



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### List of issues in relation to the second periodic report of South Africa\*\*

#### Issues identified for follow-up in the preceding concluding observations

1. In its previous concluding observations (CAT/C/ZAF/CO/1), the Committee requested South Africa to provide further information regarding areas of particular concern identified by the Committee, relating to the return of persons by the State party to States where they would be in danger of torture (para. 15); the ill-treatment, harassment and extortion of non-citizens by law enforcement personnel (para. 16); legal aid mechanisms and the difficulties faced by vulnerable groups (para. 21); acts of violence against women and children (para. 23); disaggregated statistical data on complaints related to acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials and on the abuses reportedly committed by South African peacekeepers (para. 27); and legislation criminalizing torture, training programmes for law enforcement officials, the monitoring mechanisms in mental health and other welfare institutions and measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment (para. 28). The Committee regrets that the State party did not provide information regarding the implementation of the above-mentioned recommendations, and therefore addresses them again in the present list of issues.

#### Articles 1 and 4

2. With reference to the Committee's list of issues prior to the submission of the second periodic report of South Africa (CAT/C/ZAF/Q/2),<sup>1</sup> please provide information on specific norms and legislation under which State officials have been prosecuted for isolated incidents of assault, murder or torture (para. 2).<sup>2</sup>

3. While welcoming the adoption of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013),<sup>3</sup> the Committee requests the State party to indicate whether offences amounting to torture carry penalties commensurate with the gravity of the crime, and the range of penalties for acts of torture. Also, please indicate whether the cited Act prohibits explicitly orders from a superior being invoked as justification for torture (para. 3).

\* Reissued for technical reasons on 22 February 2019.

\*\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the list of issues prior to the submission of the second periodic report of South Africa (CAT/C/ZAF/Q/2).

<sup>2</sup> CAT/C/ZAF/2, para. 13.

<sup>3</sup> Ibid., para. 21.



4. Please indicate whether acts of torture are subject to a statute of limitations and any steps taken to ensure that the crime of torture can be investigated, prosecuted and punished (para. 2).

#### **Article 2<sup>4</sup>**

5. While taking note of the keeping of custody registers and occurrence books,<sup>5</sup> providing suspects with a written notice setting out their rights upon arrival at a police station, and the right to consult with a legal practitioner of their choice or to be provided with legal aid financed by the State,<sup>6</sup> the Committee requests the State party to provide information on whether suspects are afforded other fundamental legal safeguards, such as the right to notify a member of their family or another person of their choice about their deprivation of liberty and to have access to a medical examination, preferably by a doctor of their own choice, and whether suspects are informed of their rights orally and in a language they understand.

6. Please provide updated information on measures taken to ensure that Legal Aid South Africa is able to provide a legal practitioner assigned at State expense to every person subjected to arrest, detention or imprisonment<sup>7</sup> who requires it.<sup>8</sup> Please indicate whether legal aid mechanisms for vulnerable persons or groups have been strengthened (para. 12).

7. Please provide information on any reduction in the use of pretrial detention, in particular of children, and on any changes in legislation whereby time spent in pretrial detention is taken into account when the final sentence is calculated (para. 24).

8. Please provide information on the specific body to which the Independent Police and Investigative Directorate established under the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011)<sup>9</sup> and section 206 (6) of the Constitution<sup>10</sup> is accountable with regard to investigating criminal acts and misconduct of the South African Police Service and the Municipal Police Services.<sup>11</sup> Please provide information about the scope of the mandate and financial and human resources provided to the Independent Police and Investigative Directorate (para. 7).

9. Please provide information on the status of the review of the South African Police Act, 1995 (Act No. 68 of 1995).<sup>12</sup>

10. Please provide updated information on the status of the system being developed by the South African Police Service to provide for video and audio recordings of interviews of suspects or arrested persons, with a view to implementing the Standing Orders of the Police Service promulgated in 1999.<sup>13</sup> Please provide information on any criminal or disciplinary proceedings resulting from the implementation of the Standing Orders, their investigation by Independent Police and Investigative Directorate,<sup>14</sup> and their subsequent outcome.

11. While welcoming the adoption of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013), the Committee requests the State party to provide

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<sup>4</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

<sup>5</sup> CAT/C/ZAF/2, para. 183.

<sup>6</sup> *Ibid.*, para. 182.

<sup>7</sup> *Ibid.*, para. 25.

<sup>8</sup> *Ibid.*, para. 18.

<sup>9</sup> *Ibid.*, para. 35.

<sup>10</sup> *Ibid.*, para. 36.

<sup>11</sup> *Ibid.*, para. 37.

<sup>12</sup> *Ibid.*, para. 192.

<sup>13</sup> *Ibid.*, para. 59.

<sup>14</sup> *Ibid.*, paras. 60 and 62.

information on steps taken to prevent and prosecute all types of trafficking in human beings as well as on any training provided to police, immigration officers, medical and judicial personnel to identify and deal with victims of trafficking, and on measures taken to ensure the reparative needs of victims.<sup>15</sup> Please indicate whether only persons convicted of trafficking are liable to provide redress to victims.<sup>16</sup>

12. Please provide updated information on measures taken to protect persons, including vulnerable groups, from domestic, sexual and gender-based violence under the Domestic Violence Act, 1998 (Act No. 116 of 1998), the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)<sup>17</sup> and the Children's Act, 2005,<sup>18</sup> as well as on the functioning of sexual offences courts.<sup>19</sup> In addition, please provide additional information about the specialized police units, Thuthuzela care centres and Khuseleka One Stop Centres, and on the training provided to South African Police Service personnel, prosecutors and magistrates with specialized skills to keep sexual offenders released from prison under long-term supervision,<sup>20</sup> as well as about the training provided in rural areas to traditional leaders, prosecutors and court clerks on domestic violence under the Ndabezitha Project.<sup>21</sup>

13. Please provide updated information about the mandate, resources, activities and results of the work of the South African Human Rights Commission, including relevant statistical data (para. 6).

### Article 3

14. Please provide information on:

(a) Measures taken to ensure full compliance with the obligations under article 3 of the Convention, so that individuals under the State party's jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair treatment at all stages of proceedings, including an opportunity for effective and impartial review by an independent decision-making mechanism, regarding expulsion, return or extradition, with suspensive effect. With reference to the Committee's previous concluding observations (CAT/C/ZAF/CO/1, para. 15), please indicate whether the merits of each individual case are examined thoroughly by an adequate judicial mechanism, and also provide updated information regarding the cases of Mr. Rashid and Mr. Mohamed;

(b) The number of cases of refoulement, extradition and expulsion carried out by the State party from its territory during the period under review on the basis of the acceptance of diplomatic assurances or the equivalent thereof,<sup>22</sup> and of any instances where the State party has offered such diplomatic assurances or guarantees, and the measures that have been taken in such cases with regard to subsequent monitoring of assurances given to South Africa;

(c) The number of asylum applications received during the period under review, any reduction in the backlog of applications (para. 26), the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include data, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the Committee's consideration of the previous report, and on which post-return monitoring arrangements<sup>23</sup> have been put in place (para. 8). Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on

<sup>15</sup> Ibid., para. 29.

<sup>16</sup> Ibid., para. 28.

<sup>17</sup> Ibid., para. 81.

<sup>18</sup> Ibid., para. 82.

<sup>19</sup> Ibid., para. 77.

<sup>20</sup> Ibid., para. 17.

<sup>21</sup> Ibid., para. 89.

<sup>22</sup> Ibid., para. 155.

<sup>23</sup> CAT/C/ZAF/CO/1, para. 15.

the type of appeal mechanisms that exist, any appeals that have been made and the outcome of those appeals, and explain whether such appeals have suspensive effect;

(d) Measures taken to prevent refugees and asylum seekers whose permits have lapsed or have not been renewed from becoming undocumented persons at risk of refoulement. Please describe legislative and other mechanisms to improve the identification and determination of statelessness and to introduce procedural safeguards to improve access to the procedure to determine statelessness.

#### **Articles 5–9**

15. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention.

16. Please inform the Committee of any additional extradition treaties concluded with other States parties, and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties.<sup>24</sup>

17. Please clarify the mutual judicial assistance treaties or agreements that the State party has entered into with other entities, such as Governments, international tribunals or international institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment. Please provide examples of and an update on the additional treaties on mutual legal assistance in criminal matters concluded during the period under review.<sup>25</sup> Also, please provide updated information on the outcomes of the 87 mutual legal assistance and 46 extradition requests made in 2012 and 2013.<sup>26</sup>

#### **Article 10**

18. Please provide information on:

(a) Any specific training provided during the period under review to law enforcement and correctional personnel and to other public officials involved in work with persons deprived of their liberty, asylum seekers and migrants on the provisions of the Convention and the absolute prohibition of torture;

(b) Whether the Basic Training Programme and the Detective Learning Programme of the South African Police Service with respect to training to prevent torture when making an arrest, while a person is in custody and while a person is being questioned include specific references to the provisions of the Convention;

(c) The status of the policy on prohibition of torture being developed by the Department of Correctional Services;<sup>27</sup>

(d) Whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is part of the training provided to all medical professionals and for law enforcement and judicial personnel (para. 14);

(e) Whether any methodologies have been adopted to assess the effectiveness and impact of such training.

#### **Article 11**

19. While welcoming the adoption of the Correctional Services Amendment Act, 2008 (Act No. 25 of 2008), which, *inter alia*, abolished the practice of solitary confinement, the Committee requests the State party to provide additional information on segregation in order to undergo specific programmes aimed at correcting a person's behaviour, with a loss of gratuity and restriction of amenities that may be appealed before an inspecting judge,<sup>28</sup>

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<sup>24</sup> CAT/C/ZAF/2, para. 120.

<sup>25</sup> *Ibid.*, para. 159.

<sup>26</sup> *Ibid.*, para. 122.

<sup>27</sup> *Ibid.*, para. 166.

<sup>28</sup> *Ibid.*, para. 32.

including how long it can last and whether it may, under certain circumstances, amount to solitary confinement.

20. Please provide information on any steps taken to reduce the current 72 hours during which an inspecting judge may decide on an appeal by an inmate concerning the use of mechanical restraints, such as handcuffs and leg irons, which may amount to ill-treatment.<sup>29</sup>

21. Please provide updated information on further measures taken to reduce overcrowding in correctional facilities, on the number of new correctional facilities built during the period under review, and on which existing structures have been upgraded<sup>30</sup> in order to bring them into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Please indicate measures that have been taken to improve the conditions of pretrial detainees in police cells,<sup>31</sup> and whether the situation has improved since the adoption of the Bail Protocol, which entered into force on 1 April 2009.<sup>32</sup>

22. With reference to the Committee's previous concluding observations (CAT/C/ZAF/CO/1, para. 22), please provide information on the provision of adequate health care in correctional facilities, in particular with regard to antiretroviral therapy for HIV/AIDS and medication against tuberculosis. Please indicate whether periodic examinations of prisoners are carried out.

23. Please provide information on conditions at the Lindela Repatriation Centre, whether persons housed in it have access to adequate medical and other services,<sup>33</sup> and whether migrants, refugees and asylum seekers in general have access to adequate health care in provincial and local hospitals and clinics. Please indicate whether the Minister for Home Affairs has appointed a judge to exercise independent oversight of the Lindela Centre.<sup>34</sup> Please indicate whether any allegations of ill-treatment, harassment or extortion of non-citizens by law enforcement officials were reported during the period under review, and the results thereof (para. 17).

24. Please provide detailed information on the number of deaths in detention during the period under review, both natural and unnatural, a breakdown of their causes, on the number of investigations into such deaths, and on prosecutions and sentencing of law enforcement or correctional personnel in this regard (para. 15). Also, please provide an update on the status of the drafting of the guidelines regarding the prevention of the death of persons in police custody,<sup>35</sup> and with regard to any other detention facilities.

### Articles 12–13

25. Please provide comprehensive statistical data, disaggregated by age, gender, ethnic or national origin and place of detention, on complaints, investigations, prosecutions, including disciplinary and criminal proceedings, and convictions and criminal or disciplinary sanctions applied in any cases of torture (encompassing common assault, assault with intent to do grievous bodily harm, indecent assault, torture and attempted murder)<sup>36</sup> and ill-treatment, trafficking and domestic and sexual violence. Please provide examples of relevant cases and/or judicial decisions, including under the Prevention and Combating of Torture of Persons Act, 2013, the Correctional Services Amendment Act, 2008 (Act No. 25 of 2008) and the Prevention and Combating of Trafficking in Persons Act, 2013, and other relevant legislation. Please indicate how many people have been prosecuted under the cited legislation and whether they were suspended from duty during the proceedings. Also, please indicate whether any non-South Africans have been tried for

<sup>29</sup> Ibid., para. 34.

<sup>30</sup> Ibid., paras. 63 and 176.

<sup>31</sup> CAT/C/ZAF/CO/1, para. 22.

<sup>32</sup> CAT/C/ZAF/2, para. 177.

<sup>33</sup> Ibid., para. 69.

<sup>34</sup> Ibid., para. 73.

<sup>35</sup> Ibid., para. 190.

<sup>36</sup> Ibid., para. 30.

torture in South Africa under the Prevention and Combating of Trafficking in Persons Act, 2013 since the State party submitted its second periodic report.<sup>37</sup>

26. Please provide updated information on any investigations or prosecutions and their outcome initiated in connection with allegations of torture and other cruel, inhuman or degrading treatment during incidents in 2015 at the Mangaung Correctional Centre, a private maximum security detention facility, alleged to have been perpetrated by the employees of the South African subsidiary of the private G4S Security Group.

27. Please provide information about the results of any investigation conducted in relation to the death in custody after torture of Khuthazile Mbendu on 8 December 2014.

28. Please provide information on any investigation into the excessive use of force by law enforcement officials while dispersing protesting students at Rhodes University in April 2016, and in 2016 against students protesting at Witwatersrand University in Johannesburg, including the causing of severe injuries by a stun grenade on 21 September 2016.

29. Please provide information regarding the scope of the mandates of monitoring mechanisms for all places where persons are deprived of their liberty, in addition to the Judicial Inspectorate for Correctional Services and the Independent Police and Investigative Directorate,<sup>38</sup> including the Independent Correctional Centre Visitors (Independent Visitors).<sup>39</sup> Please indicate whether representatives of the South African Human Rights Commission, of civil society organizations or of other bodies are also allowed to carry out visits to places where persons are deprived of their liberty, and whether they can receive complaints. Please provide information on monitoring mechanisms for psychiatric and welfare institutions, immigration detention facilities and other places where persons are deprived of their liberty against their will (para. 29).

30. Please provide information on any independent monitoring mechanism or dedicated oversight structure concerning child- and youth-care centres in conflict with the law.

31. Since the Prevention and Combating of Torture of Persons Act, 2013 is not retroactive, please provide updated information on the steps taken to bring to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate the apartheid regime (para. 18). In particular, please provide updated information with regard to the cases of Ahmed Timol and Nokuthula Simelane. Please provide an update on any steps taken by the National Prosecuting Authority with regard to the 362 applicants who were refused amnesty by the Truth and Reconciliation Commission and with regard to the list of 800 cases that required further investigation and consideration for prosecution.<sup>40</sup>

32. Please provide information on any measures taken to combat acts of torture perpetrated by non-State actors.

33. Please provide updated information on any investigation into or prosecution of abuses reportedly committed by South African peacekeepers, and on any redress, including compensation, provided to victims (para. 20).

#### **Article 14**

34. Please provide information on redress and compensation measures, including the means of rehabilitation ordered by courts and actually provided to victims of torture or their families since the Committee's consideration of the previous report submitted by the State party, including after the adoption of the Prevention and Combating of Torture of Persons Act, 2013.<sup>41</sup> This should include the number of requests for compensation made, the number of requests granted and the amounts ordered and actually provided in each case. Please indicate whether the Act provides for all forms of reparation, including restitution,

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<sup>37</sup> Ibid., para. 149.

<sup>38</sup> Ibid., para. 184.

<sup>39</sup> Ibid., para. 197.

<sup>40</sup> Ibid., para. 146.

<sup>41</sup> Ibid., para. 206.

rehabilitation, compensation, satisfaction and guarantees of non-repetition, and whether reparation can still only be sought through a common law civil claim of damages. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

35. With reference to the Committee's previous concluding observations (CAT/C/ZAF/CO/1, para. 18), please provide updated information on the status of redress, including compensation, provided to persons who were victims of acts of torture under the apartheid regime.

36. Please provide information on the scope and implementation of the integrated Victim Empowerment Programme and the Integrated National Policy Guidelines for Victim Empowerment,<sup>42</sup> whether victims of torture receive support from the Government's holistic and integrated services under the Programme, and the number of victims of torture who have received support and services under the Programme to date. Also, please provide information on the Shelter Strategy for abused women.<sup>43</sup>

37. Please indicate whether sufficient measures have been taken to raise the awareness of vulnerable groups, including with regard to languages, about the provisions of the Convention, and the right of such groups to submit complaints and to obtain redress and compensation as victims of torture.<sup>44</sup>

#### **Article 15**

38. Please provide information on concrete measures taken to ensure respect, both in law and in practice, for the principle of the inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

#### **Article 16**

39. With reference to the Committee's previous concluding observations (CAT/C/ZAF/CO/1, para. 25), please provide information on steps taken to implement strictly the Abolition of Corporal Punishment Act, 1997 (Act No. 33 of 1997),<sup>45</sup> which prohibits corporal punishment, including in schools and welfare institutions for children, and whether an independent mechanism has been established to monitor its enforcement in such facilities and all other settings.

#### **Other issues**

40. Please provide information on measures taken to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, such as stun belts, riot stun shields, stun gun-shock batons and projectile electric shock weapons (para. 30).

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<sup>42</sup> Ibid., paras. 84–85.

<sup>43</sup> Ibid., para. 93.

<sup>44</sup> CAT/C/ZAF/CO/1, para. 21.

<sup>45</sup> CAT/C/ZAF/2, para. 57.