

# A critical appraisal of the national institutional mechanisms for the prevention of torture in Nigeria

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**ABSTRACT:** According to the Optional Protocol to the Convention against Torture (OPCAT), national preventive mechanisms (NPMs) are required to conduct regular visits to detention centres and provide recommendations to authorities for preventing torture. Following its ratification of OPCAT, Nigeria established its NPM, known as the National Committee Against Torture (NCAT), in 2009 and enacted the Anti-Torture Act of 2017, which prohibits the use of torture in Nigeria without any exceptions. To comply with OPCAT requirements and create an effective NPM, Nigeria dissolved the 2009 NCAT and inaugurated a new NCAT in 2022. In 2024, the National Human Rights Commission (NHRC) was designated as the NPM, with a specialised department tasked with preventing torture. This raises an important question: If the previous two NCATs as an NPM could not comply with OPCAT requirements, how could we be sure that the NHRC, with its specialised department, will effectively prevent torture as prescribed by OPCAT? To address this question, this article investigates the previous NCATs' compliance with OPCAT requirements. It then analyses the NHRC as the newly designated NPM and interrogates its ability to meet OPCAT standards. The article concludes that several factors, such as the lack of adequate legal documentation establishing the 2009 and 2022 NCATs, insufficient resources, lack of functional independence, and limited funding, played a role in non-compliance. However, the NHRC already has an established structure and the capability to investigate human rights violations, albeit not with a preventive focus. Therefore, while the designation of the NHRC as the NPM through the 2024 order, along with its specialised department, meets specific standards, the clarity regarding the structure, funding, and unannounced visitation of this specialised department remains uncertain.

## TITRE ET RÉSUMÉ EN FRANÇAIS

### Une évaluation critique des mécanismes institutionnels nationaux pour la prévention de la torture au Nigéria

**RÉSUMÉ:** Conformément au Protocole facultatif à la Convention contre la torture (OPCAT), les mécanismes nationaux de prévention (MNP) sont tenus d'effectuer des visites régulières dans les centres de détention et de formuler des recommandations aux autorités afin de prévenir la torture. Après sa ratification de l'OPCAT, le Nigéria a mis en place son premier MNP, le Comité national contre la torture (NCAT), en 2009, et a promulgué en 2017 une loi interdisant la torture sans exception. Dans un souci de conformité avec les exigences de l'OPCAT, le Nigéria a dissous le NCAT de 2009 pour instaurer un nouveau NCAT en 2022. En 2024, la Commission nationale des droits de l'homme (CNDH) a été désignée comme MNP, avec un département spécialisé pour la prévention de la torture. Cette évolution soulève une question essentielle : si les précédents NCAT n'ont pas respecté les normes de l'OPCAT, comment garantir que la

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CNDH, avec son département spécialisé, parviendra à prévenir efficacement la torture, comme le prescrit l’OPCAT ? Cet article examine dans un premier temps la conformité des NCAT précédents avec les exigences de l’OPCAT. Il analyse ensuite le rôle de la CNDH en tant que MNP et évalue sa capacité à respecter les normes établies par l’OPCAT. L’article conclut que plusieurs facteurs, tels que l’absence des instruments juridiques solides pour les NCAT de 2009 et 2022, l’insuffisance des ressources, le manque d’indépendance fonctionnelle et un financement limité, ont contribué à leur non-conformité. Toutefois, la CNDH bénéficie déjà d’une structure opérationnelle et d’une capacité d’enquête sur les violations des droits humains, bien que son action ne soit pas spécifiquement axée sur la prévention de la torture. Dès lors, bien que la désignation de la CNDH comme MNP par l’ordonnance de 2024 et la création de son département spécialisé répondent à certaines exigences, des incertitudes demeurent quant à la clarté de sa structure, de son financement et de la mise en place de visites inopinées par ce département.

**KEY WORDS:** national preventive mechanism; prevention; torture; detention; National Committee Against Torture; National Human Rights Commission; Nigeria; OPCAT

**CONTENT:**

1	Introduction.....	94
2	The National Committee Against Torture .....	96
2.1	Functional independence of the NCAT .....	96
2.2	Independence of personnel .....	98
2.3	Financial independence.....	101
2.4	Roles and effectiveness of NCAT.....	102
2.5	Cooperation between NCAT and SPT .....	106
3	The NHRC as an NPM in Nigeria.....	108
3.1	The roles and the effectiveness of the NHRC as an NPM in Nigeria.....	109
3.2	NHRC's functional independence .....	112
3.3	NHRC's independence of personnel .....	114
3.4	NHRC's financial independence.....	116
3.5	Cooperation with the SPT.....	117
4	Conclusion .....	118
4.1	Possible challenges and recommendations.....	121

**1 INTRODUCTION**

The Nigerian Government signed the United Nations Convention against Torture (UNCAT) on 28 June 1988 and ratified it on 28 June 2001;<sup>1</sup> it ratified the Optional Protocol to the Convention against Torture (OPCAT) on 27 July 2009.<sup>2</sup> OPCAT imposed obligations on state parties to ensure that they established a functioning national preventive mechanism (NPM).<sup>3</sup> Two months after the OPCAT ratification, on 29 September 2009, the Federal Government

1 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 10 December 1984. Entry into force: 26 June 1987, by article 27(1). Registration 26 June 1987, No 24841, Status: Signatories: 84, Parties: 173 *United Nations Treaty Series*, vol 1465, 85. Signed by Nigeria on 28 July 1988 and ratified on 28 June 2001. See also, the United Nations treaty collection depository [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en) (accessed 11 April 2022).

2 Federal Ministry of Justice ‘Mandate of the national committee on torture’ <https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf> (accessed 26 July 2022).

3 Art 3 of OPCAT.

inaugurated the National Committee Against Torture (NCAT)<sup>4</sup> and in 2022 inaugurated another NCAT. The inaugural NCATs acted as an NPM in Nigeria as required under article 3 and part IV of the OPCAT.<sup>5</sup>

However, before NCAT, the National Human Rights Commission had been protecting and promoting human rights in Nigeria under Decree No 22 of 1995.<sup>6</sup> The government inaugurated the NHRC Governing Council eight months after its establishment. Furthermore, the law establishing the NHRC was amended in 2010,<sup>7</sup> and in 2024, with an order establishing the NHRC as the NPM in Nigeria with a specialised department.<sup>8</sup>

This article aims to analyse NCAT and NHRC, checking whether these institutions are independent and created by legal texts. Each institution must comply with the requirements set forth in part IV OPCAT. It is divided into three parts. The first part looks at Nigeria's NCAT with the mandate to visit any detention area in Nigeria. This part aims to understand why the NCAT lacks effectiveness and in doing so, outlines the process by which the NCAT was formed and if it was established by a statutory act or by the Constitution. It also analyses the functional, personnel and financial independence of NCAT. It provides a list of persons who are members of the NCAT and analyses whether members of the NPM can be functionally independent from the government. It discusses the roles and effectiveness of the NCAT. This role includes the visits conducted by the NCAT, recommendations, cooperation with the SPT and the drafting of legislation. The second part looks at the NHRC in Nigeria. While the NHRC was set up to protect and promote human rights in Nigeria, this part analyses if the NHRC as the new designated NPM in Nigeria will be able to function as an NPM. In order to determine whether the NHRC is an NPM, this part looks at whether it has the same mandates and other requirements as specified in articles 18 and 21 of OPCAT. The third part provides a conclusion and recommendation to the article.

4 SS Ameh (Chairman National committee Against torture) '4th Quarterly report of the National Committee Against Torture for the Period Ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland'. Available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf> (accessed 3 November 2024)

5 Federal Ministry of Justice 'Mandate of the national committee on torture' <https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatерms-ofreference.pdf> (accessed 26 July 2022).

6 Decree No 22 of October 1995. The military regime that is known for the abuse of human rights established a human rights institution. This was ironic as it is impossible for such an institution to function independently without state control or influence. It was later known as National Human Rights Commission Act Cap N46, Laws of the Federation of Nigeria, 2004.

7 National Human Rights Commission (Amendment) Act, 2010 (NHRC 2010 as Amended). See also, I Anaba 'Jonathan signs human rights commission bill into law' 28 March 2011 *Vanguard Newspaper* <https://www.vanguardngr.com/2011/03/jonathan-signs-human-rights-commission-bill-into-law/> (accessed 14 December 2022).

8 Designation of the National Human Rights Commission as Nigeria Preventive Mechanism Order, 2024. S 1 No 21 of 2024. Available at <https://www.apr.ch/sites/default/files/2024-09/NHRC%20NPM%20GAZETTE.pdf> (accessed 3 November 2024).

## 2 THE NATIONAL COMMITTEE AGAINST TORTURE

The Anti-Torture Act 2017 failed to include the establishment of the NPM, apart from section 10, which provides that the Attorney General and other law enforcement or investigative agencies shall ensure the oversight of the implementation of the Anti-Torture Act 2017.<sup>9</sup> Furthermore, the Attorney General may assert that he oversees the implementation by indicating that the directors of NCAT and NHRC report to him. Section 10 did not mention the establishment of an oversight mechanism that would see to the eradication of torture or act as an agency that would serve as an NPM.

The objective of this part of the study is to examine whether the NCAT meets the requirements for functional independence, is staffed by professional experts, and complies with the Paris Principles, as well as the rules on visitation and recommendation mandate, as specified in part IV of OPCAT.

### 2.1 Functional independence of the NCAT

A key component of OPCAT's provision for the establishment of NPMs is to assure that they are functionally independent.<sup>10</sup> As explained by Nowak, functional independence must be based upon legislation that makes the NPMs stand out from the other branches of government, in order to maintain control over their institutions.<sup>11</sup> In general, the relevant legislation should be an act of parliament that creates NPMs.<sup>12</sup> As stated in the preliminary guidelines and the first annual report of the NPM, it is necessary for the state to establish the NPMs through legislation or within its constitution.<sup>13</sup> The NPM needs legislative backing to function properly and remain stable.<sup>14</sup> It also needs to be

9 Sec 10 of the Anti-Torture Act 2017.

10 Art 18 of OPCAT.

11 M Nowak & E McArthur *The United Nations Convention Against Torture: a commentary* (2008) 1075.

12 E Steinerte 'The changing nature of the relationship between the United Nations Subcommittee on Prevention of Torture and national preventive mechanisms: in search for equilibrium' (2013) 31(2) *Netherlands Quarterly of Human Rights* 132-1 9.

13 Committee against Torture. Fortieth session Geneva, 28 April-16 May 2008. First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment February 2007 to March 2008 CAT/C/40/2 para 28. See also, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The twelfth session, Geneva, 15-19 November 2010 'Guidelines on national preventive mechanisms' CAT/OP/12/5 para 7.

14 Subcommittee on Prevention of Torture Report on the visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras CAT/OP/HND/1 10 February 2010, para 262.

autonomous as an institution – a factor crucial to its success and stability.<sup>15</sup>

Both the 2009 and 2022 NCAT were established through terms of reference in order to fulfil the mandate of OPCAT, but no legislative text was attached to its establishment.<sup>16</sup> NCAT was established under the authority of the Federal Ministry of Justice, but the instrument of establishment<sup>17</sup> does not have legislative status because it is not an act of parliament or a part of the 1999 Constitution of Nigeria.<sup>18</sup> Amnesty International in 2014 noted that NCAT does not possess the legal independence necessary to fulfil any of its functions and mandates.<sup>19</sup>

As NCAT has no law establishing it, its involvement with the Federal Ministry of Justice suggests that it is an institution controlled by whoever heads the ministry.<sup>20</sup> The Attorney General of the Federal Ministry of Justice is appointed by the President, who is confirmed by the Senate. In light of the fact that there is no legislative text establishing the existence of the NCAT, the Attorney General may arguably be able to prevent it from performing its duties, compare to the NHRC Act 2010 (as amended) which prescribed how members can

15 As above.

16 Nigeria. Joint alternative report submitted in application of article 19 of the UN Committee against Torture and Cruel Inhuman and degrading treatment 72nd session of the UN Committee against Torture for the examination of Nigeria 2021 at 11.

17 The inaugural documents contain the Nigerian coat of arms, a symbol of the federal government. This document begins with the phrase 'Federal Ministry of Justice' followed by the phrase 'Mandate of the National Committee on Torture.' All capital letters are used. The document can only be accessed through the University of Bristol website. A concise outline of the mandate can also be found in the document provided by the former Chairman of the NCAT, Dr Samson Sani Ameh to the SPT in 2014. Dr Samson Sani Ameh NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' 2014 15 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf> (accessed 12 October 2022). This implies that the NCAT had no website either on its own or under the Ministry of Justice that could be accessed by the general public who want to file a complaint, and thus the NCAT mandate is only accessible to those who possess the necessary skills to search the internet. For example, South Africa, an African country like Nigeria, has an NPM website that can be accessed through <https://sahrc.org.za/npm/index.php/about-the-npm>. This website makes it easy for people to access information and provides a phone number for contact. However, the NCAT does not have a similar resource. Moreover, the annual reports received by the Subcommittee from National Preventive Mechanisms regularly update their websites; however, it indicates that Nigeria has not yet submitted a report. This information is available at <https://web.dev.ohchr.un-icc.cloud/en/treaty-bodies/spt/annual-reports-received-sub-committee-national-preventive-mechanisms> (accessed 3 November 2024).

18 The document that established the NCAT can be see here at <https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsoference.pdf> (accessed 7 July/2022).

19 Amnesty International 'Torture in Nigeria; in summary' AFR 44/005/2014 <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf> (accessed 10 July 2022).

20 Nigeria. Joint alternative report submitted in application of article 19 of the UN Committee against Torture and Cruel Inhuman and degrading treatment 72nd session of the UN Committee against Torture for the examination of Nigeria 2021 at 12.

be appointed and how they cease office, which the term of reference did not cover. This grants the AG broader powers than the NHRC.

OPCAT's torture prevention objective depends on an independent national and international body capable of visiting places where people are deprived of their liberties as a means of accomplishing this goal, countries that have ratified the OPCAT must establish national bodies to visit places where people are being deprived of their liberty.<sup>21</sup> The ostensible purpose of NCAT is to visit places of detention,<sup>22</sup> but since NCAT is not established by a legal text, it cannot function as required by article 18 of OPCAT.<sup>23</sup>

Moreover, article 18(3) obligates states to provide 'necessary resources for the functioning' of the NPMs.<sup>24</sup> According to Murray, and as noted above, the NPMs need 'the necessary resources' to function.<sup>25</sup> The functional independence of NPM is characterised by an adequately staffed and funded statutory establishment based on an act of parliament or the constitution.<sup>26</sup> The letter of reference did not specify how the NCAT is funded. Functional independence requires that an NPM have adequate staffing and provisions outlined in the statute that establishes the NPM regarding its funding.

## 2.2 Independence of personnel

According to article 18(2) of OPCAT, NPMs must have capable staff members who possess professional expertise,<sup>27</sup> in other words, experts with appropriate knowledge in relevant areas (as per the APT).<sup>28</sup> Through the Attorney General, the Nigerian Federal government inaugurated a newly appointed NCAT on 11 September 2022 with a broader mandate of preventing torture and liaising with NHRC in

21 Art 3 of OPCAT.

22 Federal Ministry of Justice Mandate of the national committee on torture <https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf> (accessed 26 July 2022).

23 Amnesty International (n 19).

24 Art 18(3) of OPCAT.

25 R Murray 'National preventive mechanisms under the Optional Protocol to the Torture Convention: One size does not fit all' (2008) 26(4) *Netherlands Quarterly of Human Rights* 485, 496. (Among the resources that are required are offices, vehicles, furniture, computers, funds, and personnel. In spite of the fact that the necessary resources outlined in article 18(3) are a minimum requirement, many states argue that there is no additional funding available for NPMs Act.) As a result, the state is responsible for providing the necessary resources, which may be achieved by allocating funds to the NPMs through the appropriations process by the legislature.

26 Murray (n 25). The Term of Reference did not specify how the NCAT is funded. Functional independence requires that an NPM have adequate staffing and provisions outlined in the statute that establishes the NPM regarding its funding. For example, see the NHRC Act.

27 Art 18(2) of OPCAT.

28 Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) 2010 91.

discharging its mandate, especially in the area of visitation to Correctional service facilities, to enable it to have first-hand information on the condition of inmate.<sup>29</sup> The newly appointed committee has a comprehensive mandate to engage and liaise with the Committee Against Torture and the regional human rights mechanisms. Its responsibilities include conducting follow-up actions, collecting data and information, and consulting with the NHRC as well as civil society organisations.<sup>30</sup> Among the newly appointed members are experts from a variety of fields, including human rights, police, academia, law, and non-governmental organisations (NGOs). They include the solicitor-general or the Permanent Secretary of the Ministry of Justice who serves as the chairperson, the Executive Secretary of the National Human Rights Commission who alternates as the chairperson; the Director of Citizens' Rights within the Ministry of Justice; the Director of Public Prosecutions of the Federation; The Director-General of the Legal Aid Council of Nigeria or any of the Director representatives; the Inspector-General of Police or any of his representatives not below the rank of Commissioner of Police; the Commandant-General of the Nigeria Security and Civil Defence Corps or any of his representatives but not below the rank of a commandant; the Director-General of the Department of State Service or any of his representatives not below the rank of a Director; and the Chief of Army Staff or any of his representatives not below the rank of colonel. In addition, the Chairman of the Economic and Financial Crimes Commission or any of his representatives not below the rank of a Director, and the President of the Nigerian Bar Association or any of his representatives act as members. Christy Mbonu Ezim, the Director-General of the Nigeria Institute of Advanced Legal Studies or any of staff of the Institute not below the rank of a director; the President of the International Federation of Woman Lawyer (FIDA) or any of her representatives; Avocats San Frontières, the Chairman of the Human Rights Agenda Network; Access to Justice; the Director of Nigerian Law School, Chibueze P Okoli also serve as members and the Director of Monitoring Department of the National Human Rights Commission serves as the Secretary.

Providing the necessary resources and selecting the appropriate members are specific responsibilities of each state's government.<sup>31</sup> As required by article 18(4), the government must take into account the Paris Principles when establishing NPMs.<sup>32</sup> The Paris Principles provide more guidance on how the members of a human rights institution should be appointed, instructing that representatives from a wide range of backgrounds should be appointed,<sup>33</sup> including NGOs,

29 A Oluwafemi 'FG sets up committee to monitor compliance with laws against torture' *The Cable* <https://www.thecable.ng/fg-sets-up-committee-to-monitor-compliance-with-laws-against-torture> (11 September 2022) (accessed 8 October 2022).

30 As above.

31 Murray (n 25) 485-97.

32 Art 18(4) of OPCAT.

33 Composition and guarantees of independence and pluralism Paris Principle 1.

members of parliament, lawyers, and government officials – but the latter should only serve as advisers.<sup>34</sup>

In accordance with the Paris Principles, the appointment of members must be outlined and stipulated in an official act or legal document,<sup>35</sup> which must also embody pluralism.<sup>36</sup> However, the appointments cited above cannot be said to be made through an official act or legal document.

As outlined in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Czech Republic in 2002, an NPM should be distinct from the police service<sup>37</sup> an independent body that is not administratively or organisationally subordinate to any government ministry.<sup>38</sup> In summary, this suggests that the government should not interfere with the duties of the NPM, but should provide adequate resources and ensure that the NPM is governed according to the Act of Parliament establishing it.<sup>39</sup>

It can be asked whether all NPMs can be detached from the government. According to Murray, NPMs must maintain a close relationship with the government so that its recommendations and findings are implemented.<sup>40</sup> One benefit of an NPM is that it cannot be completely detached from the government as would be in the case of NGOs.<sup>41</sup> Murray recommends that NPMs be established by statutes or legal documents that take on a status that extends beyond those of NGOs.<sup>42</sup> This would bring them closer to the government while providing them with some influence.<sup>43</sup> While being an independent body does not mean the NPM must be ‘friends’ with the government,<sup>44</sup> it does mean that the NPM must be able to distance itself from the government while also engaging in constructive dialogue with the

34 Composition and guarantees of independence and pluralism Paris Principle 1(a)-(e).

35 Composition and guarantees of independence and pluralism in the Paris Principle 1(3).

36 As above.

37 Council of Europe ‘Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2002. Strasbourg, 12 March 2004 CPT/INF/(2004) 4 para 102. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695650> (accessed 10 October 2022).

38 As above.

39 As above.

40 Murray (n 25) 485-500.

41 As above.

42 As above.

43 University of Bristol *The optional protocol to the UNCAT: Preventive mechanism and standards’ conference report*; report on the First Annual Conference on the Implementation of the Optional Protocol to OPCAT. Law School, University of Bristol April 19-20, 2007 32 [https://research-information.bris.ac.uk/ws/portalfiles/portal/190916323/First\\_Annual\\_Conference\\_on\\_the\\_implementation\\_of\\_OPCAT\\_19\\_20\\_April\\_2007\\_Bristol\\_UK\\_Final\\_Proceedings.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/190916323/First_Annual_Conference_on_the_implementation_of_OPCAT_19_20_April_2007_Bristol_UK_Final_Proceedings.pdf) (accessed 10 October 2022).

44 As above.



government and monitoring detention centres.<sup>45</sup> This would enable the NPM to create a relationship and a partnership with the government that would produce lasting trust.<sup>46</sup> Thus, it is argued that the inclusion of the Chief of Army Staff, Inspector-General of Police, Director of Public Prosecutions, and Controller General of Corrections on the NCAT committee will provide a balance between NCAT's capacity as an NPM and the ability to maintain influence on government through these officials, which is not possible for an NGO. Nevertheless, when these government-appointed individuals are unable to distance themselves from the government's influence, the NCAT committee, as a whole, and its independence will be at risk.<sup>47</sup>

In addition, the Paris Principles stipulate that for an expert to be independent,<sup>48</sup> a legal document detailing their terms of service and terms of renewal must be provided.<sup>49</sup> However, it is not stated in the inaugural document of NCAT whether members can renew their positions or what the duration of the term of office will be.<sup>50</sup> Moreover, the document that created NCAT members is neither in a constitutional document, nor in a statute.<sup>51</sup>

## 2.3 Financial independence

In accordance with OPCAT article 18(3), state parties are required to provide 'necessary resources' for the proper functioning of NPMs.<sup>52</sup> OPCAT did not specify what 'necessary resources' entail, however, the NPMs guidelines indicate that adequate funding is required for the NPMs to perform their functions.<sup>53</sup> Having adequate funding allows NPMs to be financially autonomous, allowing them to hire their own

45 As above.

46 Murray (n 25) 485-500.

47 In addition, the government may appoint members from different NGOs who have previous experience in civil society organisations. As such, any recommendations made may not be implemented on time or have less influence on the government. In this regard, the thesis argues that government members should serve only as advisers to the NCAT rather than being members. The members should possess expertise in civil society organisations and human rights. The government members would have an influence on the government and would also create a relationship of trust between the government and the NCAT committee. See also, Composition and guarantees of independence and pluralism Paris Principle 1(e) Government departments (If these are included, their representative should participate in the deliberations only in an advisory capacity).

48 Composition and guarantees of independence and pluralism Paris Principle 1(3).

49 As above.

50 Federal Ministry of Justice 'Mandate of the National Committee on Torture' <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeria/termsofreference.pdf> (accessed 10 October 2022).

51 As above.

52 Art 18(3) of OPCAT.

53 Para 11 of the Guidelines on NPMs.

staff and direct their own activities.<sup>54</sup> Therefore, financial independence is a fundamental requirement for the NPM to function effectively, and without it, the NPM cannot make independent decisions or operate efficiently.<sup>55</sup>

According to the APT manual guide, the NPM must be able to develop its own budget that will enable it to function independently of the government.<sup>56</sup> This will enable it to make its own decisions.<sup>57</sup> Consequently, the founding documents establishing the NPMs must specify the sources of funding and how they should be spent.<sup>58</sup> In spite of this, there are no legislative documents establishing the NCAT. The former chairman of the NCAT, Sanni Ameh (Senior Advocate of Nigeria), in a technical consultation on implementing the Anti-Torture Act 2017 held in Abuja on an international day supporting victims of torture, in 2022, alleged that the NCAT lacked adequate financial resources to investigate and send periodic reports to the United Nations.<sup>59</sup>

The 2021 US Department of State's Country Reports on human rights alleged that the NCAT also lacked operational independence and legal backing, which had hindered the NCAT from working effectively.<sup>60</sup> This implied that NCAT, despite having broad mandates, lacked legal, operational and financial independence to perform any of its tasks. Arguably, this has resulted in a low number of visitations to prisons and none to any police cells.

## 2.4 Roles and effectiveness of NCAT

The question of the effectiveness of any human rights institution is closely related to the roles of the institution.<sup>61</sup> In accordance with OPCAT, the role of an NPM is diverse. NPMs are responsible for

54 United Nations 'Principles relating to the status of national institutions (The Paris Principles)' Adopted 20 December 1993 by the General Assembly resolution 48/134. <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> (accessed 14 August 2022) para 2.

55 Amnesty International 'Checklist for the effective implementation of the OPCAT establishment of National Preventive Mechanisms (NPMs)' 2 <https://www.amnesty.org/en/wp-content/uploads/2021/06/ior500012014en.pdf> (accessed 15 December 2022).

56 Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) 2010 100.

57 As above.

58 As above.

59 S Ogunlowo 'We are suffering from lack of funding-FG's anti-torture committee' 21 June 2022 *Premium Times Newspaper* <https://www.premiumtimesng.com/news/more-news/538425-we-are-suffering-from-lack-of-funding-fgs-anti-torture-committee.html> (accessed 10 July 2022).

60 United State Department of State '2021 Country reports on human rights practices: Nigeria' <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/nigeria> (accessed 10 July 2022).

61 Murray (n 25) 485-502.

conducting regular visits to detention centres<sup>62</sup> and making recommendations to the relevant authorities in order to improve the conditions of deprived individuals.<sup>63</sup> In addition, they must submit proposals for and comments on any draft legislation.<sup>64</sup> Further, it serves as a point of contact for the SPT<sup>65</sup> and prepares reports for the SPT on the state of affairs and advises the government when necessary.<sup>66</sup>

The mandates of NCAT envisage visitation to any place of detention as defined by OPCAT.<sup>67</sup> This includes prisons, immigration detention centres, police cells, and places where authorities hold people.<sup>68</sup> NCAT, in 2014, with the then chairman and other members, visited Minna Old Prison, Minna New Medium Security Prison, Kontagora Medium Security Prison, Bida Prison, New Bussa Prison, Lapai Prison and Kagara Prison.<sup>69</sup> While the efforts of NCAT are laudable, places of detention do not stop at prisons; they include police station cells where the use of torture is most perpetrated in Nigeria.<sup>70</sup>

The use of torture is said by Human Rights Watch to be a norm in interrogation rooms used by officers of the Nigeria Police Force.<sup>71</sup> NCAT visited some police cells and interviewed detainees about their living conditions.<sup>72</sup> According to the detainees, they were treated well.<sup>73</sup> In spite of this, the NCAT committee members observed that the surroundings were not conducive to the detainees' well-being.<sup>74</sup>

Moreover, only Niger state is mentioned in the report out of the 36 states in the Federation.<sup>75</sup> It is commendable that the efforts have been made, but there is still a lot more that needs to be done in order to prevent torture in Nigeria. For NCAT to fulfil its mandate and be effective as required by OPCAT, it must be able to visit other detention centres across the country as prescribed in article 4(2) of OPCAT.<sup>76</sup>

62 Art 19(a) of OPCAT.

63 Art 19(b) of OPCAT.

64 Art 19(c) of OPCAT.

65 Art 11(b) of OPCAT.

66 Art 11(b) of OPCAT

67 Federal Ministry of Justice Mandate of the National Committee on Torture <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf> (accessed 10 October 2022).

68 As above.

69 As above.

70 Human Rights Watch 'Rest in pieces: Police torture and deaths in custody in Nigeria' <https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria> (accessed 14 August 2022).

71 As above.

72 Dr Samson Sani Ameh 'NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31 December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' 2014-2015 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf> (accessed 12 October 2022).

73 As above.

74 As above.

75 As above.

76 Art 4(2) of OPCAT.

Article 19(c) obligates each NPM the power to submit a proposal about a draft or existing law.<sup>77</sup> The NCAT is tasked with the responsibility to continuously review interrogation rules, methods, instructions and practice.<sup>78</sup> This implies that the NCAT must ensure that the interrogation rules comply with international law.<sup>79</sup> The purpose of reviewing all laws that deal with the practice and treatment of a person arrested is to ensure that torture is always prevented, demonstrating that the government has zero tolerance for the use of torture.<sup>80</sup>

The use of torture is prohibited, and the NCAT is tasked to report quarterly by briefing the Attorney General of the Federation on cases of torture and proposing administrative and judicial ways forward for eradicating torture in Nigeria.<sup>81</sup> This includes proposing laws prohibiting torture (Anti-Torture Act) and developing anti-torture policies for the Federation.<sup>82</sup> The NCAT with other civil society organisations and Bristol University, Nigeria Human Rights Commission, the United Nations Subcommittee on Prevention of Torture, Her Majesty's Inspectorate of Prisons, and Redress helped develop the Anti-Torture Act of Nigeria 2017.<sup>83</sup> The proposed Anti-Torture Bill in 'New Part V' described the establishment of the National Preventive Mechanism in Nigeria as well as the composition, appointment, duties, and funding of the NCAT.<sup>84</sup> Upon the enactment of the Anti-Torture Act 2017, the NCAT section was removed.<sup>85</sup>

NCAT is designed to ensure that the police and other law enforcement officers, medical personnel, and public officials have adequate knowledge and information on the prohibition of torture in Nigeria.<sup>86</sup> This includes custody officials in different prisons, interrogation officers in different law enforcement agencies in Nigeria and people in charge of treating any person arrested or detained in a prison or any other detention centre.<sup>87</sup>

77 Art 19(b) of OPCAT.

78 Federal Ministry of Justice Mandate of the National Committee on Torture <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf> (accessed 10 October 2022).

79 As above.

80 As above.

81 As above.

82 As above.

83 University of Bristol Law school 'Nigeria OPCAT project' <https://www.bristol.ac.uk/law/research/centres/hric/projects/the-implementation-of-the-opcat-in-nigeria/> (accessed 11 October 2022).

84 Redress, University of Bristol 'Anti-Torture legislative frameworks in Nigeria' Report of round table discussion on the draft-anti-torture Bill. Sheraton Hotel, Abuja 26 February 2017. <https://redress.org/wp-content/uploads/2017/12/ANTI-TORTURE-LEGISLATIVE-FRAMEWORKS-IN-NIGERIA.pdf> (accessed 11 October 2022).

85 As above.

86 As above.

87 As above.

Nevertheless, Murray contends that another component that may contribute to an NPM's effectiveness is its visibility.<sup>88</sup> NCAT can receive, and in some circumstances, consider communications from those tortured and those with the knowledge of what will happen or when it happened. This communication can come from civil society organisations, individuals and various government institutions.<sup>89</sup> In spite of this, the NCAT does not have a presence in the entire country as its only secretariat is located at the headquarters of the NHRC. Also, the NCAT does not have a website where the public may report cases of torture.<sup>90</sup>

Furthermore, Murray asserts that, for NPMs to be effective, there must be a political will on the part of the government.<sup>91</sup> The government must support the work of the NPMs. A state is required to provide NPMs with access to information,<sup>92</sup> the place of deprived liberties,<sup>93</sup> access to private interviews with detainees without witnesses,<sup>94</sup> and the right to choose the location of the visit,<sup>95</sup> as specified in article 20 of OPCAT. The NCAT reports show it has visited various detention centres and has access to detainee information during interview processes.<sup>96</sup>

From September 8th to 19th, 2024, SPT visited Nigeria to assess the treatment of individuals in detention facilities. During its visit, the SPT noted that conditions in detention centres, including police cells, have been abysmal even after the OPCAT's ratification and the NCAT's establishment.<sup>97</sup>

In conclusion, the NCAT, meant to serve as an NPM, lacks an independent and functional preventive mechanism. It indicates that the 2009 and 2022 NCATs have not been independent, as they were not created through legal documents defining their functions, terms of

88 Murray (n 25) 502.

89 As above.

90 In contrast, the South African National Preventive Mechanism has a website where members of the public can contact them either by phone or by completing a form on the website. The website contains an NPM fact sheet that is available in all South African languages. <https://sahrc.org.za/npm/index.php/about-the-npm> (accessed 11 October 2022).

91 Murray (n 25).

92 Art 20(a) of OPCAT.

93 Art 12(c) of OPCAT.

94 Art 12(e) of OPCAT.

95 As above. See also, Council of Europe Report to the Bulgarian government on the visit to Bulgaria carried out by the European committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 17 to 26 April 2002 Strasbourg, 24 June 2004. CPT/Inf (2004) 21 paras 158 and 25, where it was concluded that the NPMs can visit places of detention centres unannounced and randomly.

96 Dr Samson Sani Ameh NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' (2014) 15 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf> (accessed 12 October 2022).

97 Office of the High Commissioner 'Nigeria: urgent measures needed to end torture and ill-treatment, say experts' 23 September 2024.

appointment, staff recruitment procedures, operational offices, visitation rights to detention facilities, and funding mechanisms. Nevertheless, it is imperative to know whether NCAT communicates and stays in contact with the SPT as specified in articles 20(f) and 11(b).

## 2.5 Cooperation between NCAT and SPT

Articles 11(b) and 12(c) of OPCAT set out the relationship between the two institutions. In article 11(b), the SPTs must be able to 'advise and assist state parties,' and in doing so, the SPTs must 'maintain direct contact', which could be confidential.<sup>98</sup> NCAT, through its then chairman, Samson Sane Ameh (SAN), submitted a report to the SPT in 2014 showing what the NCAT had done and what detention centres it had inspected.<sup>99</sup> According to the report, the NCAT has been mandated to receive communications from both individuals and civil society organisations.<sup>100</sup> It also visits places of detention, ensures that there is sufficient information regarding the prohibition of torture, and reviews laws and legislation.<sup>101</sup> The report indicates that Niger state is the only state among the 36 in which centres have been visited<sup>102</sup> and convicted inmates, unconvicted inmates, and inmates serving life sentences interviewed.<sup>103</sup>

The SPT first visited Nigeria in 2014 in accordance with its function to visit countries facing claims of torture.<sup>104</sup> The meeting in Abuja involving government officials, NCAT members and the NHRC, focused on how the SPT could help implement OPCAT in Nigeria.<sup>105</sup> In 2022, before the new inaugural NCAT, the chairman alleged that the committee could not meet, properly investigate, and send periodic reports to the United Nations due to a lack of funding. It implies that the NCAT lacks operational and functional independence, which does not comply with the OPCAT requirement.<sup>106</sup>

The NCAT, with other members of the Federal Ministry of Justice, entered into a dialogue with the UN Committee against Torture but Nigeria as a State, failed to submit its initial report in 2021.<sup>107</sup> During

98 Art 11(b) of OPCAT

99 Ameh (n 96).

100 As above.

101 As above.

102 As above.

103 As above.

104 Nigeria: 'UN torture prevention body concludes its high level advisory visit, as a first step to strengthen the national capacity to prevent torture' <https://www.ohchr.org/en/press-releases/2014/04/nigeria-un-torture-prevention-body-concludes-its-high-level-advisory-visit> (accessed 14 August 2022).

105 As above.

106 Ogunlowo (n 59).

107 In initial dialogue with Nigeria, experts of committee against torture ask about the fight against terrorism, and conditions of detention <https://www.ungeneva.org/ar/news-media/meeting-summary/2021/11/loccasion-de-son-premier-dialogue-avec-le-nigeria-le-comite> (accessed 10 July 2022).

the dialogue, the UN Committee against Torture experts raised the fact that whilst 'the Constitution created a right not to be subjected to torture, and the Anti-Torture Law 2017 specifically criminalised acts of torture perpetrated by public officials',<sup>108</sup> there were no specific provisions included in the Anti-Torture Act establishing that the crime of torture was not subject to a statute of limitations and that amnesties and pardons were prohibited for acts of torture.<sup>109</sup> Nigerian authorities were also asked whether they ensured that video recorders were used during the interrogation of suspects to show that the suspects were not tortured.<sup>110</sup> Nigeria had ratified OPCAT and established that NCAT could visit detention centres. However, the UN Committee against Torture questioned whether NCAT was effectively performing its role as an NPM.<sup>111</sup>

The Nigerian delegation responded by informing the UN Committee on Torture that the Federal Government was restructuring NCAT to make it more independent and responsive.<sup>112</sup> Most responses of the delegates focused more on prison decongestion in Nigeria rather than on statutory limitations, functions and roles of the NCAT and its effectiveness.<sup>113</sup> It was further claimed that the Anti-Torture Act 2017 applied all over the Federation.<sup>114</sup> The UN Committee on Torture and the Rapporteur replied that:

...it was good to pass laws, but it was better to act on them. The legal framework of Nigeria was not called into question: rather, the questions raised had been more about the implementations of those laws.<sup>115</sup>

State reporting under an international human rights treaty is important to ensure the accountability of each member country's government.<sup>116</sup> This enables the UN Committee to point the government's attention to areas that need improvement.<sup>117</sup>

In conclusion, although Nigeria established two NCATs through terms of reference that outline their mandates, these two NCATs were not created by an act of parliament. While they have visited some detention centres, their visitation efforts are limited due to a lack of financial and functional independence. Therefore, it is evident that the government lacks the political will to implement the mandates of the NCAT so that it can perform as prescribed by OPCAT.

108 As above. Question from Sebastien Touze, Committee Vice-Chairperson and Co-Rapporteur for Nigeria.

109 As above.

110 As above.

111 As above.

112 As above.

113 As above.

114 As above.

115 As above.

116 CD Creamer & BA Simmons 'Ratification, reporting, and rights: quality of participation in the Convention against Torture' (2015) 37(3) *Human Rights Quarterly* 579-580.

117 Creamer & Simmons (n 116) 584.

### 3 THE NHRC AS AN NPM IN NIGERIA

The OPCAT tasks member states with establishing or designating one or more independent NPMs within one year of the protocol's entry into force. Articles 19 to 22 outline several essential functions that an independent NPM must fulfil to operate effectively. Moreover, adhering to the Paris Principles is important in establishing the NPM.

To create an effective NPM, Nigeria established its NCAT in 2009 and reaffirmed its commitment in 2022. There is no one-size-fits-all model for NPMs, and each country must determine what works best for its circumstances. Although the Nigerian government has attempted to establish an independent NPM separate from the NHRC, these efforts have faced challenges, primarily due to a lack of funding and political will. As a result, it is reasonable to question whether the NHRC, designated as the NPM in Nigeria, will be effective in preventing torture.

The government set up the NHRC in 1995 to protect and promote human rights in Nigeria under Decree 22 of 1995 (1995 Act).<sup>118</sup> Eight months after its establishment, the government inaugurated the Governing Council with the power to oversee the institution. It acquired a rented office in 1997, established the first set of zonal offices in six geopolitical zones and in 1988, with the first two zonal offices in Lagos and Kano,<sup>119</sup> later extended to Port Harcourt, Enugu, Jos and Maiduguri.<sup>120</sup>

The 1995 Act establishing the NHRC was amended in 2010 and signed into law in 2011.<sup>121</sup> The NHRC amended Act 2010 created the general mandate of the NHRC, which is to deal with all matters relating to human rights in Nigeria.<sup>122</sup> Specifically, it allows the NHRC to visit persons, police cells, and any detention centres to determine the detention centres' condition and make recommendations to the appropriate authorities.<sup>123</sup> In 2024, an order designated Nigeria's NHRC as the NPM (Order 2024).<sup>124</sup> The section 1 of the Order 2024 specifies that section 1 of the NHRC Act of 2010 as amended, serves as Nigeria's NPM by articles 3 and 17 of the OPCAT.<sup>125</sup>

118 Decree No 22 of October 1995. The military regime that is known for its abuse of human rights established a human rights institution. This is ironic, because it is impossible for such an institution to function independently when under state control or influence. It was later known as National Human Rights Commission Act Cap N46, Laws of the Federation of Nigeria, 2004.

119 As above. Nigeria is divided into six geopolitical zones, created during General Sani Abacha's rule as an administrative grouping of Nigeria.

120 As above.

121 National Human Rights Commission (Amendment) Act, 2010 (NHRC 2010 as amended).

122 Secs 5(1) NHRC 2010 as amended.

123 Secs 6(1)(d) NHRC 2010 as amended.

124 Designation of the National Human Rights Commission as Nigeria Preventive Mechanism Order, 2024. S 1 No 21 of 2024.

125 As above



This section provides an overview of the NHRC and analyses if it is capable of serving as an NPM in Nigeria in accordance with OPCAT's requirements in Part IV.

### 3.1 The roles and the effectiveness of the NHRC as an NPM in Nigeria

Section 2(1) of the 2024 Order establishes a specialised department within the NHRC that possesses the authority and mandate of an NPM. This extends the NHRC's powers to include those of an NPM, as established by an act of Parliament rather than through a letter of reference. The Order 2024 is a significant departure from the 2009 and 2022 NCAT, which were established by a letter of reference.

According to section 3 of the 2024 Order, the NHRC is responsible for regularly inspecting and examining the treatment of individuals deprived of their liberty in places of detention, as outlined in article 4 of the OPCAT. Prior to this, section 6(1)(d) of the NHRC Act 2010, as amended, mandated the NHRC to visit detention facilities. As a result, the NHRC has established an annual prison audit to address human rights issues within the Nigeria Correctional Services.<sup>126</sup> It is unclear whether this includes visits to police cells in each police station in Nigeria. However, according to section 3 of the 2024 Order, the specialised department will need to fulfil its mandate of visitation as specified in article 4 of the OPCAT. This mandate includes police cells and other holding facilities where individuals are not free to leave at will under the authority of the law.<sup>127</sup>

Moreover, section 5(b) of the NHRC Act 2010 directs that the NHRC must be able to monitor and investigate any alleged human rights violation cases in Nigeria and is also obligated to recommend appropriate actions for prosecution to the President.<sup>128</sup> This suggests that the NHRC already has access to detention centres and holds

126 'NHRC flags off 2022 prison audit exercise, donates drugs to inmates.' 13 May 2022 <https://www.nigeriarights.gov.ng/nhrc-media/news-and-events/341-nhrc-flags-off-2022-prison-audit-exercise-donates-drugs-to-inmates.html> (accessed 19 May 2022). See also, 'NHRC chairperson commends officers of Kuje correctional service during 2022 facility audit 16 May 2022' <https://www.nigeriarights.gov.ng/nhrc-media/news-and-events/343-nhrc-chairperson-commends-officers-of-kuje-correctional-service-during-2022-facility-audit.html> (accessed 19 May 2022).

127 Art 4(2) of OPCAT.

128 In the 72nd session of the United Nations Committee against Torture, the NHRC submitted an individual report on the implementation of the UNCAT and OPCAT in Nigeria at 9. The NHRC in 2019 received 15 457 complaints of torture and in 2020 recorded 12 400 cases, making 27 858 in two years. The document was submitted to the researcher by Hillary Ogbonna and Halilu Adamu of the NHRC Abuja. However, this thesis concludes that while the provision is laudable, it is arguably not enough to recommend prosecution to the President. Moreover, the violation of human rights extends to the use of torture, which implies that the NHRC has the capacity to investigate cases of alleged torture but not to prevent the use of torture, as investigation may only be carried out after the use of torture has been perpetrated.

monitoring and investigation powers. Furthermore, section 3(b) of the 2024 Order grants the NHRC's specialised department the ability to obtain information regarding the treatment of individuals deprived of their liberty, as well as the conditions within the detention centres.

Section 6 of the NHRC Act 2010 includes further details of the mandate of the NHRC by stipulating that it should have the power to investigate and inquire,<sup>129</sup> introduce civil actions,<sup>130</sup> appoint interpreters,<sup>131</sup> decide on compensation or damages to be awarded to victims of human rights abuse,<sup>132</sup> summon and interrogate,<sup>133</sup> issue warrants and compel any person or authority to appear before it,<sup>134</sup> enter any property to obtain evidence of a violation of human rights,<sup>135</sup> and visit places of detentions or cells.<sup>136</sup> Though the NHRC has broad mandates, the specialised department, as outlined in section 3(c) of the 2024 Order, allows the NHRC to conduct private interviews with individuals deprived of their liberties, without the presence of witnesses or state authority. When a translator is required, one must be provided, in accordance with article 20(d) of the OPCAT. The purpose of conducting these interviews in private is to enable the detainee to speak freely and openly without fear of reprisals.

The NHRC must also cooperate, liaise, and participate with other local and international organisations.<sup>137</sup> The NHRC must also collect data, disseminate information,<sup>138</sup> publish information,<sup>139</sup> promote public discussion of human rights,<sup>140</sup> receive and investigate complaints,<sup>141</sup> examine existing legislation or any proposed Bills,<sup>142</sup> undertake research or coordinate any education programme to advance the promotion of human rights in Nigeria,<sup>143</sup> and act as a conciliator when appropriate,<sup>144</sup> referring human rights violation to the Attorney General,<sup>145</sup> and, when appropriate, can seek leave of the court to hear matters on human rights violations.<sup>146</sup> Additionally, in section 3(d)(ii) of the 2024 Order, the specialised department is tasked with

129 Sec 6(1)(a) of the NHRC 2010 as amended.

130 Sec 6(1)(b) of the NHRC 2010 as amended.

131 Sec 6(1)(c) of the NHRC 2010 as amended.

132 Sec 6(1)(e). See also, Decision on 2020/IIP-SARS/ABJ/120 where the petitioner was awarded five million naira compensation for the violation of his rights by the police.

133 Sec 6(2)(b) of the NHRC 2010 as amended.

134 Sec 6(2)(c), (d) & (e) of the NHRC 2010 as amended.

135 Sec 6(2)(a) of the NHRC 2010 as amended.

136 Sec 6(1)(e) of the NHRC 2010 as amended.

137 Sec 5(g) See also, sec 6(1)(f) of the NHRC 2010 as amended.

138 Sec 5(h) of the NHRC 2010 as amended.

139 Sec 5(i) of the NHRC 2010 as amended.

140 Sec 5(m) of the NHRC 2010 as amended.

141 Sec 5(j) of the NHRC 2010 as amended.

142 Sec 5(k) of the NHRC 2010 as amended.

143 Sec 5(n) of the NHRC 2010 as amended.

144 Sec 5(q) of the NHRC 2010 as amended.

145 Sec 5(p) of the NHRC 2010 as amended.

146 Sec 5(r) of the NHRC 2010 as amended.

recommending improvements to the conditions of individuals deprived of their liberty.

Section 5(c) extends the mandate of the NHRC to assist the victims of human rights violations in seeking redress and remedies. The NHRC in 2020 and 2021 acted as part of the independent investigation panel on human rights violations by the defunct Special Anti-Robbery and other units of the NPF.<sup>147</sup> The panel hears matters of police brutality and awards compensation to victims. In Decision 2020/IIP-SARS/ABJ/15, the panel awarded the sum of five million naira to the petitioner, who was a victim of police brutality.<sup>148</sup>

In sections 5(d) and (e), the NHRC is mandated to conduct research on human rights, and serves as a policy adviser to the Federal Government, states and local governments, especially when formulating laws for human rights protection and promotion in Nigeria. It further states that the NHRC may publish reports and then submit them to the President, National Assembly, judiciary, and state and local government regarding issues of human rights protection and promotion in Nigeria.

NHRC was assigned the task of preparing Nigeria's National Plan of Action for the Promotion and Protection of Human Rights.<sup>149</sup> The Action Plan was conceived as a result of a Declaration of the 1993 World Human Rights Conference in Vienna,<sup>150</sup> by which each state government was tasked with developing an action plan that showed various steps to be taken in order to improve the protection and promotion of human rights.<sup>151</sup> The Action Plan was initiated in 2000 in consultation with NGOs and the National Assembly.<sup>152</sup> The NHRC

147 O Ajayi 'NHRC inaugurates an independent investigative panel on allegations of violations by the defunct SARS' (3 November 2020) *Naira metrics online newspaper* <https://nairametrics.com/2020/11/03/nhrc-inaugurates-independent-investigative-panel-on-allegations-of-violations-by-the-defunct-sars/> (accessed 18 May 2022). See also, F Olorok 'EndSARS panel resumes sitting today as NHRC secures funding' (1 March 2022) *Punch Newspaper* <https://punchng.com/endsars-panel-resumes-sitting-today-as-nhrc-secures-funding/> (accessed 18 May 2022).

148 The independent investigation panel on human rights violations by the defunct SARS and other units of the Nigeria police force (2020) sitting at the Federal Capital Territory, Abuja. Decision 2020/IIP-SARS/ABJ/15. See also, the Decision on 2020/IIP-SARS/ABJ/120 where the petitioner was awarded five million naira in damages for the violation of his rights by the police. These cases were furnished to me by members of the NHRC.

149 National Action Plan for the promotion and protection of human rights 2022-2026 <https://www.nigeriarights.gov.ng/activities/nap/201-draft-national-action-plan-2021-2025.html> (accessed 18 October 2022).

150 United Nations Vienna Declaration and Programme of Action adopted 25 June 1993 by World Conference on Human Rights in Vienna <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action> (accessed 18 October 2022).

151 Article 83 of the Vienna Declaration and Programme of Action.

152 *Federal Republic of Nigeria National action plan for the promotion and protection of human rights in Nigeria 2009-2013* [https://www.ohchr.org/sites/default/files/Documents/Issues/Education/Training/actions-plans/Excerpts/Nigeria09\\_13.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Education/Training/actions-plans/Excerpts/Nigeria09_13.pdf) (accessed 18 October 2022).

presented the final draft document to the government in 2004 for approval.<sup>153</sup>

The Action Plan is divided into five categories.<sup>154</sup> These are civil and political rights; the right to development; rights of person with disabilities; women's, children's and youth's rights; peace and a protected environment, and economic, social and cultural rights.<sup>155</sup> The Plan outlines the government's responsibilities, the strategies it must employ to address human rights issues, and the agencies responsible for implementing and monitoring the programme.<sup>156</sup>

Section 5(f) of the NHRC has the mandate to create public awareness by organising local and international seminars and conferences on human rights issues in Nigeria. This awareness includes meeting with civil society organisations, schools, correctional centres, and social media. In 2021, as part of the awareness mandate, the NHRC issued a press release in 2019 to affirm that freedom from torture was a non-derogable right in Nigeria.<sup>157</sup> In July 2021, the NHRC with the NCAT trained 190 police officers under the Anti-Torture Act of 2017 and other legislation that prohibits the use of torture in Nigeria.<sup>158</sup>

In conclusion, the mandates of the NHRC include the ability to visit places where liberties are deprived, conduct private interviews, and access information related to individuals who are deprived of their liberties. However, one might question why other factors, such as research and the right to contact the Subcommittee on Prevention of Torture, are not included in the 2024 Order. Nevertheless, a careful reading of the NHRC's broad mandates suggests that it indeed has the authority to conduct research and collaborate with other bodies. Therefore, the question remains whether the NHRC can operate as outlined in articles 18 to 21 of OPCAT.

### 3.2 NHRC's functional independence

Article 18(1) of OPCAT requires the state to guarantee the NPM's functional independence.<sup>159</sup> However, the meaning of functional independence was not defined in article 18. As outlined in the Practical Guide of the Office of the High Commissioner, functional independence implies a legislative mandate, operational independence, and financial

153 As above.

154 As above.

155 As above.

156 As above.

157 Press release issued by the Executive Secretary, National Human Rights Commission, 24 April 2019 <https://www.nhrc.gov.ng/nhrc-media/press-release/61-press-release-issued-by-the-executive-secretary-national-human-rights-commission.html> (accessed 18 May 2022).

158 'NHRC trains 190 police officers on Anti-torture legislation' *Vanguard Newspaper* 22 July 2021 <https://www.vanguardngr.com/2021/07/a2j-nhrc-trains-190-police-officers-on-anti-torture-act-legislation/> (accessed 18 May 2022).

159 Art 18(1) of OPCAT.

independence.<sup>160</sup> Legislative mandates include the establishment of an NPM by an act of parliament or in the state constitution.<sup>161</sup> The statutory document would probably include such information as visiting rights, access to information, communications with the SPT, independent experts, work stations, terms of office, and an election or appointment system for NPM members.<sup>162</sup>

During the military regime of General Sani Abacha, the NHRC was established under Decree 22 of 1995.<sup>163</sup> This period was characterised by human rights violations, unlawful detentions and the use of force by various security agencies.<sup>164</sup> It was not the intention of the military regime to create a human rights institution that would address the needs of the people.<sup>165</sup> Instead, it was a political uproar that led to the establishment of the National Human Rights Commission.<sup>166</sup> The NHRC did not have legitimacy and credibility under the military regime, even though it was established by a decree making it notionally independent.<sup>167</sup>

The Amended Act 2010 gives the NHRC functional independence. This is because it specifies that it is established as a corporation with perpetual succession and a common seal, and which can sue and be sued.<sup>168</sup> Section 1 buttresses Newark's assertion that the NPMs must be independent bodies free from government interference or control.<sup>169</sup> Additionally, the 2024 Order in section 2(2)(a) and (b) states that the specialised department shall have operational independence to perform its duties. This operational independence also entails the appropriate allocation of resources necessary for it to carry out its functions, projects, and programs.

160 United Nations Human Rights, Office of the High Commissioner 'Preventing torture: the role of national preventive mechanisms' A Practical Guide: Professional Training Series No 21 15 [https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM\\_Guide.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf) (accessed 17 October 2022).

161 As above.

162 As above.

163 Decree No 22 of October 1995. The military regime that is known for the abuse of human rights established a human rights institution. This was ironic as it is impossible for such an institution to function independently without state control or influence. It was later known as National Human Rights Commission Act Cap. N46, Laws of the Federation of Nigeria, 2004.

164 N Mbelle 'The national human rights commission of Nigeria: valuable, but struggling to enhance relevance' (2005) 48(3) *Centre for Conflict Resolution* 33, 37.

165 As above.

166 As above.

167 As above.

168 Sec 1 of the NHRC 2010 as amended.

169 M Nowak & E McArthur *The United Nations Convention Against Torture* (2008) 1075.

Article 18(3) of OPCAT and the Paris Principle conclude that a state member must provide all the necessary resources for an NPM to function efficiently.<sup>170</sup> These resources include a number of office locations, personnel, financial resources, and most importantly, accessibility to the nation's citizens. The NHRC established one office per state to reach people at the grassroots.<sup>171</sup> According to the NHRC, it would have preferred to have had offices in all local government jurisdictions; however, due to resource limitations, state offices had to suffice.<sup>172</sup>

### 3.3 NHRC's independence of personnel

The NHRC consists of 16 members as a council<sup>173</sup> made up of a retired judge of the Supreme Court, a representative from the Federal Ministry of Justice, Foreign and Internal Affairs, human rights organisations, media practitioners, legal practitioners and three others with a variety of interests and a secretary.<sup>174</sup>

Upon the Attorney General of the Federation's recommendation and confirmation from the Senate, the President of the Republic of Nigeria appoints the members of the Council<sup>175</sup> who serve for a term of four years,<sup>176</sup> which may be renewed.<sup>177</sup> Except for the chairman and secretary-general, each member of the council works part-time and the council meets once a month for three days.<sup>178</sup> NHRC Council members may be removed by consultation with the National Assembly under section 4(1) of the 2010 Amended Act if the President determines that

170 Art 18(3) of OPCAT. See also, United Nations 'Principles relating to the status of national institutions (The Paris Principles)' Adopted 20 December 1993 by General Assembly resolution 48/134. <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> accessed 14 August 2022. The Paris Principles required that each human rights institution must be competent and responsible and must be guaranteed independence. The Paris Principle 'Composition and guarantees of independence and pluralism principle' 2.

171 National Human Rights Commission <https://www.nhrc.gov.ng/map.html> (accessed 18 October 2022).

172 Mbelle (n 164) 43.

173 'NHRC governing council members inaugurated' 3 August 2021 <https://nhrc.gov.ng/nhrc-media/news-and-events/192-nhrc-governing-council-members-inaugurated.html> (accessed 18 October 2022).

174 'NHRC governing council members inaugurated' 3 August 2021 <https://nhrc.gov.ng/nhrc-media/news-and-events/192-nhrc-governing-council-members-inaugurated.html> (accessed 18 October 2022). The current council members are: Dr Salamatou Hussein Suleiman as the chairperson, Tony Ojukwu (Executive Secretary), Joseph Mmamel, Ahmad Fingilla, Kemi Asiwaju-Okenyodo, Abubakar Muhammed, Femi Okewo, Sunday Etim Daniel, Agabaidu Jideani, Nella Andem-Rabana, Azubuike Nwakewenta, Jamila Isah, Idayat Hassana, Jeddy Agba J, the representative of foreign affairs and Dafe Adesida, representing Ministry of Interior.

175 Sec 2(3)(b) of the NHRC amended 2010.

176 Sec 3(1) of the NHRC amended 2010.

177 As above.

178 Mbelle (n 164) 40.

it is not in the public interest for members to continue in their positions.<sup>179</sup> Specifically, the 2010 amended act stipulated that a member of the council may be removed by the President on confirmation of a simple majority of the Senate.<sup>180</sup> Members may only be removed by the President if they are incompetent, bankrupt, convicted of a felony, or otherwise behave improperly.<sup>181</sup>

In terms of section 7 of the NHRC amended Act 2010, the President appoints the executive secretary to the Commission with approval from the Senate.<sup>182</sup> The executive secretary acts as the chief executive officer and the accountant general of the commission – a legal practitioner with over 20 years of post-qualification experience in human rights cases.<sup>183</sup> The executive secretary is appointed for five years and can be re-appointed for a second term based on the Attorney General's recommendations.<sup>184</sup> He or she is in charge of the day-to-day running of the Commission.<sup>185</sup>

Prior to the NHRC amended Act 2010, the United Nations Special Representative of the Secretary-General, a human rights defender, visited Nigeria and raised the issue of the independence of the NHRC.<sup>186</sup> Although it is based on a legal document, it cannot be said to be independent.<sup>187</sup> This was apparent in various events in 2006. Bukhara Bello, the then executive secretary as a member of the NHRC Council, was removed from office by the then Minister of Justice on the allegation of criticising the national security agencies for the constant harassment and intimidation of journalists in the country.<sup>188</sup> In 2009, the executive secretary Behind Ajani was removed from office by letter from the then Attorney General of the Federation.<sup>189</sup>

Section 8 gives the NHRC the power to appoint anybody it deems fits and to transfer members of staff from the public service of the Federation with the required skills to help and assist the NHRC.<sup>190</sup> The NHRC may determine an employee's remuneration, and has the power

179 Sec 4(2) of the NHRC as amended 2010.

180 As above.

181 As above.

182 Sec 7(1)(c) NHRC as amended 2010.

183 Sec 7(1)(a) NHRC as amended 2010.

184 Sec 7(2) NHRC 2010 as amended.

185 Sec 7(3) NHRC 2010 as amended.

186 Frontline Protection of Human Rights Defenders 'Nigeria: defending human rights: Not everywhere not every right' International Fact-Finding Missions Report April 2010 at 18.

187 Frontline Protection of Human Rights Defenders 'Nigeria: defending human rights: Not everywhere not every right' International Fact-Finding Missions Report April 2010 at 18.

188 Amnesty International Nigeria: Government interference with the independence of the national human rights commission 26 June 2006 AFR 44/012/2006 <https://www.amnesty.org/en/documents/afr44/012/2006/en/> (accessed 20 May 2022).

189 As above.

190 Sec 8(1) NHRC 2010 as amended.

to pay such employees.<sup>191</sup> The NHRC has the power to regulate the conditions of staff promotion, salaries, dismissals, appointments, pensions, and gratuities. The pension must be in accordance with the Pensions Act.<sup>192</sup>

Section 18 of the NHRC 2010 restricts the arrest or institution of a civil claim against the executive secretary or any of the staff while discharging their duties.<sup>193</sup> However, for a civil claim to be instituted on other grounds against the members of the NHRC, it must be commenced within three months after the act, and in the case of damage or injury, it must be within six months.<sup>194</sup> This is in accordance with the Public Offices Protection Act, which seeks to protect public officers in the course of their official duties.<sup>195</sup>

### 3.4 NHRC's financial independence

The NHRC maintains a fund for its day-to-day running allocated from the Consolidated Revenue Fund of the Federation.<sup>196</sup> The funds emanate from the Federal Government, which pays and credits the NHRC.<sup>197</sup> The House of Representatives committee on Human Rights oversees the financial management of the NHRC.<sup>198</sup>

Chief Tony Ojukwu, executive secretary of the National Human Rights Commission, addressed the chairman and members of the House of Representatives Human Rights Committee to actualise the human rights fund Bill.<sup>199</sup> The Bill established the NHRC human rights fund in the annual budget of the Federal Government.<sup>200</sup> According to Chief Tony Ojukwu, the Bill's signing enabled the NHRC to better fulfil its mandates and increase its reputation as an independent body.<sup>201</sup> In addition, it addressed the issue of inadequate funding, which had hindered the NHRC since its inception in 1995.<sup>202</sup>

191 Sec 8(2) NHRC 2010 as amended.

192 Sec 9, 10 & 11 NHRC 2010 as amended.

193 Sec 18 of the NHRC 2010 as amended.

194 Sec 18(2), (3) & (4) of the NHRC 2010 as amended.

195 Cap P41, Laws of the Federation 2004.

196 Sec 12(1) & (2) NHRC 2010 as amended.

197 Sec 12(3) NHRC 2010 as amended.

198 National Human Rights Commission 'Ojukwu tasks NASS on human rights funds, increased budget' 13 October 2022. <https://nhrc.gov.ng/nhrc-media/news-and-events/393-ujukwu-tasks-nass-on-human-rights-funds-increased-budget.html> (accessed 19 October 2022).

199 As above.

200 As above.

201 L Baiyewu 'Senate amends NHRC Act, creates rights fund in annual budget' 5 April 2022 *The Punch Newspaper* <https://punchng.com/senate-amends-nhrc-act-creates-rights-fund-in-annual-budget/> (accessed 19 October 2022).

202 M Olugbode 'New law to enhance national human rights commission's performance' *This Day Newspaper* <https://www.thisdaylive.com/index.php/2022/04/11/new-law-ll-enhance-national-human-rights-commissions-performance/> (accessed 19 October 2022).



The NHRC also has the liberty to receive gifts, lands, and funds from individuals or philanthropists; however, the gift must not be inconsistent with or prevent the NHRC from its mandate or delivering its functions.<sup>203</sup> The NHRC's independence is further strengthened by being able to borrow from any sources in order to meet its mandates., It can invest any surplus, subject to the requirement of the Trustee Investments Act or any other securities Act in Nigeria.<sup>204</sup>

Section 15 establishes the Human Rights Fund, which enables the NHRC to research any human rights issues and facilitate meetings with other non-governmental organisations, civil society, or other relevant stakeholders.<sup>205</sup> The federal state and local governments and national and multinational companies are able to contribute to this fund on a tax-deductible basis.<sup>206</sup>

The NHRC is obliged to submit an annual estimate of its expenditure and income to the Federal Executive Council before 30 September of every year for an audit conducted by an auditor from the list issued by the Auditor-General of the Federation.<sup>207</sup> Once the account has been audited, the NHRC is obliged to submit a report showing the activities of the NHRC during the previous year to the National Assembly and the President.<sup>208</sup>

### 3.5 Cooperation with the SPT

The NPMs must have adequate cooperation with the SPT In April 2014, the SPT visited Nigeria to discuss the establishment of an independent NPM.<sup>209</sup> The discussion assured the SPTs that the Nigerian Government would establish an NPM. During the visit, the NHRC was also met by the SPT, which advised the NHRC on the steps needed for Nigeria to comply with its requirements under OPCAT.<sup>210</sup> The NHRC has since then published no communication with the SPTs and it would seem that the NHRC did not directly communicate with the SPT. However, with the newly established specialised department in Order 2024, it can be argued that it will communicate more effectively with the SPT.

203 Sec 13 of the NHRC 2010 as amended.

204 Sec 14 NHRC 2010 as amended.

205 Sec 15 of the NHRC 2010 as amended.

206 Sec 15(3) of the NHRC 2010 as amended.

207 Sec 16(1), (2) & (3) of the NHRC 2010 as amended.

208 Sec 17 of the NHRC 2010 as amended.

209 United Nations 'Torture and inhuman treatment' <https://www.ohchr.org/en/taxonomy/term/1328?page=20> (accessed 23 May 2022).

210 As above.

In the 72nd session of the United Nations Committee against Torture, the NHRC submitted an individual report on implementing the UNCAT and OPCAT in Nigeria.<sup>211</sup> In the report, the NHRC was held to have demonstrated adequate cooperation with the country's civil society organisations and other relevant stakeholders.<sup>212</sup> From 2006 to 2008, the NHRC partnered the Network of Police Reform in Nigeria (NOPRIN) to carry out hearings on extrajudicial killings by the police. From 2016 to 2017, the NHRC collaborated with the Nigeria Bar Association and civil society organisations in the public hearings on police brutality by the Special Anti-Robbery Squad.<sup>213</sup>

The NHRC cooperates with different civil society organisations, but it does not enjoy that cooperation with the SPT. If the NHRC were to approach the SPT in terms of article 20(f) of OPCAT for information and a meeting, it is argued that SPT would provide them with what they need to perform its mandate.

The cooperation with civil society organisations has probably not included visitations to police cells but has rather focused on awareness creation. Although the Prisoner's Rehabilitation and Welfare Action (PRAWA)<sup>214</sup> constantly visits prisons, there is a lack of adequate visits to police cells by the NHRC.

In conclusion, the NHRC is arguably the best model for the Nigerian NPM, as it already has an established structure and has been investigating human rights. The NHRC was established by an Act of Parliament that outlines its funding, staff appointments, operations, and mandate. Furthermore, the creation of a specialised department via Order 2024 for the NPM indicates an expansion of the NHRC's mandate to include the prevention of torture and dialogue, which are the main focuses of the OPCAT. It represents a significant shift for the NHRC, as its focus has primarily been on addressing complaints that require investigation rather than prevention of torture.

## 4 CONCLUSION

By enshrining an NPM into a legislative text or in the Constitution, the institution is given adequate power and autonomy to perform its

211 In the 72nd session of the United Nations Committee against Torture, the NHRC submitted an individual report on the implementation of the UNCAT and OPCAT in Nigeria at 5. The document was submitted to the researcher by Hillary Ogbonna and Halilu Adamu of the NHRC Abuja. [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NGA/INT\\_CAT\\_NHS\\_NGA\\_47047\\_E.docx](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NGA/INT_CAT_NHS_NGA_47047_E.docx) (accessed 23 May 2022).

212 As above.

213 As above.

214 There are many NGOs that are capable of visiting prisons and detention centres. Although many of these NGOs, such as PRAWA and FIDA have visited places of detention in the past, they are not considered NPMs in accordance with OPCAT PART IV. An examination of NGOs as NPMs is outside the scope of this work. See also, FIDA Nigeria outreach to Bauchi State Correction Centre 21 June 2021 <https://fida.org.ng/2022/06/fida-nigeria-outreach-to-bauchi-state-correctional-centre/> (accessed 29 November 2022).

functions.<sup>215</sup> The concept of independence refers to being free from interference by the government.<sup>216</sup> The NCAT was established on 29 September 2009 with an inaugural letter of reference that is not legally binding.<sup>217</sup> In spite of the fact that the letter of reference specifies the mandate of the NCAT, the body has not been established by the Constitution or an Act of Parliament.<sup>218</sup> Moreover, as part of the mandates of the NCAT to visit places of deprived liberties, the NCAT visited some prisons and police stations.<sup>219</sup> However, the definition of deprived liberty does not end in prisons but includes police cells where torture is typically administered to detainees to obtain evidence in Nigeria.<sup>220</sup> This implies that the visitation mandates must include that NCAT takes necessary steps to visit other detention centres within the country, especially across all the local governments of the federation.

The provisions of OPCAT emphasise that the NPMs must be independent entities. The 2009 NCAT of Nigeria, through the former chairman, alleges that it cannot perform most of the NCAT functions due to the non-availability of funds,<sup>221</sup> which it sees as crucial, to control its own activities and be independent of the government.<sup>222</sup> It is not clear how NCAT receives its funding, or the criteria used for its council members' appointment. Moreover, one may think the 2022 NCAT will be established through an Act of Parliament; however, it was established through a letter of reference, though with a mandate that focuses more on engagement with regional and human rights mechanisms.

Article 18(4) of OPCAT requires state parties to take into account the Paris Principles in establishing an NPM<sup>223</sup> to clarify the concept of national human rights institutions by providing minimum criteria on

215 As above.

216 Paris Principle 'Composition and guarantees of independence and pluralism' Principle 3. The principle provides that 'In order to ensure a stable mandate of members of the national institution, without which there can be no real independence ...' The NCAT though has a mandate in the inaugural document, but this can be removed by the Attorney General of the Federation who inaugurated them.

217 Federal Ministry of Justice 'Mandate of the National Committee on Torture' <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeria-terms-of-reference.pdf> (accessed 10 October 2022).

218 As above.

219 Dr Samson Sani Ameh 'NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' (2014) 15 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf> (accessed 12 October 2022).

220 Amnesty International *Under embargo until May 13th* AFR 44/005/2014. <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf> (accessed 20 October 2022).

221 Paris Principle 'Composition and guarantees of independence and pluralism' Principle 3.

222 As above.

223 Art 18(4) of OPCAT.

their status and role as advisory bodies.<sup>224</sup> In accordance with the Paris Principles, when a state party creates a NHRC, it must be incorporated in its Constitution or legislation.<sup>225</sup> The NHRC was created by the 2010 NHRC Act as an independent, incorporated body that has the authority to act in accordance with the law that established it.<sup>226</sup> The provisions of section 2, read with section 5, gives the NHRC a clear and reasonable jurisdiction that entails broad mandates to deal with matters relating to the protection and promotion of human rights in Nigeria.<sup>227</sup> The NHRC in section 6 has the mandate to visit places, prisons and persons deprived of their liberties in any of the correctional or detention centres in Nigeria.<sup>228</sup> The mandate to visit and make recommendations to appropriate authorities aligns with the mandate of an NPM under article 18 of OPCAT, which allows the NPM to visit places where people are being deprived of their liberties and to make a recommendation to the appropriate authorities about the condition of the people at the detention centres.<sup>229</sup>

Moreso, the NHRC Amended Act of 2010 legitimises the NHRC's contracts with the previous NCAT, which was established through the Letter of Reference. The designation of the NHRC by the 2024 Order indicates that this specialised department operates under the governance of the NHRC Amended Act of 2010, as outlined in section 1 of the 2024 Order. Although the NHRC has been visiting places of detention even before the 2024 Order was issued, the NHRC Amended Act of 2010 does not fully meet the expectations set by the OPCAT regarding preventive mechanisms, which is the primary focus of OPCAT.

However, the new 2024 Order extends the NHRC's focus to include preventive measures aimed at reducing torture. Furthermore, to align with OPCAT, establishing a separate department must have its staff, budget, and resources. The 2024 Order does not specify how this specialised department obtains its staff and budget. However, section 2(2)(a) and (b) implies that the NHRC, with the applicable guidelines for the constitution and operation of an NPM, will take necessary measures to ensure the allocation of appropriate resources. As provided in the 2010 amended act, the NHRC is funded by the consolidated fund of the federal government.<sup>230</sup> The NHRC receives funds from the Federal Government, which pays or credits the NHRC.<sup>231</sup>

224 United Nations 'Principles relating to the status of national institutions' (The Paris Principles) adopted on 20 December 1993 by the General Assembly in Resolution 48/134.

225 Paris Principle 'Competence and responsibilities' Principle 2.

226 Secs 2 of the NHRC 2010 as amended.

227 Secs 5 of the NHRC 2010 as amended.

228 Secs 6(1)(d) of the NHRC 2010 as amended.

229 Art 19(a) & (b) of OPCAT.

230 Sec 12(1) & (2) NHRC 2010 as amended.

231 Sec 12(3) NHRC 2010 as amended.

#### 4.1 Possible challenges and recommendations

The primary purpose of OPCAT is to prevent torture and other forms of ill-treatment. State parties are obligated to establish an effective NPM that can help prevent torture. However, the concept of torture prevention requires a multidimensional approach, which extends beyond merely visiting detention centres, and brings into play the political, social, legal, and judicial contexts in Nigeria.

The inaugural NCAT in 2009 and the subsequent one in 2022 did not meet the qualifications of an NPM as required by OPCAT. However, with the designation of the NHRC as an NPM through Order 2024, the Nigerian government has incorporated these mandates into an Act of Parliament. This designation ensures that the specialised department can visit places of detention. Nevertheless, challenges may arise in implementing this framework, particularly in respect of political will. One of the major issues faced by the previous two NCATs was, indeed, the lack of political commitment from the government.

An independent NPM requires unrestricted access to locations where individuals may be deprived of their liberties. To effectively carry out its mandate, the NPM must have the ability to choose freely when and where to make visits, including conducting inspections at night without prior announcement. This means that the specialised department should be able to visit various facilities such as correctional services, police cells, immigration holding facilities, Economic and Financial Crimes Commission holding cells, civil defence centres, and military detention facilities without any prior notice.

This unannounced access aims to ensure that the NPM can assess the conditions faced by individuals deprived of their liberties. According to the Nigeria Correctional Service website, there are 253 custodial centres in Nigeria.<sup>232</sup> A critical question arises: Can the specialised department visit all these facilities without prior notice? For such access to be possible, there must be political will, which includes the Federal Government, through the Ministry of Interior, granting the specialised department unlimited access to all relevant facilities.

To effectively implement the mandate for the specialised department on visitations, it is essential to gather staff with diverse expertise. This team should not only consist of lawyers but also include professional doctors, nurses, social workers, investigators, child specialists, psychologists, and editorial staff. The SPT has emphasised this need, stating that prevention requires a comprehensive examination of rights and conditions from the moment of deprivation of liberty until the point of release.<sup>233</sup>

One of the major factors that limited the 2009 NCAT in carrying out its mandate was a lack of funding. Section 2(2)(b) of Order 2024 states that the NHRC shall allocate appropriate resources to the specialised

232 'Nigerian Correctional Service' available at <https://www.corrections.gov.ng> (accessed 3 November 2024).

233 SPT, Report of the visit of the SPT to Sweden (2008) (CAT/OP/SWE/1) at 36.

department according to applicable guidelines, enabling it to conduct its activities. However, the question remains: What are the applicable guidelines? It is suggested that the allocation of resources may need to adhere either to the NHRC Act of 2010 or through another framework. The NHRC maintains a fund for its day-to-day running allocated from the Consolidated Revenue Fund of the Federation.<sup>234</sup> The funds emanate from the Federal Government, which pays and credits the NHRC.<sup>235</sup> For the specialised department to perform effectively, it is crucial that the allocation of resources is not curtailed and is in accordance with an Act of Parliament. This approach will allow the department to budget appropriately and fulfil its mandates.

<sup>234</sup> Sec 12(1) & (2) NHRC 2010 as amended.

<sup>235</sup> Sec 12(3) NHRC 2010 as amended.