 visits in 2017. It holds monthly meetings in its offices with other stakeholders to exchange ideas and experience. NGOs such as APT have been instrumental in the adoption of OPCAT, the creation of NPMs in Mauritius and Senegal and the training of their members. Together with other stakeholders, they have helped to finance NPM monitoring activities in Senegal. The UK NPM has also mentioned the University of Bristol and Open Society as some of the organisations supporting its mandate.

The Senegalese NPM has also involved the judiciary in its work by conducting seminars with them to persuade them to adopt alternative sentencing to reduce prison sentences which have resulted to overcrowding which has made conditions in detention and prisons to deteriorate.

### **3.3 CONFIDENTIALITY V. FULFILMENT OF MANDATE**

The SPT and NPMs' work is covered by confidentiality however, NPMs are expected to publish annual reports detailing their activities. The UK, Slovene, and Mauritian NPMs reports include the places of deprivation of liberty they visited, their observations and recommendations. In contrast, SPT can only publish its monitoring reports with the consent of

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<sup>352</sup> SPT, 'Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: April – December 2010' (3 February 2011) UN Doc CAT/C/46/2 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f46%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f46%2f2&Lang=en)> para 37

<sup>353</sup> SPT (n 333) para 44

<sup>354</sup> SPT (n 352) para 39

<sup>355</sup> International Rehabilitation Council for Torture Victims, 'Working with the UN Subcommittee on Prevention of Torture: A practical guide for NGOs engaging with the process of SPT country visits' (2012) <[https://irect.org/assets/uploads/pdf\\_20161120154901.pdf](https://irect.org/assets/uploads/pdf_20161120154901.pdf)> p 10

the State Party. This complete confidentiality makes it difficult to access information concerning a State Party and, it has also been applied to the other details of SPT's activities for instance, its reports refer to 'Engagement with other bodies in the field of torture prevention' however, they do not reveal sufficient details of the nature of cooperation referred to.

The purpose for confidentiality was to foster trust and dialogue between State Parties and SPT without rebuke therefore allowing them to openly share their challenges and receive the help and support they require to improve the conditions and treatment of persons deprived of their liberty. However, there needs to be the will to cooperate with SPT.

Unfortunately, where there is no will, confidentiality is a hindrance. Usually, places of detention are closed off therefore the monitoring reports of SPT serve to give a glimpse into the lives of persons deprived of their liberty. They also enable authorities to be held accountable by stakeholders that interact with them and persons deprived of their liberty. Unfortunately, when State Parties refuse to publish these reports, it is impossible to hold them accountable and it a way of hiding 'their dirty laundry'. An example is Mauritius which, despite repeated requests by CAT to publish its SPT report, the State party stated that the report contained confidential information that could undermine the security strategies of prisons. In my view, this was an odd excuse considering the fact that SPT's reports only focus on the conditions and treatment of persons deprived of their liberty and do not release security information relating to the places of deprivation of liberty. Consequently, only SPT can follow-up on its recommendations during its next visit.

The SPT does not have adequate human and financial resources to make regular visits to State Parties to follow-up on its recommendations therefore publication of reports would allow NPMs, NGOs and other stakeholders to assist in follow-ups. Complete confidentiality in this case defeats OPCAT's purpose of opening up places of deprivation of liberty to monitoring to prevent torture or ill-treatment and hinders SPT's fulfilment of its mandate. It also denies NPMs learning opportunities through joint visits where they can observe how SPT conducts visits, so they can improve their effectiveness in monitoring and strengthening their capacity.

Confidentiality is important but not at the expense of the fulfilment of SPT's mandate. A compromise should be reached so that if a State Party has already established an NPM, the confidential report should be shared with the NPM. The NPM should be empowered to follow-up on SPT's recommendations without including such activities in its public reports. In this

way, a healthy balance of confidentiality and the fulfilment of SPT's mandate would be achieved.



## CHAPTER 4

### 4.1 CONCLUSIONS

Twelve years after the adoption of OPCAT, it is still hailed as the most innovative UN Treaty for introducing a preventive system that is proactive, through monitoring visits to places of deprivation of liberty and production of reports by the monitoring bodies as opposed to State Parties, and forward-looking. As torture is a crime of opportunity that thrives in hidden places, OPCAT has opened up places of deprivation of liberty to regular monitoring visits conducted by SPT and NPMs to identify conditions that may lead to torture or ill-treatment of persons held there. This thesis aimed to understand factors that made NPMs effective by undertaking a comparative study of different NPMs. The NPMs were selected based on their geographical locations and organization structures and an analysis conducted to understand how their structure, methods of working, independence, and cooperation with other stakeholders influenced their effectiveness in preventing torture.

When I began this research, I expected to find isolated factors that made one NPM more effective than the other, but I have discovered that one cannot attribute effectiveness to a specific factor. Rather, all factors are interconnected and influenced by the environment in which the NPM functions.

Insufficient financial resources have impacted all the NPMs negatively. The Senegalese NPM's financial constraint meant that stakeholders such as APT and the OHCHR stepped in to finance its activities of training security personnel on prevention of torture and ill-treatment. The UK NPM reported that the financial resources allocated to HMIP to coordinate the NPM was insufficient for its complex structure and prevented members from cooperating more with each other. The Slovene NPM, on the other hand, is haunted by its ignorance of the cost of hiring external experts which has meant that it is now prevented by government budgetary policies from increase its budget to accommodate the true cost of including experts in its monitoring activities. Therefore, it relies on extra funds from the Ombudsman budget which is still insufficient.

State Parties are free to select an NPM model suitable for their countries. While all the five discussed structures have their merits and demerits, I have concluded that two structures are better than the rest. As discussed above, all the NPMs face financial constraints which have also affected the number of visits they can undertake and the hiring of personnel. However, the UK and Slovene NPMs have been able to thrive despite this challenge. Among the 21 members

of the UK NPM, there are lay monitors which have numerous volunteers who are community members, from different professional backgrounds, trained to conduct visits to places of detention. These volunteers conduct more visits than the professional institutions. The Slovene NPM, on the other hand, has only four members who are assisted by NGO staff members and they are compensated according to the monitoring work they do. As a result, the NPM has been able to conduct numerous visits as witnessed in 2017 when it conducted 80 visits. Although the Mauritian NPM has one full-time member who is the Deputy of the NPM, a seconded staff member who is the head of the NHRC and two part-time members, it has also conducted numerous visits. However, from its reports, its visits have not adopted a holistic monitoring approach of considering all factors relating to the condition and treatment of persons deprived of their liberty as envisaged by OPCAT. It has also not embraced the wide variety of places of deprivation of liberty.

The creation of an NPM through legislation, its powers and its separation from government influence contribute to its effectiveness. The Senegalese ONLPL was created through legislation however its powers are greatly limited so that Senegalese authorities can prevent it from accessing places of deprivation of liberty and information for reasons not provided for by OPCAT. Additionally, the Minister of Justice nominates the candidate Observer before he/she is confirmed by Parliament. Although there is no way of confirming the effects of these limitations because ONLPL has never published an annual report, it would pose a great risk in the future.

While the UK NPM has no legal footing, the UK government has been hesitant to include it in legislation and to give it powers to monitor overseas military detention centres. Some members of the NPM operate under certain Ministries whose Cabinet Secretaries propose their Chief Inspector candidates and allocate them their budget; although the Public Accounts Committee proposed that Cabinet Secretaries transferred these powers to Parliament, this proposal was rejected. Fortunately, the UK has checks and balances prevent actual interference of the Cabinet Secretaries in the NPM's activities.

The SPT recommends that if an NHRI or the Office of the Ombudsperson is nominated as an NPM, its function should be separated from the functions of these institutions and it should be allocated its own budget. The Slovene NPM separated the functions and personnel of the NPM from the Office of the Human Rights Ombudsman and it resulted in its staff being more organised and prepared for visits and the number of monitoring visits conducted increased. The

mandate of the Mauritian NPM is blurred with the mandate of the NHRC which has led to the NPM having a reactionary mandate of handling complaints and requests on social aid. These additional mandates put additional pressure on the NPM and have likely contributed the lack of a holistic monitoring approach observed in its reports.

From these case studies, it is clear that although the maintenance of an NPM's independence is the responsibility of the NPM, State Parties, and the SPT, the NPMs have been most activities and they received some support from CAT. The Senegalese and UK NPMs have asked for their functions to be separated from Government Ministries to ensure their independence, but the governments have not done so and there is no evidence of SPT's intervention in their annual reports. The CAT intervened in UK's case but did not go beyond asking the State Party to end the practise of seconding staff working in places of deprivation of liberty to assist the NPM in monitoring these same places.

A strategy that has contributed to effective prevention of torture is the NPMs' adoption of unannounced visits as part of their working methods. This has led to improvement of conditions in the places of deprivation of liberty and the treatment of the people held there. NPMs being proactive in interpreting their mandate and implementing their activities has also contributed to making them effective. The UK NPM adopted a wide interpretation of places of deprivation of liberty and has been involved in monitoring conditions during transfer of prisoners and detainees. It is the only case study NPM which monitors conditions and treatment of detainees during overseas deportation. The Mauritian NPM has been active in working to maintain family links of foreign prisoners by advocating for prisoner transfer back to their countries of origin.

Annual reports of NPMs play a big role in ensuring their effectiveness by holding them accountable to stakeholders and citizens. They also provide the NPMs with an opportunity of self-reflection and self-evaluation so as to improve their working methods. The UK NPM critiques itself and is concerned about not achieving gender balance and including minority communities within the activities of the member organisations. The Slovene NPM changed the way it reported its activities over the years making it reader-friendly for lay people and without compromising on its content. It has also decided to adopt thematic reporting in a bid to ensure monitoring of all areas concerning conditions and treatment in places of deprivation of liberty. Its reports have been detailed, informing its users of how it conducts monitoring which is something I found wanting in Mauritian NPM reports, which formed part of the general NHRC's reports.

My research revealed that cooperation between regional monitoring bodies, ie the CPT and the CPTA, with NPMs did not directly impact on their effectiveness. The Slovene NPM lamented that communication with CPT was one-way and only during CPT's visit while the African NPMs did not have much cooperation with CPTA yet, the Slovene NPM thrived in fulfilling its mandate. On the other hand, however, CPT's visits did ensure that the State Parties remained alert to their obligations to prevent torture because the resulting report would, in accordance with practice, be made public. African States are also aware of the implications of a visit by CPTA and the Special Rapporteur and that could explain why they are resistant to these visits by neglecting to respond to requests for permission to conduct missions in their territories.

In contrast, cooperation with stakeholders has had a direct impact on the effectiveness of the NPMs. Their advocacy led to the adoption of the NPM laws in Senegal and Mauritius and they have provided information and training to the NPMs in UK, Slovenia, Senegal, and Mauritius. Financial support has sometimes been provided by stakeholders as was the case for the Senegalese NPM thus enabling it to conduct human rights training of security personnel. The Slovene NPM benefits from their knowledge and ideas thanks to the monthly meetings it holds with stakeholders in its offices.

Finally, inadequate financial resources and personnel have prevented SPT from providing sufficient support to the NPMs. Although SPT's organisational change and appointment of Focal Point persons over countries and regions improved communication with NPMs, more needs to be done. There is need to review the confidentiality accorded to State Parties to allow NPMs to have a role in SPT's visits within their territories and in following-up its recommendations, which would be strategic in light of the scarcity of resources facing SPT. Complete confidentiality, as is the practice, is not beneficial for the prevention of torture and ill-treatment.

## **4.2 RECOMMENDATIONS**

Considering the above observations, I would like to propose some recommendations that I believe would ensure effectiveness of all NPMs in Africa. Firstly, State Parties must ensure, without excuse, that NPMs have sufficient resources to function effectively. Creating an NPM and granting it insufficient funds is akin to 'cutting off its legs before it can learn to walk'. State Parties could instead work together with their NPMs and stakeholders to devise a law or regulation, similar to the case in Senegal, allowing the NPMs to receive grants from legal persons besides the government, and institute measures to protect them from undue influence.

This however, should not absolve State Parties from their obligation to ensure that NPMs have adequate funding.

Another way to enable the NPM to have enough personnel to conduct monitoring visits would be for the State Party and the NPM to agree to the adoption of the practice of lay monitoring. They could set up community organizations, independent from the government, to recruit and train community member volunteers to assist in monitoring places of deprivation of liberty. The lay monitoring should adapt to the country's environment to be able to thrive, not simply imported from the UK NPM and forced to thrive. This would enable the NPM to involve community members while spread awareness of its mandate and OPCAT.

State Parties must also give the NPMs the powers they require, according to OPCAT, to fulfil their mandate of monitoring to prevent torture and ill-treatment. Putting in place restrictions in the name of the security of the State only cripples their effectiveness and does no good for the government and its citizens. State Parties should be guided by OPCAT and if they face challenges, they should engage SPT through the NPM Advisory visit.

NPMs cannot protect their independence on their own therefore State Parties and SPT must step in. It is paramount that State Parties separate NPMs from their Ministries. The process of selection of NPM members, allocation of the NPM budget and presentation of its reports should be transparent and without the government influence. The position of the NPM members should be widely advertised and qualified candidates selected based on their qualification and experience as is practice for public government positions. The Parliament can then endorse them. I also propose that the reports of the NPMs be presented in Parliament, not as a way reporting to a superior body, but as a way of engaging and sensitizing the legislators on its work so that they can bear it in mind when passing legislation concerning places of deprivation of liberty. On its part, the SPT should step up its engagement with State Parties where an NPM's independence is at risk and utilise public statements where necessary.

Established NPMs need to be proactive in interpreting and implementing their mandate. They should expand their monitoring visits beyond prisons, detention centres, and mental disability institutions to include centres that hold persons with other disabilities, juvenile centres, and boarding schools which are very common in some African countries, among other places. NPMs also need to promote access to information by making information on their mandate and activities accessible to users of places of deprivation of liberty and all residents in the country. It serves no purpose to prepare reports and not publish them. With more Africans having

access to internet, it is important that the NPMs to use it to their advantage by making their annual reports available on their websites as well as information on their budget, membership, and cooperation with stakeholders.

Where an NHRI or Office of the Ombudsperson is designated as an NPM, its general report should be published separately from the report of the NPM department. I believe that this will encourage the report of the NPM to be more detailed and will enable it to reflect more on its preventive activities in relation to its mandate as opposed to how its activities fits with the general activities of the NHRI or the Office of the Ombudsperson.

NPMs should use their reports to conduct self-assessment of their activities and their needs assessment to understand their challenges and the kind of assistance they require so as to increase strategic cooperation with stakeholders. Afterwards, they can hold regular meetings with stakeholders ie NGOs, academicians, parliamentarians, and government authorities, to seek solutions for these challenges and exchange ideas which will eventually strengthen their knowledge and increase their effectiveness. Noting that the ACHPR special mechanisms are also facing financial challenges, the CPTA and the Special Rapporteur should proactively encourage NPMs to attend the session of the ACHPR so that they could hold meetings on cooperation and share information. NPMs, on the other hand, should begin sharing their reports with the special mechanism to enable them to track their progress and keep update their information.

I strongly believe that the SPT should engage more in dialogue with State Parties to allow more involvement of their NPMs in their dialogue. The SPT and the NPMs were not created to work in isolation of each other therefore the SPT should adopt pragmatic initiatives to strengthen NPMs capacity and effectiveness and their relationships with their governments. The SPT should encourage State Parties to allow the participation of NPMs during its visit, for learning and cooperation purposes, and the sharing of the State report with the NPMs to facilitate follow-up while maintaining the confidentiality envisioned by OPCAT.

In conclusion, the effectiveness of an NPM in preventing torture and ill-treatment cannot be attributed to a specific factor. It is therefore important to ensure that the establishment of an NPM and its working methods are compliant with OPCAT and the SPT's Guidelines on NPMs and that the NPM performs a self-assessment to enable it to identify its strengths, weakness, its opportunities and needs. Consequently, the NPM would be better able to reach out to its diverse pool of stakeholders, not only NGOs, and engage them in its activities. On the other hand, the

SPT, State Parties to OPCAT, CPT, CPTA, NGOs, academic institutions, citizens, and other stakeholders should pay attention to the needs of the NPMs and be ready to cooperate with them to ensure that their activities are implemented effectively.

## **TABLE OF CONVENTIONS AND TREATIES**

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