



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

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Committee against Torture

**Second periodic report submitted by South Africa
under article 19 of the Convention, due in 2009^{*}, ^{**}**

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* The initial report of South Africa is contained in document CAT/C/52/Add.3; it was considered by the Committee at its 736th and 739th meetings, held on 14 and 15 November 2006 (CAT/C/SR.736 and 739). For its consideration, see the Committee's concluding observations (CAT/C/ZAF/CO/1).

** The present document is being issued without formal editing.

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I. Introduction

1. Pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”) South Africa is pleased to submit its combined second and third periodic reports.
2. South Africa submitted its initial report to the Committee on Torture (“the Committee”) on 28 June 2005.¹ The report was considered by the Committee at its 736th and 739th meetings held on 14 and 15 November 2006.²
3. The Committee adopted its Concluding Observations (Conclusions and Recommendations of the Committee)³ on the report at its 750th meeting on 23 November 2006.⁴
4. Paragraph 31 of the Concluding Observations required South Africa to submit its second periodic report by 31 December 2009. Article 19 of the Convention provides that supplementary reports must be submitted every four years, resulting in the third periodic report being due in December 2013.
5. Therefore this report is a combined report, covering the period 2002-2013.
6. It is recognized that this report is overdue. The dawn of our democracy and the advent of a constitutional dispensation have brought with it many demands in terms of re-building our country, establishing new institutions to support democracy and passing new legislation. It also brought about significant international treaty and reporting obligations. South Africa acceded to and/or ratified many basic human rights instruments after the advent of democracy in 1994 and subsequently this resulted in various accompanying obligations to be complied with, such as putting in place laws and administrative measures in order to comply with such instruments and to enable the writing of country reports in particular. This happened at the time when our government was setting up various institutions. While acknowledging the delay in preparing and submitting the current report to the Committee, Government has committed itself to deal with the backlog of reports under the United Nations Human Rights Charter and Treaty Systems and African Human Rights Systems and has put in place various reporting and monitoring mechanisms. An Inter-departmental Committee has been established to ensure enhanced compliance with treaty and reporting obligations.
7. In this report, compliance with the conclusions and recommendations made by the Committee after its consideration of the first periodic report will be addressed.
8. Because of our history South Africa has a firm commitment towards the protection and promotion of human rights, not only within the country, but also on our continent and the world over.
9. South Africa signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) on 29 January 1993 and ratified the Convention on 10 December 1998. The Department of Justice and Constitutional Development is responsible for overseeing the implementation of the Convention. The South African Human Rights Commission (“SAHRC”) is South Africa’s National Human Rights Institution (“NHRI”) with A status and is mandated by national legislation to monitor South Africa’s international treaty obligations.
10. South Africa was also host and party to the successful workshop in February 2002 in Cape Town on Robben Island,⁵ which gave rise to the Robben Island Guidelines (“RIG”).
11. The right to human dignity is a non-derogable right at both the levels of international law and at national level in terms of our Constitution. The Bill of Rights recognises the

¹ (CAT/C/52/Add.3).

² (CAT/C/SR.736 and 739).

³ (CAT/C/ZAF/CO/1).

⁴ (CAT/C/SR.750).

⁵ The Robben Island Workshop on the Prevention of Torture.

importance of human dignity and under no circumstances may the right to dignity be limited.

12. Section 12 of our Constitution entrenches the right to freedom and security. This right includes, among others, the right not to be tortured in any way, and the right not to be treated or punished in a cruel, inhuman or degrading way. Torture undermines the basic democratic principles of human dignity.

13. In line with our Constitution, Government is committed to the fight against torture and cruel and inhuman punishment. However, there have been isolated incidents where individuals have been assaulted, murdered or tortured by State officials. Measures have been developed to address this challenge; in particular training programmes on human rights have been established for state officials. The police service, Defence, Health and Correctional Services Departments are part of the departments which offer this training.

14. Government is committed to the advancement of the rule of law in order to ensure the realisation of the rights enshrined in the Constitution. Our courts ensure the nurturing of South Africa's founding values such as human dignity, equality and supremacy of the Constitution. To demonstrate this, the judiciary has made pronouncements on acts which it regarded as torture, despite the non-existence of specific anti-torture legislation.

15. The goal of our Constitution is to heal the wounds of the past and guide us to a better future. This is the core ideal of a transformative constitutionalism: that we must change. Change must take place at all levels of society. This also entails the transformation of the judiciary. We have transformed the judiciary and put in place various interventions to enhance access to justice. The Constitution 17th Amendment Act and the Superior Courts Act, 2013 (Act No. 10 of 2013) are both very important pieces of legislation and are discussed in detail elsewhere in the report. The Constitution Seventeenth Amendment Act in particular, affirms the independence of the Courts and acknowledges the Chief Justice as the head of the judiciary who exercises responsibility over the establishment and monitoring of norms and standards for the exercise of judicial functions of all courts.

16. We have put in place various programmes, policies and other measures to further enhance access to justice for all our people and legal aid has been extended significantly, yet as legal aid at state expense is not available to all persons who demand it, the attainment of access to justice remains an ongoing challenge.

17. When we fought for a free and democratic South Africa, we also fought to bring about a just and fair society, where all are equal before the law and all have access to justice. After 1994, special interventions were introduced to address gender-based violence and prevent violence to women and children. These interventions include many pieces of legislation, specialised courts dealing with sexual offences, Thuthuzela care centres, specialised police units, victim-friendly rooms at police service points, empowering SAPS members, prosecutors and magistrates with specialised skills and keeping sexual offenders on long-term supervision on their release from prison. We have the Khuseleka One Stop Centres to offer victims of gender-based violence a range of integrated services that include psychosocial support, medical care and shelter services.

18. We have extended Legal Aid as part of our constitutional obligations. Legal Aid South Africa derives its mandate from section 35 of the Constitution. In terms of this section, every person who is arrested, detained or accused has a right to a fair trial, which includes the right to have a legal practitioner assigned at State expense. Legal Aid SA's personnel have increased from less than 500 in 2001 to more than 2600 in 2012. New legal aid matters have increased significantly. Legal Aid SA, as it's now called, has grown significantly over the past 20 years and has become a best practice model internationally. Where there were a total of 79 501 matters in 1993/94, the number of total cases has grown dramatically. Legal Aid SA helped more than three-quarters of a million people in the past year. This means that we have, over the years, given millions of our people the right to legal representation at State expense and increased access to justice for them.

19. South Africa is amongst the pioneers of the New Partnership for Africa's Development (NEPAD) and our police and military personnel have been deployed to assist in a number of conflict situations in Africa in line with our foreign policy, namely

“Contributing to Africa development and the better world.” The National Development Plan (2030) for South Africa released by the National Planning Commission is aimed at, amongst others, ensuring that South Africa has safe communities free from crime and corruption in 2030.

II. Specific information on new measures and new developments in terms of the implementation of articles 1 to 16 of the Convention

Article 2: Measures to prevent torture

Legal framework to prevent and combat torture

20. South Africa outlined, in the initial report, the legislative, administrative, judicial and other measures taken to prevent acts of torture within its jurisdiction since it ratified the Convention. In period under review Government has continued to implement and strengthen these measures.

21. With regard to new legislation, the passing of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013) and the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) are milestones in our country’s strive towards universal human rights.

22. The Prevention and Combating of Torture of Persons Act, 2013 aims to:

(a) Give effect to South Africa’s obligations arising from the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Provide for the offence of torture of persons;

(c) Prevent and combat the torture of persons within or across the borders of South Africa; and

(d) Impose a maximum penalty of R100 million or life imprisonment or both being imposed in the case of a conviction.

23. The Prevention and Combating of Torture of Persons Act, in its Preamble, provides that, mindful of a shameful history of gross human rights abuses including torture, the Republic of South Africa is committed, since 1994, to prevent and combat torture of persons. Furthermore, the Act gives recognition to the equal and inalienable rights of all persons as the foundation of freedom, dignity, justice and peace in the world. It recognises that the promotion of universal respect for human rights and the protection of human dignity are paramount; and seeks to ensure that no one is subjected to acts of torture.

24. The Act defines “torture” as any act “by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

(a) for such purposes as to-

(i) obtain information or a confession from him or her or any other person;

(ii) punish him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or

(iii) intimidate or coerce him or her or any other person to do, or to refrain from doing, anything; or

(b) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

25. The Act provides for the prosecution of persons who commit offences of torture as well as setting out the appropriate penalties, which include life imprisonment. It provides for the prohibition and the combating of torture; measures aimed at the prevention of torture; and also for the training of persons, who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment. Another preventative measure is the development of programmes to promote public awareness about torture and the measures to combat it.

26. The Act is discussed in greater detail under the Articles listed below.

27. The Prevention and Combating of Trafficking in Persons Act, 2013 is a comprehensive law dealing with the issue of trafficking, which was previously dealt with in various pieces of legislation, in a fragmented manner. For instance, the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) addresses the trafficking of persons for purposes of sexual exploitation only, while the Children's Act, addresses the trafficking of children.

28. In addition to creating very specific offences criminalising trafficking in persons, the Act also focus on the plight of victims, by allowing for those convicted of trafficking to be forced to pay compensation to a victim for damages, injuries, both physical and psychological harm suffered and loss of income, amongst others.

29. In this regard, the Prevention and Combating of Trafficking in Persons Act is forward-looking in that it satisfies modern developments in terms of human rights law, such as that the law should not only serve to prosecute offenders and prevent re-offending, but it should also look at the reparative needs of the victim. (This is incidentally also in-line with the spirit and aim of the General Comment on Torture, issued by the Committee Against Torture, which states that redress has five key elements which ought not to be overlooked, that is: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.)⁶

30. For purposes of the period under review, the statistical data and information contained in this report therefore relate to common assault, assault with intent to do grievous bodily harm, indecent assault, torture and attempted murder as it was prior to the promulgation of the Prevention and Combating of Torture of Persons Act. It should be noted that in some instances assault and attempted murder cases were regarded as torture by IPID and our courts. Therefore, this report still refers to offences such as common assault, indecent assault, assault with intent to do grievous bodily harm and attempted murder, under our common law, as acts which may now be regarded as torture by our courts in terms of the new legislation.

31. Future periodic reports will reflect the offence of torture, as required by the Convention Against Torture, and how it is interpreted and given effect to by our courts.

32. It should also be stressed that **prior** to the promulgation of the Prevention and Combating of Torture of Persons Act, 2013, a number of legislative and other measures were put in place to deal with other forms of cruel, inhumane or degrading treatment or punishment of persons. These include measures such as the Correctional Services Amendment Act, 2008 (Act No. 25 of 2008). In 2008, the Correctional Services Act, 1998 was amended through the Correctional Services Amendment Act, 2008. The amendments introduced in 2008 have far reaching positive implications in relation to South Africa's commitment and efforts to prevent and combat acts of torture. Firstly, the Amendment Act abolishes the concept and practice of solitary confinement in terms of which inmates were detained in total isolation for long periods of time, which is one form of inhumane, or degrading treatment of offenders. The most severe penalty that may be imposed on an inmate in the case of serious and repeated infringements would be "segregation in order to undergo specific programmes aimed at correcting his or her behaviour, with a loss of gratuity and restriction of amenities." Inmates subjected to segregation may appeal to the Inspecting Judge against the decision to segregate them.

⁶ Committee against Torture, General Comment No.3 (2012).

33. The Act also allowed for changes of terminology from ‘prison’ to ‘correctional centre’, and from ‘prisoner’ to ‘inmate’ (referring to persons sentenced and those awaiting trial), and ‘offender’ when referring to convicted and/or sentenced incarcerated inmates, as well as to those serving their sentences in the community outside a correctional centre. These were not superficial distinctions, as it reinforced the Department of Correctional Services’ vision of viewing prisoners as human beings capable of change and rehabilitation. The Act also included ‘care’, ‘correctional’ and ‘development’ services to sentenced offenders. Care refers to the provision of services and programmes aimed at the social, mental, spiritual, health and physical wellbeing of inmates. Correction services and programmes are aimed at correcting the offending behaviour of sentenced offenders in order to rehabilitate them; and ‘development’ refers to those programmes and services aimed at developing and enhancing competencies and skills that will enable to sentenced offenders to reintegrate into society.

34. The Act requires that all cases of mechanical restraint (e.g. by handcuffs and leg-irons) of an inmate be immediately reported to the Inspecting Judge. An inmate so restrained may appeal against the decision to restrain him to the Inspecting Judge who must decide the appeal within 72 hours of the receipt of the appeal. The Act provides that all cases of use of force against an inmate must immediately be reported to the Inspecting Judge. The effect of these amendments is that there is now a robust monitoring mechanism of ensuring that acts of torture in correctional centres are prevented and/or detected as soon they occur.

35. Another important piece of legislation is the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) which establishes the Independent Police and Investigative Directorate (“IPID”). The IPID replaces the Independent Complaints Directorate (“ICD”). The South African Police Service Act, 1995 (Act No. 68 of 1995) provided for the powers and functions of the ICD.

36. The IPID is a government department established to investigate all deaths as a result of police action or that occur in police custody, and complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS) and the Municipal Police Service (MPS). It is established in terms of Section 206 (6) of the Constitution of the Republic of South Africa, which makes provision for the establishment of an independent police complaints body. It operates independently from the SAPS and the municipal police department in the investigation of alleged misconduct and criminality by SAPS members.

37. The mandate of the new IPID is to conduct independent and impartial investigations of specified criminality committed by members of the South African Police Service (SAPS) Municipal Police Services (MPS). The IPID must, amongst others, investigate the following matters: any deaths in police custody; deaths as a result of police actions; any complaint relating to the discharge of an official firearm by any police officer; rape by a police officer, whether the police officer is on or off duty; rape of any person while that person is in police custody; any complaint of torture or assault against a police officer in the execution of his or her duties.

38. It is also worth noting that the South African Human Rights Commission has established a Section 11 committee on the prevention of torture. Section 11 committee meetings are set up in accordance with the South African Human Rights Commission Act, 2013 (Act No. 40 of 2013).⁷ Section 11 committees are considered expert advisory panels that provide the SAHRC with expert advice on how to best realize the rights entrenched in the constitution.

Legal framework on child justice

39. In its initial report, South Africa reported that it was in the process of finalizing a bill criminalizing torture and a bill on child justice. The Child Justice Bill was subsequently finalized and enacted into law as the Child Justice Act 75, 2008 (Act No. 75 of 2008) (“CJA”).

⁷ Act 40 of 2013, South African Human Rights Commission Act, 2013.

40. The Child Justice Act came into effect on 1 April 2010. The Child Justice Act puts in place a criminal justice system which provides for children under the age of 18 years. One of the aspects in the Child Justice Act is the issue of the criminal capacity of children.

41. The Constitution of South Africa and the Child Justice Act set out provisions which seek to protect the child under the age of 18 in all interactions in the criminal justice system when such children are in conflict with the law. The dignity and well-being of the child must be protected at all times during an arrest, during the preliminary stages before the matter is referred to court, as well as during the period when the matter is at court and during trial. It entrenches the notion of restorative justice in the criminal justice system. In this regard, the Act provides that where a child is charged with a minor offence, the matter may be diverted away from the criminal justice system. For example, if a child has committed a petty offence, also known as a Schedule 1 offence, the child could be diverted by the prosecutor at court. Diversion options include options such as releasing the child into the care of a parent or appropriate adult or guardian or attendance of certain programs, and so forth.

42. It must be noted that the Act also provides, in exceptional circumstances, for the diversion of children who have committed more serious offences, however, in such instances authorization must be obtained from the relevant Director of Public Prosecutions. In circumstances where a matter is inappropriate for diversion, the Act provides for such a case to be tried in a Child Justice Court.

43. The Child Justice Policy Framework was adopted in May 2010. The Policy Framework provides the blueprint for the coordination and holistic implementation of the Child Justice Act by all Government Departments and civil society. The Policy Framework was drafted by an Inter-sectoral Committee on Child Justice (“ISCCJ”) in consultation with civil society. The National Prosecuting Authority of South Africa (“NPA”) also developed and issued directives in line with the Child Justice Act for prosecutors to effectively and efficiently deal with child justice matters, investigations, preliminary inquiries, diversions and prosecutions. The South African Police Service (“SAPS”) issued the SAPS National Instruction On Children in Conflict with the Law.⁸

44. The Regulations on the Child Justice Act require that state officials treat children in conflict with the law in a manner conducive to their participation without intimidating or humiliating them during their handling. At all stages of the process the child must be allowed to ask questions and be afforded an opportunity to express themselves. Officials must treat the child with care and understanding, and the officials must be sensitive to the needs of the child.

45. The Child Justice Act and the Regulations issued in pursuance thereof, both underpin the principle of the best interests of the child and therefore singles children out for special protection. It thus affords children in conflict with the law specific safeguards, among others, the right not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period of time and the right to be treated in a manner and kept in conditions that take account of the child’s age. Children must be kept separately from adults, and boys from girls, while in detention. It further acknowledges that children have the right to family, parental or appropriate alternative care. They have the right to be protected from maltreatment, neglect, abuse or degradation and the right not to be subjected to practices that could endanger the child’s well-being, education, physical or mental health or spiritual, moral or social development.

46. Based on these protective principles, the Regulations issued in terms of the Child Justice Act contain specific provisions in Chapter 4 which pertain to the detention and placement of a child prior to sentencing. These protective guidelines and procedures aim to guarantee the best interests of the child.

47. In terms of Chapter 4, any complaint or observation about an injury sustained or psychological trauma suffered by a child in detention must be recorded in writing in the form of a comprehensive report. In addition, a register regarding the detention of children

⁸ National Instruction 2/2010.

in police cells or lock-ups referred to in section 28 (3) of the Act must contain a comprehensive list of information pertaining to the child, such as, for example, the full names of the child and any alias or nickname; the nature of the offence alleged to have been committed; the age of the child; the date and time of arrest; the reasons why the child cannot be released; the physical and psychological condition of the child, as observed by a police official, at the time of arrest; and the names, addresses and telephone numbers of the parents or next of kin, if known.

48. This register may be examined in terms of section 28 (4) of the Act by a member of the South African Police Service in the performance of his or her functions; a social worker, health care practitioner or probation officer in the performance of his or her functions; the prosecutor involved in the case; a member of the Inter-sectoral Committee for Child Justice established in terms of section 94 of the Act; an independent observer appointed in terms of section 65 (6) of the Act; a person who is by law empowered or mandated to take care of the interests of a child; a parent of the child or the appropriate adult or guardian; a staff member of the child and youth care centre where the child is placed; the presiding officer involved in the case; and the legal representative of the child.

49. Following the enactment of the Child Justice Act, a system of preliminary inquiry had been developed and monitoring systems had been developed. Child and Youth Care Facilities (“CYCFs”) had been established for awaiting trial and sentenced children. The Department of Social Development (“DSD”) had finalised norms and standards for these institutions. The Department of Basic Education (“DBE”) was handing over Reform Schools and Schools of Industry to the DSD and the DSD was building or refurbishing separate wings in at least one CYCF in each province for sentenced children.

50. It is furthermore noteworthy that in the period running up to the promulgation of the Child Justice Act, the South African government had already initiated a co-ordinated and sustained focus on the prioritisation of matters involving children in conflict with the law. Three “one-stop” child-justice centres have been established in the country. The One Stop Youth Justice Centres works within the criminal justice system, but also seeks to deter young people from breaking the law. This intervention is, in this sense, a primary prevention strategy that also seeks to start by targeting young people and to do so in a way that strengthens families.

51. Diversion programmes are a critically successful and effective part of restorative justice. There are many benefits to diversion, including decreased crime amongst young people and lower numbers of young people who need to be institutionalised, as through assessment it is ensured that young people who do not belong in prison, places of safety, children’s homes, schools of industries and reformatory schools are not sent there. The responsibility of child rearing is given back to the parents and where parents are absent, communities are encouraged and are already taking responsibility for some of these children. It also means that the rights of the child are protected.

52. Legal Aid South Africa has also appointed children’s units to provide legal representation to children in conflict with the law. In addition, time frames for concluding cases involving children in conflict with the law have been set:

- (a) three to six months for cases in district courts;
- (b) six to nine months for cases in regional courts;
- (c) nine to 12 months for cases in high courts.

53. As a consequence, the number of children awaiting trial has significantly reduced over the years. In 2009, there was a 50% reduction of children awaiting trial in correctional facilities or prisons and an increase in the numbers of children awaiting trial in Secure Care Facilities or home-based supervision. Children’s cases have also been fast-tracked through the criminal justice system, with the result that only 29% of children await trial for longer than 3 months. Thus, 71% of children’s cases are managed within 3 months.

54. In addition, the SAPS have also developed National Instructions for Children in Need of Care and Protection⁹ in order to provide clear directives to police officials on the implementation of the Children's Act, 2005 (Act No. 38 of 2005). The police have powers to remove a child in need of care and protection and in need of immediate emergency protection from a suspected abusive environment and must arrange for the placement of the child in alternative care. "Alternative care" includes a Child and Youth Care Centre and the care of a responsible adult.

55. The matter of *C v. Department of Health and Social Development, Gauteng*¹⁰ concerned the confirmation of a declaration of constitutional invalidity of sections 151 and 152 of the Children's Act. The Constitutional Court held that the removal and placement of a child must always be subject to automatic judicial review or confirmation by a court.

56. South Africa was the second country on the African continent (after Namibia) to ban corporal punishment when it passed the South African Schools Act in 1996. The legal framework encapsulated primarily in the South African Schools Act 84 of 1996 and its subsidiary legislation establishes a 'coherent and principled system of discipline'. This system includes a prohibition against corporal punishment. 65. This was confirmed in the Constitutional Court case of *Christian Education SA v. Minister of Education*.¹¹ The prohibition also seeks to give effect to South Africa's international obligations most notably, in terms of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

57. The Abolition of Corporal Punishment Act, 1997 (Act No. 33 of 1997) is a general law outlawing corporal punishment. The South African Schools Act, 1996 (Act No. 84 of 1996), which is administered by the Department of Basic Education, specifically prohibits corporal punishment in schools.

58. A set of mechanisms have been put in place to prevent torture and afford redress to victims. These include the Human Rights in Policing Learning Programmes that SAPS have been conducting training on since 1998. This training is offered to all law enforcement officials. The SAPS have developed a Policy on the Prevention of Torture and Treatment of Persons in Custody which sets out a system of checks and balances to protect persons in the custody of the Police Service from acts of torture, cruel, inhumane or degrading treatment by members of the Police Service and also includes guidelines that must be followed when a person in custody is being interviewed.

59. SAPS is also in the process of developing a system to provide for video and audio recordings of interviews with suspects or arrested persons. To ensure the effective implementation of this Policy, a number of Standing Orders of the Police Service were promulgated in 1999. In terms of these orders no member of the Police Service may torture any person, permit anyone else to do so or tolerate the torture of another by anyone. The same applies to an attempt to commit torture and to an act by any person that constitutes complicity or participation in torture. In the Standing Orders it is clearly evident that no exception, such as a state of war, or threat of war, state of emergency, internal political instability or any other public emergency will serve as justification of torture and any contravention thereof constitutes misconduct and disciplinary proceedings have to be implemented in respect thereof. Such conduct may also incur criminal liability if it complies with all the requirements.

60. All police stations are issued with the necessary registers, including a Custody Register (the "SAPS14") and Notice of Rights in terms of the Constitution (the "SAPS 14 (a)") to ensure the proper treatment of persons and to monitor police activities. The Independent Complaints Directorate (replaced by the IPID), which investigates all cases of misconduct against police officers, received and investigated 62 513 cases from 2002-2013. Of these cases, 29 026 were investigated and closed between 2007 and 2013. These cases/complaints range from common assault, indecent assault, assault GBH, torture, attempted murder and murder. The ICD distinguishes between complaints into deaths in

⁹ National Instruction 3/2010.

¹⁰ 2012 (2) SA 208 (CC).

¹¹ 2000 (4) SA 757.

police custody and deaths as a result of police action. Most deaths in police custody were caused by natural causes, suicide, injuries sustained prior to detention due to assaults by mob justice, torture, injuries sustained in police custody and assaults by inmates. The past eleven years the ICD experienced an increase in the cases/complaints received in relation to assault common, assault GBH and attempted murder, which include the discharge of a firearm. The increase for these cases/complaints was as a result of public awareness of the ICD mandate. With regards to torture and murder cases/complaints the figures show decreases.

61. Strategies for the prevention of torture have included training of all members of the SAPS in accordance with the National Human Rights Programme which has now been incorporated into the Basic Training Programme and the Detective Learning Programme of the Police.

62. A Commander who receives a complaint must conduct a proper investigation and inform the complainant of his/her rights to refer the matter to the IPID for investigation. The IPID Act confers certain powers on the IPID to ensure independent oversight over the SAPS and MPS, and to provide independent and impartial investigation of identified criminal offences allegedly committed by members of the SAPS and MPS.

63. The Correctional Services Act, 1998 (Act No. 111 of 1998) as amended, embodies the Constitutional guarantee of the right to humane treatment of persons deprived of their liberty, this includes the right not to be tortured. Overcrowding in our correctional facilities remains a challenge. One of the strategies to address overcrowding is the building of new correctional facilities, which is being expedited. Concerted efforts are being made to accelerate the upgrading of existing structures to further alleviate overcrowding. The Judicial Inspectorate for Correctional Services (“JICS”) is a vital watchdog body that seeks to ensure that inmates’ rights — as contained in the Constitution and relevant legislation and policy — are respected, protected, promoted and fulfilled.

64. On 7 July 2008, Mr Bradley McCullum lodged a complaint with the Committee in relation to an incident that occurred on 17 July 2005 whilst he was incarcerated. McCullum claimed to be a victim of violations by South Africa of articles 7 and 10 read in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights (the “ICCPR”). On 2 November 2010, South Africa was found to have violated these provisions of the ICCPR in relation to the treatment of Mr McCullum. The Committee held that South Africa violated article 7 of the ICCPR and failed to provide effective remedies to the complainant and that there was not a speedy response to the complainant’s request for a medical examination (article 10). The Government published the Committee’s findings and acknowledged its failure to participate in the processes of the Committee by placing advertorials in national newspapers on 2 October 2011. The advertorials outlined the Committee’s findings and the actions taken by the South African Government to give effect thereto.

65. On 17 July 2005, the Department of Correctional Services re-opened the investigation into the conduct of its senior officials, who overturned the recommendations of the investigator in 2005, as well as that of the medical personnel at the St Albans Correctional Centre. The recently opened police investigation into the McCullum case was submitted to the National Prosecuting Authority for a decision on whether to prosecute or not. The National Prosecuting Authority has been unable to prosecute the case as there was insufficient evidence for prosecution.

66. The South African National Defence Force has also, since 1994, engaged in an active training programme to inculcate the principles of International Humanitarian Law and specifically to address issues of torture. An independent Office of the Military Ombudsman has recently been established in terms of the Military Ombudsman Act, 2012 (Act No. 4 of 2012). The Military Ombudsman is to investigate, amongst others, allegations of inhumane treatment of SANDF members.

67. The constitutional provisions as well as those of international human rights and humanitarian law instruments, to which South Africa is party, make it imperative that all persons deprived of their liberty are treated with dignity and are not subjected to cruel, inhumane, degrading treatment or punishment. The South African government wishes to

underline that the Lindela Repatriation Centre is a transit facility for non-nationals on deportation programmes to their countries of origin.

68. The Lindela Repatriation Centre can therefore not be considered as a detention centre in the same sense as, for example, correctional facilities for convicted offenders and awaiting trial detainees. The maximum amount of time someone may be detained for deportation is 120 days. After 30 days of detention for deportation a warrant for a further 90 days' detention may be applied for in a magistrate's court. The smooth and prompt deportation is sometimes impeded by delays in the verification of identities and nationalities of deportees as well as acquisition of travel documents from the country of origin. In the event that these delays should extend beyond requisite prescribed time frames, government is required to apply to a competent court for an extension and to obtain an appropriate court order in this regard.

69. The Lindela Repatriation Centre is equipped with a fully serviced medical centre operated by qualified health professionals with support from a nearby hospital. All the patients at the centre enjoy unfettered access to medical care and supplies on a non-discriminatory basis. The South African Human Rights Commission, recognised lawyers' associations representing deportees, relevant international institutions and United Nations' agencies also have access to the facility and to deportees, consistent with their various mandates. The Lindela Repatriation Centre is fully compliant with all minimum standard rules for the treatment of persons deprived of their liberty.

70. Government is sensitive and responsive to the special needs of children, juveniles and pregnant mothers who, as appropriate, are referred to places of safety, managed or supported by government.

71. The National Health Act, 2003 (Act No. 61 of 2003) seeks to protect, respect, promote and fulfil the rights of the people of South Africa to the progressive realisation of the constitutional right to access to health care services, including reproductive health care. The Act enumerates the rights of patients who inevitably include migrants. It includes the right not to be refused emergency medical treatment.

72. The protection against discrimination embodied in the Constitution extends to both nationals and non-nationals. Generally speaking, therefore, almost all the rights in the Constitution extend to everyone in South Africa. With regard to cross-border migrants and other mobile populations, health care is provided to migrants who seek such care at health facilities. In 2006 the National Department of Health issued a memorandum that clarified that refugees and asylum seekers, with or without permits, should be assessed according to the current means test as applied to South African citizens when accessing public healthcare.

73. The Department of Health, the Department of Labour and the South African Human Rights Commission may inspect the records, conditions and systems of the Lindela centre. The Minister of Home Affairs is considering appointing a retired Judge to exercise independent oversight over Lindela, with full access to the entire centre. The Lindela Repatriation Centre does not accept minors, pregnant woman, asylum seekers or anyone who has not been properly investigated and correctly identified as an illegal foreign national.

74. In line with the recommendations of the Committee, South Africa has doubled its efforts to prevent, combat and punish violence against women and children. In this regard, the South African Government has designated violent crimes against women and children as one of the 'high priority crimes'. Dedicated services for victims of gender based violence remain a high priority of government and the criminal justice system with reference to specialised investigations, prosecutions and the court system.

75. In the past 5 years, in particular, several interventions were introduced to address gender-based violence and sexual offences against vulnerable groups. A major component of our fight against gender-based violence really is the Thuthuzela¹² Care Centers ("TCCs"), which embody a coordinated approach in the way we effectively manage sexual offences. In the 2013/14 financial year, at the 51 TCCs providing services, a total number of 30 706

¹² Thuthuzela is a Xhosa word which means "comfort."

matters were reported of which 2769 are trafficking, domestic violence or Children's Act matters; the remaining number of 27 947 are sexual offences related.

76. For the same financial year, the National Prosecuting Authority produced an average conviction rate for TCC-cases of 65.9 per cent, which was the best conviction rate over a period of 5 years. Of the 2357 cases finalised with a verdict, 1554 (65.9%) resulted in a conviction. This is also an improvement of 13.3% compared to the 2012/13 financial year. During the 2013/14 financial year the TCC-cases per accused and per offence, which resulted in convictions included amongst others 151 sentences of life imprisonment, 132 sentences of 20-25 years' imprisonment and 455 sentences of between 10 and less than 20 years' imprisonment.

77. We have also recently re-established the sexual offences courts. These dedicated services use intermediaries, audio-visual equipment and specialised training, amongst other measures. The NPA's Sexual Offences and Community Affairs (SOCA) Unit have developed comprehensive training manuals which are updated annually to be in line with the latest developments in law for specialist prosecutors and also an integrated training manual for stakeholders at our TCCs.

78. In a bid to increase the state's capacity to deal with sexual violence against women and children, South Africa promulgated, on 16 December 2007, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). This Act criminalises a wide range of acts of sexual abuse and exploitation. It repeals the common law offence of rape and replaces it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender. It also repeals the common law offence of indecent assault and replaces it with a new offence of sexual assault which contains a wider range of acts of sexual violation without consent. Moreover, the Act targets for punishment sexual predators who prey on children and people who are mentally disabled. It criminalises sexual exploitation or grooming of children and mentally disabled persons, exposure or display of child pornography or pornography to children and the creation of child pornography. The Act also provides for an offence of trafficking in persons for sexual purposes.

79. In addition to criminalising a wide range of acts of sexual abuse and exploitation, the Criminal Law (Sexual Offences and Related Matters) Amendment Act establishes a mechanism for the adequate and effective protection of victims of sexual violence. In terms of the Act, victims of sexual offences are entitled to post-exposure prophylaxis. It provides for the compulsory testing of alleged sex offenders and the keeping of a national register of sex offenders. The Act imposes an obligation on a person who has knowledge that a sexual offence has been committed against a child to report such knowledge to a police official forthwith.

80. Capacity building and training of the SAPS members is an on-going process commencing in basic training. The SAPS engages in public awareness and education campaigns with the purpose of creating a greater awareness of the relevant legislation and government's commitment to eradicating violence against women and children. These awareness campaigns have, over the years, encouraged communities to report these crimes to the police and also compelled the police to improve the policing of these crimes. An integrated training manual for stakeholders at TCC's has been compiled, focusing on the management of sexual offences predominantly. These training manuals are annually reviewed and updated with the latest developments in law and training is also an ongoing activity.

81. The SAPS has developed National Instructions on the Domestic Violence Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act in order to provide clear policy directives for the police in support of members to improve service delivery to victims. The NPA (facilitated by SOCA), in line with Act 32 of 2007 also developed directives for prosecutors on how best to deal with sexual offences in the criminal justice system.

82. Following the promulgation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act in 2007, the Department of Justice and Constitutional Development developed registers aimed at protecting persons, children in particular,

against sexual offences and abuse (known as the Sexual Offenders Register and the National Child Protection Register). The registers were established in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 and the Children's Act, 2005 respectively. Data on the registers will enable employers to vet applications and ensure that convicted child abusers (including sex offenders) are not employed in positions where they are in contact with children. The purpose of the registers is to have a record of persons who are unsuitable to work with children so as to protect children against abuse from these persons.

83. Chapter 9 of the Children's Act, 2005 makes provision for identification, reporting and statutory intervention for a child in need of care and protection including children who have been abandoned, orphaned, exploited, neglected, abused or maltreated. Abuse includes circumstances which may seriously harm that child's physical, mental or social well-being. Where a child is found to have been abused or at risk of abuse, the available legal interventions, as per the Children's Act, include, amongst others, the removal and placement of the child in temporary safe care, alternative care such as an appropriate child and youth care centre or foster care.

84. As the lead department on the issue of Victim Empowerment, the Department of Social Development has, as part of its mandate, the responsibility of promoting the wider government goal of protecting the rights of women and children. This is also inspired by the fact that South Africa is a signatory to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Victims are entitled to access the mechanisms of justice and seek prompt redress for the harm and loss suffered and should receive adequate specialized assistance in dealing with emotional trauma and other problems caused by the impact of victimization. In order to give effect to these obligations, an Integrated National Policy Guidelines for Victim Empowerment was developed in 2007 to ensure that holistic and integrated services are rendered to victims of crime and violence.

85. The VEP Policy Guidelines seek to create a society in which the rights and needs of victims of crime and violence are acknowledged and effectively addressed within a restorative justice approach. The policy also serves as a guide for sector-specific victim empowerment policies, capacity development and a greater emphasis on the implementation of victim empowerment programmes by all relevant partners. Partnership between various government departments and civil society organizations on service delivery to victims of crime and violence holds key to the success of the integrated Victim Empowerment Programme. The VEP sector's specific roles and responsibilities of all relevant partners and stakeholders are clearly defined in the policy guidelines.

86. The Department of Social Development released the National Policy Guidelines for Victim Empowerment in July 2009. The Victim Empowerment Policy is based upon the concept of restorative justice. Whereas formerly the focus was almost exclusively on the progress of the perpetrator through the system, the current focus is also strongly on serving the needs of the victim. Wherever a victim-centred approach has been put into practice internationally, it has invariably resulted in a reduction of victimisation, while simultaneously improving service standards in the system.

87. The priority target group for victim empowerment under the Policy Guidelines includes women, victims of domestic violence, victims of sexual assault and rape, victims of human trafficking, and abused children. In essence, the Policy Guidelines provide a framework for the implementation of several acts of Parliament that address violent crime in South Africa, including the Domestic Violence Act, 1998 (Act No. 116 of 1998) the Children's Act, 2005 (Act No. 38 of 2005) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). The Policy Guidelines provide a framework for sound inter-departmental and inter-sectoral collaboration and for the integration of effective institutional arrangements for a multi-pronged approach in managing victim empowerment. Such an approach facilitates the establishment of partnerships in the victim empowerment sector to effectively address the diverse and sensitive needs of victims holistically. Of particular importance is the cross-cutting nature of the programme. In addition, the National Policy Guidelines serve as a guide for sector-specific victim empowerment policies, capacity development and a greater emphasis on the implementation of victim empowerment programmes by all relevant partners.

88. In addition to these new developments, South Africa bolstered its efforts to combat domestic violence, including through the prosecution of domestic violence perpetrators. For example, when compared to 2008/09, there has been a decrease in matters going to court in 2009/10. There has also been a decrease in the numbers of cases being withdrawn and the number of cases involving breaches of protection orders. However, there has been a decrease in the granting of interim protection orders, as well as a decrease in the numbers of orders made final.

89. In 2009, a review of the implementation of the Domestic Violence Act, 1998 was finalised. In 2008, the Government, in conjunction with and to support the judiciary, launched a set of guidelines for handling domestic violence cases. The guidelines have been circulated widely. The Government in conjunction with the NPA has also been running the Ndabezitha Project¹³ which seeks to train traditional leaders, prosecutors and court clerks on domestic violence matters in rural areas.

90. Government has also been running awareness campaigns (through the media, booklets, pamphlets, etc.) aimed at sensitising communities about domestic violence services.

91. Most recently, electronic forms and systems have been developed and approved to be piloted at two Magistrates' Courts after which they will be rolled out to all Magistrates' Courts' service points in order to further improve the handling of domestic violence cases. Government is also in the process of developing a booklet called "No More Violence Booklet" which is aimed at teaching the role-players at service points, as well as victims, to how to manage and improve in alleviating domestic violence matters.

92. As part of commemorating the 16 Days for No Violence Against Women and Children, the Department of Justice and Constitutional Development launched a Domestic Violence Safety Plan booklet in November 2013. This formed part of the Department's endeavours to empower victims of violence. The Safety Plan is a ground-breaking preventative initiative which seeks to assist victims to enhance their safety and that of their families against domestic violence. It is also aimed at encouraging victims to plan for their safety whilst leaving an abusive relationship.

93. The DSD facilitated the establishment of shelters for abused women in South Africa and developed a Shelter Strategy that served as a guideline for service providers rendering services to abused women. To date, ninety-seven (97) shelters have been established in South Africa. Minimum standards for service delivery in shelters were also developed to standardise services in shelters. Furthermore, there is a programme which has been conceptualised as "white and green door" safe houses. These are shelters provided by ordinary people, approved and funded by government, to serve as shelters for women and children who are victims of violence and abuse. At this stage the programme is being rolled out in Gauteng and the Eastern Cape, and rollouts to other provinces are under way.

94. Table 1 shows the number of female victims and types of crime in the period under review:

Table 1

Female Adult Victims (adult women 18 years and older):

(Selected Contact Reported Crime Figures)

<i>Crime Category</i>	<i>2006/7</i>	<i>2007/8</i>	<i>2008/9</i>	<i>2009/10</i>	<i>2010/11</i>	<i>2011/12</i>	<i>% decrease</i>
Murder	2 602	2 544	2 436	2 457	2 594	2 286	-11.9
Attempted murder	3 362	3 016	2 966	3 008	2 842	2 416	-15
All sexual offences	34 816	31 328	30 124	36 093	35 820	31 299	-12.6

¹³ Ndabezitha means "Your Highness" — one of the praise and respect words used when Zulu and other Nguni tribes want to acknowledge loyalty to an Nguni royal.

95. The greatest number of reported cases by adult women is common assault followed by assault with grievous bodily harm, and all sexual offences. In the absence of detailed disaggregated data in terms of domestic violence it stands to reason that common assault is high because cases of domestic violence, reported to the police, is being recorded under this category and assault GBH.

Legislation to combat human trafficking

96. South Africa is a source, a transit route and a final destination for human trafficking. In recognition of the grave consequences of this phenomenon and in compliance with the Committee's recommendation, South Africa adopted legislation — the Children's Act, 2005 — for the adequate prevention, combating and punishment of child trafficking (section 284). The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) also provides for the offence of trafficking of persons, both adults and children, for sexual purposes.

97. Chapter 18 of the Children's Act, 2005 provides for the prevention and combatting of child trafficking. The chapter gives effect to the UN Protocol to Prevent Trafficking in Persons. Indeed, the Act has the effect of domesticating the Protocol which is now 'in force in the Republic and its provisions are law in the Republic,' subject to the provisions of the Act. The Act prohibits trafficking in children and any behaviour that facilitates such crimes, whether committed by a natural or juristic person. It attributes vicarious liability to an employer or principal whose employee or agent commits trafficking in children within the scope of his employment, apparent authority or with the express or implied consent of a director, member or partner of the employer or principal. The Act also provides for the mechanism of assisting victims of child trafficking. It requires the Director General of the Ministry of Foreign Affairs (currently called International Relations and Cooperation) to assist in the return into South Africa of child victims of trafficking who are South Africans and the repatriation of child victims of trafficking found within South Africa but who are not South Africans.

98. The Children's Act also establishes South Africa's extra-territorial jurisdiction over the crime of child trafficking when committed by South African nationals outside South Africa. In this regard, the Act states that a citizen or permanent resident of the Republic, a juristic person or a partnership registered in terms of any law in the Republic that commits an act outside the Republic which would have constituted an offence in terms of the Act, had it been committed inside the Republic, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed for that offence.

99. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 also contains provisions for extra-territorial jurisdiction in relation to offences committed under that Act.

100. As indicated above, comprehensive legislation addressing trafficking in persons, the Prevention and Combating of Trafficking in Persons Act, has recently been enacted. This law gives effect to the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. The law seeks to fulfil the following four main objectives, namely to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to prevent and combat the trafficking in persons within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; and to provide for the establishment of the Inter-sectoral Committee on Prevention and Combating of Trafficking in Persons.

101. The Department of Justice and Constitutional Development is the lead department in the fight against trafficking in persons. The Department of Social Development further contributes to government's efforts in this regard. A number of initiatives have been developed to assist victims of human trafficking. These initiatives include:

- Draft Regulations;
- A brochure for intake officers/social service providers on the identification of victims of trafficking; and

- The DSD Guidelines for services provided to victims of trafficking.

102. The purpose of the DSD Guidelines is to present the policy framework to ensure appropriate intervention of services providers in an effective and efficient manner and to enable social service providers to determine and develop intervention strategies that are victim centred. A rehabilitation programme for service providers rendering services to victims of human trafficking was also developed.

103. In addition, the following instruments were developed to enhance services to victims:

(a) An Information Management Tool to collect data on victims of trafficking using DSD services; and

(b) Draft Norms and Minimum Standards for accredited organisations rendering services to victims of trafficking.

104. Finally, in recognition of the fact that human trafficking is a transnational crime, South Africa is currently in the process of concluding memoranda of understanding on cooperation to combat trafficking in persons and assisting victims of trafficking with the following countries: Angola, Brazil, Indonesia, Malaysia, Mozambique, Nigeria, and Thailand.

Medical and scientific experiments

105. Section 12 (2) (c) of the Constitution provides that everyone has the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction, to security in and control over their body and not to be subjected to medical or scientific experiments without their informed consent.

106. Sections 7 and 8 of the Employment Equity Act, 1998 (Act No. 55 of 1998) also prohibit the medical testing of an employee unless legislation permits or requires the testing. Medical testing of an employee will be justified where medical conditions so require or the inherent requirements of the job so demand.

107. Research on and experimentation with humans and human material is regulated and controlled by the South African Medical Research Council Act, 1991 (Act No. 58 of 1991). The Act establishes the Medical Research Board which is charged with, inter alia, the determination of ethical directives which shall be followed in research or experimentation. The Board takes such control measures as it may deem necessary in order to ensure that the ethical directives are complied with. In this regard, the Board has entrenched the culture of human rights as a core value in health research which has elevated the critical role ethics play in the conduct of research. In line with the Bill of Rights in the Constitution, the Board issued a new edition of *Guidelines on Ethics for Medical Research* in 2003. The revised guidelines ensure that the concept of ‘the best interest of the research participant’ is clear. It also changes the term ‘research subject’ to ‘research participant’ to emphasise that research is a partnership.

108. No cases dealing with medical and scientific experimentation without the informed consent of the participants have been reported during the period under review. However, in at least one case, the results of HIV preventive research trials were published without the consent of the research participants. The case of *NM v. Smith*¹⁴ involved three women who were HIV positive. The applicants claimed that the respondents violated their rights to privacy and dignity by publishing their names and HIV status in a biography of the second respondent. The Constitutional Court found such unauthorized disclosure to constitute a violation of the participants’ rights to privacy, dignity and psychological integrity.

¹⁴ 2007 (5) SA 250 (CC).

Article 3: Non-refoulement

109. *Refoulement* means the expulsion of persons who have the right to be recognised as refugees.

110. It is important to note that the principle of *non-refoulement* does not only forbid the expulsion of refugees to their country of origin, but to any country in which they might be subject to persecution. The only possible exception provided for by the UN Convention is the case that the person to be expelled constitutes a danger to national security.

111. South Africa is amongst the countries that have the highest numbers of individuals applying for asylum in the world. In 2008 a total of 207 206 applications were received and in 2009 the number rose to 223 324. The great majority of applicants are clearly work-seekers and not refugees as defined in any of the conventions South Africa is a signatory to. One of the measures taken was to make the application process more efficient. In this regard, the Department of Home Affairs introduced additional controls and streamlined processes.

112. As reported in the initial report, the protection of refugees and the principle of *non-refoulement* in South Africa is enshrined under the Refugees Act, 1998 (Act No. 130 of 1998). This Act seeks to give effect to relevant international legal instruments, principles and standards relating to refugees. The legislation also outlines the rights of refugees and asylum seekers. Under the Act, a refugee is entitled to the following:

- (a) a formal written recognition of refugee status;
- (b) full legal protection, which includes the rights set out in chapter 2 of the Constitution of the Republic of South Africa, except those rights that only apply to citizens;
- (c) permanent residence in terms of section 27 (d) of the Immigration Act, after five years of continuous residence in South Africa;
- (d) an identity document;
- (e) a travel document if he or she applies in the prescribed manner; and
- (f) to seek employment.

113. South Africa does not host refugee camps. While they are being processed and hold a valid asylum seeker visa, asylum seekers can move freely and have the right to work and study, as well as access to basic health services. Refugees are entitled to apply for birth certificates for their children born in South Africa, identity documents and travel documents that are limited only by not allowing travel to countries of origin.

114. Foreign nationals, once they enter South Africa, enjoy the protection provided by the Constitution of the Republic of South Africa. Section 7 (1) of the Constitution expressly provides that the Bill of Rights enshrines the rights of “all people in our country” They are therefore entitled to the right to legal representation in addition to review and appeal processes under the Refugees Act. An asylum seeker, is further entitled to the following whilst within the territory of South Africa:

- (a) a formal written recognition as an asylum seeker, pending finalization of his or her application for asylum;
- (b) the right to remain in the Republic of South Africa pending the finalization of his or her application for asylum;
- (c) the right not to be unlawfully arrested or detained; and
- (d) the rights contained in the Constitution of the Republic of South Africa in so far as those rights apply to an asylum seeker.

115. In the case of *Tantoush v. Refugee Appeal Board*¹⁵ the High Court, citing the Convention as an interpretative guide, upheld the principle of *non-refoulement*. The court overturned the decision of the Refugee Appeal Board not to grant the applicant refugee

¹⁵ 2008 (1) SA 232 (T).

status in South Africa. In reaching this decision, the court noted that it would be a contravention of the doctrine of *non-refoulement* to return the applicant to Libya as there were substantial grounds to believe that he would be in danger of being tortured if he were so returned.

Death Penalty/Capital Punishment (Extradition/deportation)

116. Often the application of human rights norms is used as an objection or disqualification to extradition. Some extradition agreements provide for the application of human rights norms, but even those extradition agreements that do not provide for such application may refuse extradition on the grounds of human rights considerations. The two main human rights norms are the non-imposition of the death penalty and non-discrimination.

117. In relation to return and extradition, South Africa has a number of extradition agreements with other countries. South Africa has also ratified the Southern African Development Community (SADC) Protocol on Extradition. The Protocol entered into force on 1 September 2006. In accordance with the right not to be tortured as enshrined in our Constitution, South Africa will not extradite a person to another state when there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

118. Extradition shall be refused if the person whose extradition is requested has been, or would be, subjected in the Requesting State to torture or cruel, inhuman or degrading treatment or punishment, or if that person has not received or would not receive, the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights. Details of these agreements are dealt with below.

119. South Africa will not extradite foreign nationals suspected of crimes that may lead to them facing the death penalty in those countries that seek to try them. In the matter of *Minister of Home Affairs v. Tsebe*¹⁶ the Constitutional Court clarified some aspects of extradition, as well as some relating to deportation and sojourn in South Africa.¹⁷

120. The Tsebe judgment reinforced an earlier precedent-setting judgment handed down by the Constitutional Court in the matter of *Mohamed v. President of the Republic of South Africa*.¹⁸ The case involved Khalfan Mohamed, who was wanted by the United States in connection with the bombing of its embassy in Tanzania in 1998. The Constitutional Court ruled in the Mohamed case, that even if there was an extradition agreement between South Africa and the USA, he could not be handed over without an assurance that he would not face the death penalty. In the Tsebe judgment, the Court went further than in Mohamed to require not only that the South African Government **seek** the assurance that an extradited person will not face the death penalty, but also **obtain** that assurance, failing which extradition could not be granted.

121. In terms of our Extradition Act, the Minister of Justice receives the extradition request from a foreign state via diplomatic channels. The Minister will then issue a notification to a magistrate who in turn will issue a warrant of arrest. The arrest and detention are aimed at conducting an extradition enquiry. An extradition enquiry is regarded as a judicial and not an administrative proceeding. Extradition proceedings nevertheless remain *sui generis* in nature and can therefore not be described as criminal proceedings. It is important to note that there is a significant differentiation between judicial and executive roles in extradition proceedings. Although a magistrate fulfills an important screening role to determine whether or not there is sufficient evidence to warrant

¹⁶ 2012 (5) SA 476 (CC).

¹⁷ In this case two Botswana nationals were charged with committing murder in Botswana. They fled to South Africa where they were apprehended and processed for deportation. The Court made it clear that such foreign nationals may only be extradited (or deported) if the country to which he or she is being deported has provided an undertaking or guarantee to South Africa that the death penalty will not be imposed and executed in the case of the said foreign national being found guilty of the alleged crime he or she has been charged with in his or her country of origin.

¹⁸ 2001 (3) SA 893 (CC).

prosecution in the foreign state, the decision to extradite a person is ultimately an executive one.

122. In 2012/13 the Department of Justice and Constitutional Development processed 87 requests for mutual legal assistance and 46 extradition requests. Eighty-six per cent of these requests were processed within the prescribed time frame.

Article 4: Torture as a criminal offence

123. Before the promulgation of the Prevention and Combating of Torture of Persons Act, 2013, reliance was placed on the Constitution which guarantees the right not to be tortured in any way or to be treated or punished in a cruel, inhuman and degrading way. In cases involving torture, the judiciary adopted the definition given under the Convention.

124. In *Mthembu v. The State*¹⁹ the Supreme Court of Appeal (SCA), in the first case of this kind since the advent of our constitutional democracy, ruled that evidence obtained through the use of torture is inadmissible — even when the evidence was reliable and necessary to secure the conviction of an accused facing serious charges. The Court reiterated the absolute prohibition of torture within the Constitution and held that the use of torture by the police, for the purposes of obtaining evidence, fell within this prohibition. The Court held further that the admission of evidence obtained from torture compromises the integrity of the judicial process and brings the administration of justice into disrepute. It stated that torture is one of the most serious human rights violations as it is “barbaric, illegal and inhumane”.²⁰ The unanimous judgement by the SCA emphasised that the absolute prohibition on the use of torture in both South African law and in international law demands that “any evidence” which is obtained as a result of torture must be excluded “in any proceedings.”

125. Similarly in *Kutumela v. Minister of Safety and Security*²¹ the court relied on the definition of torture under the Convention in finding that a suspect who had been subjected to electric shocks and his head covered with a wet bag had been tortured. The court found in favour of the plaintiff.

126. In the case of *Fose v. Minister of Safety and Security*²² the appellant instituted a claim against the Minister of Safety and Security for damages arising from an alleged series of assaults by members of the police. In addition to claiming common law damages for pain and suffering, insult, shock, past and future medical expenses and loss of enjoyment of the amenities of life, the appellant claimed ‘constitutional damages’ for the infringement of his constitutional right not to be tortured and not to be subject to cruel, inhuman or degrading treatment and for infringements to his rights to dignity and privacy.

127. The Court held that ‘appropriate relief’ is relief that is necessary to protect and enforce the Constitution. An appropriate remedy must mean an effective remedy. In some cases an award of damages will be appropriate. In others it might be necessary for courts to fashion new types of remedies in order to protect and enforce fundamental rights.

128. However, in this case the Court found that an award of extra constitutional damages would not be appropriate. The Court pointed out that if the appellant succeeded in proving that he was indeed assaulted by members of the police, he would be awarded substantial compensatory damages. As a result his constitutional rights would be effectively vindicated.

Legislation implementing the principle of absolute prohibition of torture

129. The notion that torture is absolutely prohibited is entrenched in section 12 of the Constitution. This position was reiterated in *Mthembu* case where the Court noted that the South African Constitution prohibits torture in absolute terms.

130. As indicated, the Prevention and Combating of Torture of Persons Act is now in place. This Act implements the principle of an absolute prohibition of torture. It provides

¹⁹ (64/2007) [2008] ZASCA 51 (10 April 2008).

²⁰ Par 32.

²¹ (36053/05) [2008] ZAGPHC 430 (12 December 2008).

²² 1997 (3) SA 786 (CC).

that a state of war, threat of war, internal political instability or any other public emergency will not be invoked as a justification for torture.

131. The Act also provides that the fact that an accused person is or was a head of state or government, a member of a government or parliament, an elected representative or a government official or was under a legal obligation to obey a manifestly unlawful order of a government or superior will neither be a defence to a charge of committing an act of torture, nor a ground for any possible reduction of sentence, once that person has been convicted of an act of torture. The Act further provides that no one will be punished for disobeying an order to commit an act amounting to torture. Imprisonment for life is the maximum sentence that may be imposed against a person convicted of torture.

Article 5: Jurisdiction over acts of torture

132. The South African Judiciary has asserted its independence and advanced the supremacy of the Constitution and the rule of law through its pronouncements on acts which it regarded as torture, even prior to the promulgation of the Prevention and Combatting of Torture Act.

133. The essence of section 34 of the Constitution is the right to a fair trial. Section 34 of the Constitution provides that — *“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”*

134. Government has embarked on a process of transformation of the judiciary and the legal profession to enhance equality and access to justice. Before the dawn of democracy the judiciary was overwhelmingly white and male. Transformation is required to ensure that the bench reflects the race and gender demographics, and is therefore broadly representative, of our modern South African society.

135. The Constitution 17th Amendment Act and the Superior Courts Act, 2013 (Act No. 10 of 2013) which came into effect on 23 August 2013, have brought South Africa closer to realising the goal of a single judiciary. The Constitution Seventeenth Amendment Act in particular, affirms the independence of the Courts and acknowledges the Chief Justice as the head of the judiciary who exercises responsibility over the establishment and monitoring of norms and standards for the exercise of judicial functions of all courts.

136. The Superior Courts Act, 2013 not only rationalises and consolidates the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa, but provides for a uniform framework for the judicial management, by the judiciary, of all courts, including the Magistrates’ Courts. In terms of the Superior Courts Act, the Judge President of a Division is now also responsible for the co-ordination of judicial functions of all Magistrates’ Courts falling within the jurisdiction of that Division. The Act spells out the nature of judicial functions in respect of which Judges President exercise judicial oversight over magistrates and this may include any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts, including case flow management.

137. The Constitution 17th Amendment Act, 2012 makes the Constitutional Court the apex court in all matters, as previously it was the highest court only on constitutional matters and issues connected with decisions on constitutional matters and the Supreme Court of Appeal was the highest court on all other matters. Now the Constitutional Court can consider any matter that raises an arguable point of law of general public importance, which ought to be considered by the Constitutional Court.

138. Government has also been instrumental in transforming the legal profession, which is made up of the advocates’ and attorneys’ professions. This is to ensure equitable and affordable access to justice.

139. It is important to emphasise that the Prevention and Combatting of Torture of Persons Act, 2013 provides for both territorial and extra-territorial jurisdiction. Section 5 (1) of the Act provides that any person who commits an act of torture outside the territory of South Africa will be deemed to have committed that act in the territory of South Africa if:

- (a) that person is a South African citizen;
- (b) that person is not a South African citizen but is ordinarily resident in South Africa;
- (c) that person is, after the commission of the act of torture, present in the territory of South Africa; or
- (d) that person has committed the offence against a South African citizen or against a person who is ordinarily resident in South Africa.

Legislation implementing the Rome Statute

140. In its initial report, South Africa reported that it had signed and ratified the Rome Statute of the International Criminal Court. In 2002, the Rome Statute was domesticated into the South African legal order through the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002). The Act establishes South Africa's jurisdiction over genocide, war crimes, and crimes against humanity. In terms of the Rome Statute and the jurisprudence of the international ad hoc criminal tribunals, torture is one of the acts constituting the afore-mentioned crimes. Thus, in domesticating the Rome Statute, South Africa has established jurisdiction over acts of torture.

141. In particular, section 4 (1) of the Rome Statute Act affords South African courts the power to prosecute and punish any person who commits genocide, war crimes or a crime against humanity within South Africa. In section 4 (3), the Act provides for extra-territorial jurisdiction of South African courts. Thus, a person who commits genocide, war crime or a crime against humanity outside the territory of South Africa, will be deemed to have committed that crime in the territory of South Africa if:

- (a) that person is a South African citizen; or
- (b) that person is not a South African citizen but is ordinarily resident in South Africa; or
- (c) that person, after the commission of the crime, is present in the territory of the South Africa; or
- (d) that person has committed the said crime against a South African citizen or against a person who is ordinarily resident in South Africa.

142. The Rome Statute Act has also amended the Criminal Procedure Act, 1977 (Act No. 51 of 1977) in order to bring the crimes of genocide, war crimes and crimes against humanity within the ambit of the Criminal Procedure Act. Similarly, the Rome Statute Act amends the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999) with the effect that South African military personnel who are suspected of committing genocide, war crimes or crimes against humanity would now be dealt with in accordance with the Rome Statute Act.

Prosecution of perpetrators who committed torture during the apartheid regime

143. Torture is a tragic part of our country's history, with the apartheid regime often resorting to torture, abuse, mass detentions and other human rights violations. The records of South Africa's Truth and Reconciliation Committee provides, amongst others, that — "*Mass detentions in the 'operational areas' were common. Many detainees were held secretly and without access to lawyers or relatives for long periods, sometimes years. Such conditions provided opportunities for prolonged abuse and torture. Torture was also used as a method of intimidation by police and soldiers in the war zone, and as a way of extracting 'operational' information quickly. Torture methods reported in the South West African press, in affidavits by South West Africans and as a result of international human rights investigations included beatings, sleep deprivation, drowning, strangling and suffocation, suspension from ropes or poles, burnings (sometimes over open fires), electric shocks and being held against the hot exhausts of military vehicles.*"

144. Under the apartheid regime, the systematic pattern of torture, which was institutionalised as an operational military and policing technique, resulted in few

prosecutions or official efforts to eradicate the practice. Indeed, where military and police officials were found guilty, they were often given derisory sentences.²³

145. The period 1960 to 1994 saw the systematic and extensive use of detention without trial in South Africa. Such detention was frequently conducive to the commission of gross abuses of human rights. The Human Rights Committee estimated the number of detentions between 1960 and 1990 at approximately 80 000, of which about 10 000 were women and 15 000 children and youths under the age of 18. Detention without trial represented the first line of defence of the security forces. It was only when this strategy began to fail that the killing of political opponents increased.

146. Allegations of torture of detainees form a large percentage of all violations reported to the Truth and Reconciliation Commission.²⁴ The 1993 Interim Constitution made specific provision for an amnesty process. Persons who committed acts of torture and other human rights violations during the apartheid era could apply to the Truth and Reconciliation Commission for amnesty, so as to avoid prosecution. Some 7116 applications were received before the cut-off date for receipt of applications. The amnesty process required that applications involving ‘gross human rights violations’, as defined in the Act, be heard in public. The Commission estimated that this type of application accounted for about 20% of the total. Some 362 applicants were refused amnesty after public hearings, although 1167 individuals were granted full amnesty (50 of which were ‘in chambers’) and a further 145 were granted amnesty for some incidents but not others (involving matters where the application was either rejected or the application was withdrawn). While the Commission received thousands of statements alleging torture, few amnesty applications were received specifically for torture. The TRC forwarded a list of 800 of its cases to the National Prosecuting Authority, which they felt required further investigation and consideration for prosecution.

Article 6: Criminal proceedings against non-nationals who commit torture

147. As indicated above, the Prevention and Combating of Torture of Persons Act, any person (also a non-national) who commits an act of torture outside the territory of South Africa will be deemed to have committed that act in the territory of South Africa if that person is, after the commission of an act of torture, present in the territory of South Africa.

148. Prior to the promulgation of this Act, a non-national, alleged to have committed torture in the territory of South Africa, was prosecuted for common assault, assault with intent to do grievous bodily harm, indecent assault or attempted murder. The Criminal Procedure Act, 1977 would apply in taking such a person into custody, while the extradition enquiry would be processed in terms of the provisions of the Extradition Act, 1962.

149. After the promulgation of the Prevention and Combating of Torture of Persons Act, no non-South Africans have yet been tried for torture in South Africa under this Act, as South Africa only criminalised torture in terms of this legislation in July 2013.

Article 7: The duty to extradite or to prosecute

150. Prior to the criminalisation of torture, those suspected of having committed torture would be charged with the common law offences of assault, assault with intent to commit

²³ In a 1984 case, two SWATF members were each fined R50 after being found guilty of assaulting sixty-three year-old Mr. Ndara Kapitango, whom they roasted over an open fire, causing extensive injuries. In another case in 1983, two Koevoet members were given similarly small fines after the death of a detainee, Mr. Kadmimu Katanga, whom they had beaten with an ox yoke.

²⁴ Most people who told the Commission they had been detained said also that they had been subjected to some form of assault or torture associated with detention. Evidence before the Commission showed that torture was used systematically by the Security Branch, both as a means of obtaining information and of terrorising detainees and activists. Torture was not confined to particular police stations, particular regions or particular individual police officers — although certain individuals’ names came up repeatedly. Torture was used by the security police and by other elements of the security forces, including the Reaction Unit, the Municipal Police, the CID and, to some extent, by the military intelligence unit of the SADF.

grievous bodily harm, indecent assault or attempted murder. These offences carry heavy sentences, especially if the accused is tried in a Regional Magistrates' Court or the High Court.

151. The Prevention and Combating of Torture of Persons Act now gives legislative effect to the obligations that South Africa has undertaken under the CAT, in particular the duty to extradite or to prosecute. As already indicated, the Act provides for prosecution of nationals and non-nationals.

152. As mentioned above, the fight against torture was strengthened by the Correctional Services Amendment Act 2008 (Act No. 25 of 2008) which, among others, abolishes the concept and practice of solitary confinement in all South African correctional facilities and also obligates all correctional officers to immediately report all instances where inmates have been placed under mechanical restraint i.e. handcuffs or leg irons. The total effect of the amendment is that there is now a robust mechanism for detecting and punishing all acts of torture in correctional facilities. Any individual who alleges that he or she has been subjected to torture may complain to the South African Police Service, the IPID, the Judicial Inspectorate for Correctional Services, the Public Protector or the South African Human Rights Commission.

Articles 8 and 9: Extradition and mutual legal and judicial assistance

Information on all cases of extradition, return or removal

153. As indicated above, extradition in South Africa is governed under the Extradition Act, 1962 (Act No. 67 of 1962) as amended by the Extradition Amendment Act, 1996 (Act No. 77 of 1996). South Africa has entered into extradition agreements with a number of countries in terms of the Extradition Act. For example, in 2008/09, the NPA registered 21 requests for extradition of individuals from South Africa. Of these, 15 requests were received from the following countries: Botswana, Ghana, Hungary, Namibia, Portugal, Swaziland, and United Kingdom. On its part, South Africa requested extradition from, inter alia, Namibia, United Kingdom and the USA.

154. South Africa will not extradite a person to any requesting states if it is reasonably believed that a person would be in danger of being subjected to torture or to cruel and inhuman punishment if so extradited.

155. South Africa has also acceded to the European Convention on Extradition and its Additional Protocols. South Africa is also party to the Southern African Development Community (SADC) Protocol on Extradition.²⁵ In terms of article 11 of the European Convention, South Africa has undertaken to refuse extradition if the offence for which extradition is requested is punishable by death under the law of the requesting party. However, if the requesting party gives such assurance, as South Africa may consider sufficient, that the death penalty will not be carried out, then the extradition request may be granted.

156. Moreover, the Prevention and Combating of Torture of Persons Act as well as the Extradition Act provide that no accused person may be extradited from South Africa to another state if the Minister in charge of extraditions is of the opinion that there are substantial grounds for believing that the accused person would be in danger of being subjected to torture. The Extradition Act provides, in section 11 (b) (iii), that the Minister of Justice has the power to order that a person should not be surrendered to another state if the offence for which he or she is wanted is of a trivial nature or if his or her surrender is not required in the interests of justice or if, for any other reason and having regard to all the circumstances of the case, it would be unjust, unreasonable or if the punishment would be too severe. In other words, the Extradition Act recognises that there are circumstances in

²⁵ The SADC Protocols on Extradition and Mutual Legal Assistance (MLA) in Criminal Matters were signed by on 3 October 2002 and ratified by Parliament on 14 April 2003. The Protocol on Extradition entered into force on 18 August 2006. The Protocol on Mutual Legal Assistance entered into force on 1 March 2007. Both Protocols were published in Government Gazette 35368 on 25 May 2012.

which South Africa should refuse to extradite a person and sets out those situations in section 11 (b) (iii). Such situations include a situation where the Justice Minister considers the punishment or sentence that the person will or may face, if he or she is extradited, to be severe.

157. As discussed above, in the case of *Tantoush v. Refugee Appeal Board*²⁶ the court, citing the Convention as an interpretative guide, upheld the principle of *non-refoulement*. Furthermore, South Africa recognises the rights to legal representation and the provision of legal aid has been extended to extradition proceedings. Such extension was done as part of recognising that foreign nationals who enter the Republic of South Africa enjoy the protection under the Constitution. Section 7 (1) of the Constitution expressly provides that the Bill of Rights enshrines the rights of “all people in our country”, therefore all people in South Africa are entitled to a right to legal representation at State expense where substantial injustice would result from their not being afforded a right to legal representation.

158. South Africa currently has extradition agreements with a number of countries, including inter alia, Botswana, Lesotho, Malawi, Swaziland, United States of America, Canada, Australia, Israel, Egypt, Algeria, Nigeria, China, India, Hong Kong special administrative Region of the People’s Republic of China and the Republic of Argentina. South Africa has also designated Ireland, Zimbabwe, Namibia and the United Kingdom in terms of section 3 (2) of the Extradition Act.

159. South Africa has treaties on Mutual Legal Assistance in Criminal Matters (“MLA”) with the following countries: Egypt, Algeria, France, China, Lesotho and India (Canada and USA were reflected under paragraph 130 of the previous report, Lesotho has ratified subsequently). South Africa is also party to SADC Protocol on mutual legal assistance. South Africa has finalised negotiations and/or signed extradition and MLA treaties with the following countries: Zambia (Extradition and MLA), Cuba (Extradition and MLA), United States of Mexico (Extradition and MLA), United Arab Emirates (Extradition and MLA), Belarus (Extradition and MLA), Vietnam (Extradition and MLA), Iran and Korea (Extradition and MLA). These agreements are to be signed and/or ratified in the near future.

160. South Africa is currently busy setting up negotiations for the conclusion of extradition and mutual legal assistance treaties with various countries including: Peru, Paraguay, Uruguay, Tunisia, Pakistan, Venezuela, Ethiopia, Brazil and Chile.

161. In terms of the Extradition Act, any arrangement made with any foreign State which, by virtue of the provisions of the Extradition Acts, 1870 to 1906 of the Parliament of the United Kingdom as applied in the Republic, was in force in respect of the Republic immediately prior to the date of commencement of the Act shall be deemed to be an agreement entered into and published on the said date by the President under the Act.

162. Mutual legal and judicial assistance in connection with criminal proceedings, as indicated in the initial report, is governed in South Africa by the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996). In the period following the consideration of its initial report, South Africa has concluded treaties on mutual legal assistance in criminal matters, and is in the process of negotiating similar treaties as indicated in this report. A request has been directed to the Council of Europe that South Africa accede to the Convention on Mutual Legal Assistance. The Council of Ministers approved that South Africa may accede to the MLA Convention.

Article 10: Education and training regarding the prohibition of torture

163. The training of the SAPS and the SANDF on the prohibition against torture is a continuous process. The training of the SAPS is premised on the Policy on the Prevention of Torture and the Treatment of Persons in Custody of the South African Police Service.

164. Since 1999, police officers have been trained under the Training Programme on Human Rights and Policing which is included as a module in the curriculum of the Basic Training and Detective Learning Programme. The Training Programme specifically

²⁶ 2008 (1) SA 232 (T).

includes training to prevent torture when making an arrest, while a person is in the custody of the Police Service, and while questioning a person.

165. Although it falls outside the period under review, in 2014, it is still worth reporting that SAPS has developed a National Instruction on the Prevention and Combating of Torture of Persons.²⁷ The purpose of this instruction is to provide clear direction to SAPS members regarding their obligations in terms of the new Act. Of importance in this regard is the instruction that all training conducted for police officers need to integrate this National Instruction. The National Commissioner and Divisional Commissioners as well as senior SAPS personnel are obliged to include in their Performance Agreements measures taken to integrate recommendations made by IPID on investigations conducted on police conduct and related matters.

166. In addition, the Department of Correctional Services is also in the process of developing its policy on prohibition of torture, which will be informed by the promulgated Prevention and Combating of Torture of Persons Act, 2013.

167. Administratively, the abovementioned education and training initiatives will be greatly enhanced by the Prevention and Combating of Torture of Persons Act, 2013. In this regard, it is vital to note that one of the stated objects of the Prevention and Combating of Torture of Persons Act is to provide for the training of persons who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, on the prohibition and the combating of torture. As such, section 9 of the Act provides that the state will have the duty to promote awareness of the gravity of torture. It also provides that one or more Cabinet members shall be designated by the President and charged with the function of causing programs to be developed in order to:

- (a) conduct information campaigns regarding the gravity of torture;
- (b) ensure that all public officials who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, are aware of the gravity of torture;
- (c) provide assistance and advice to victims of torture; and
- (d) train public officials on the combating of torture.

Measures to improve conditions in detention facilities

168. Since 1994, South Africa has sought to transform the country's detention system from a purely penal system to one that is based on respect for human life and dignity. Thus, in 2005, the White Paper on Corrections in South Africa was adopted as a policy framework embodying South Africa's philosophy on detention. Under the new philosophy, rehabilitation of the offender is at the heart of the correctional system. In this regard, the Correctional Services Amendment Act introduced, inter alia, terminological changes reflective of this philosophy. Changes of terminology include changes from 'prison' to 'correctional centre', and 'prisoner' to 'inmate' (in reference to persons sentenced and awaiting trial), and 'offender' in reference to convicted and/or sentenced incarcerated inmates, as well as to those serving their sentences in the community, outside a correctional centre.

169. Importantly, South Africa has taken several measures to improve conditions in correctional centres. Admittedly, overcrowding in correctional centres still remains a challenge. On 31 March 2014, there were 243 operational correctional centres in South Africa. These centres collectively have the capacity to house 119 134 inmates on the basis of standardised norm of 3.5 m² floor space per inmate. However, on 31 March 2014, these centres accommodated a total of 154 628 inmates, in other words exceeding capacity by 35 494 inmates. This constitutes an overcrowding level of 30%.

170. Between 1996 and 2000, overcrowding was largely attributed to the huge numbers of un-sentenced inmate population. Improved efficiency in the criminal justice system,

²⁷ National Instruction 6/2014.

coupled with the diversion programme, has seen a general reduction of un-sentenced inmates from 48 241 in 2009 to 44 216 on 31 March 2014.

171. Thus, since 2000 the prime cause of overcrowding is believed to be the increased length of incarceration imposed as sentences on inmates convicted on serious criminal charges. The number of inmates serving sentences in excess of 5 years has increased by a considerable margin and constituted 72% of the total sentenced inmate population during 2013/2014, as opposed to 47% during 1995/1996. An aggravating circumstance in this regard is the marked increase in the number of inmates serving life imprisonment, namely from 793 in 1998 to 12 526 in March 2014. This represents an effective increase of 1 480%.

172. The inmate population in South Africa was one of the highest per capita in the world. However, significant progress has been made and improvements observed to the extent that in some instances the inmate population is now within acceptable standards, not only in terms of design but also in terms of locality, and strategies to reduce overcrowding have been satisfactorily addressed.

173. One of the dimensions of the Multi-Pronged Strategy to address overcrowding is to upgrade and build new correctional facilities that are both cost effective and rehabilitation oriented.

174. The average number of remand detainees decreased by 3 497 (7%) from April 2013 to April 2014, while the number of sentenced offenders increased by 7 650 (7%) during the same period. In respect of the juvenile/child category, our general population figures and those in detention show a similar trend — we are a country inhabited by many young people. The combined figure for children and juveniles on remand is 4 608 representing 11% of the remand population.

175. The Special Care Units, the Health Care Facilities and Units designated to hold vulnerable inmates or those segregated for disciplinary purposes, are examples of areas within a centre in which inmates are held according to acceptable standards. An example of such a centre is Johannesburg Medium A; a large remand detention facility which was the subject of an enquiry by the courts in the United Kingdom, a matter wherein the South African government sought the extradition of 3 persons alleged to have committed offences in South Africa. The court heard the testimony of a British expert, appointed by the defence, who inspected the centre, as well as the testimony of the Inspecting Judge and the National Manager: Legal Services, and found in favour of extraditing the 3 persons. The central thrust of the case was the conditions at Johannesburg Med A, and in particular, the single cell section. The South African correctional regime was thoroughly tested in that case and passed the test in the international arena.

176. In order to decongest the correctional system, Government has budgeted for an increase in bed capacity by 3810 beds over the 2011/12-2015/16 financial years. In this regard, the construction of a number of correctional centre upgrades is currently being executed and/or in the planning phase. Coupled with building new correctional facilities, measures have been put in place to ensure that inmate population is reduced.

177. In this regard, emphasis has been placed on the granting of bail to accused persons. In December 2008, a Bail Protocol outlining the procedure to be followed in applying section 63A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (“CPA”) was adopted. Section 63A of the CPA provides for a procedure in terms of which the court may, on application by a head of prison and if not opposed by the Director of Public Prosecutions concerned, order the release of certain accused being held on lesser charges and who have been granted bail, on warning in lieu of bail, or order the amendment of the bail conditions imposed by that court on the accused. The Bail Protocol came into operation on 1 April 2009.

178. The IPID conducts inspections of police cells in an endeavour to improve conditions of police cells. The inspections are done on a proactive basis. For example, in 2009 the ICD, as IPID was then called, conducted a total of 387 cell inspections.

Dissemination of the Convention

179. Government has committed itself to fully complying with human rights treaty obligations under the Convention and UN Human Rights System, and this is one area that will need to be addressed.

180. The Article 5 Initiative is a partnership between the University of Cape Town, the University of the Western Cape, the African Policing Civilian Oversight Forum and the University of Bristol to improve domestic compliance with the CAT across the continent, but particularly in South Africa, Burundi, Kenya, Mozambique, Rwanda, and Uganda. The Article 5 Initiative (A5I) recently held a two-day workshop to develop tools to support South Africa's domestication of the United Nations Convention against Torture.

Dissemination of the state party report and the conclusions and recommendations of the Committee

181. Government has shared the report and has had subsequent exchanges with National Human Rights Institutions and Civil Society Organisations. This report will be disseminated to the public after same has been presented to, and considered by, the Committee.

Article 11: Systemic review of interrogation rules

182. The South African Police Service has put in place measures to ensure that the interrogation of suspects is carried out with due respect to the rights of the suspect. Before the commencement of interrogation, the suspect must be informed of his or her right to consult with a legal practitioner of his or her choice or, should he or she prefer, to apply to be provided with services of a legal practitioner by the State. For this purpose, the Police Service has developed a specific form, called "Statement Regarding Interview with Suspect." In order to ensure that a person in custody is duly informed of his or her rights in terms of the Constitution, provision has been made that a suspect must be given a written notice setting out his or her rights upon arrival at the police station.

183. In addition, a Custody Register is kept at all police stations. Every action taken by a police officer regarding the person in custody, from the person's arrest until their release from police custody, must be recorded in the Custody Register and, where appropriate, in the Occurrence Book.

Article 12: Investigation of torture allegations

184. The investigation of torture allegations in South Africa is conducted by two bodies: the IPID which investigates acts of torture allegedly committed by members of the SAPS; and the Judicial Inspectorate for Correctional Services which investigates acts of torture allegedly committed in correctional centres. Upon completion of such investigations, these two bodies may recommend the prosecution of the alleged perpetrators by the NPA. The details of the investigations conducted by both the IPID and the Judicial Inspectorate will be covered in detail below.

185. Notably, in a bid to strengthen the powers and extend the functions of the IPID, the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) has been promulgated, and the Act extends the mandate of the IPID to investigate cases of torture against the police. The Prevention and Combating of Torture of Persons Act, 2013 reinforces the mandate of IPID.

186. The focus on assaults perpetrated by officials upon inmates is an area that was reported on during 2012/13 when 99 such allegations were recorded. Not all the allegations were evidentially proven. In many instances insufficient evidence was at hand, inmates had withdrawn their complaints or, after enquiry, the allegations of assault were found to have been a reasonable and necessary exercise of the use of force.

Investigation of all deaths in detention and allegations of torture

187. As indicated in the initial report and elsewhere in this report, the task of investigating all deaths in police custody and allegations of brutality, criminality and

misconduct committed by law enforcement personnel was carried out by the ICD (now called the IPID) which was established under the South African Police Act, 1995 (Act No. 68 of 1995). The ICD was part of the Department of Police, and was established in April 1997. It investigates complaints of against members of the SAPS, and the MPS. In 2011 the ICD was replaced by IPID, and the IPID has extended the mandate of the IPID to include investigation of acts of torture in terms of section 28 (f) of the IPID Act, 2011 (Act 1 of 2011). The IPID receives and investigates complaints which are reported as assault. The circumstances of the assault are then investigated and upon finalisation of the investigation, the IPID makes recommendations to the Director of Public Prosecution to prosecute the members concerned.

188. The IPID also makes recommendations to the SAPS in respect of disciplinary processes that should be instituted against its members who are involved in criminal activities.

189. In 2007, the SAPS issued directives regarding the prevention of the death of persons in custody of the Police Service. Among other requirements, the directives require a police officer, upon learning of death in custody or as a result of police action, to report the incident immediately by telephone to the relevant provincial office of the IPID. Thereafter, the Station Commissioner must complete the prescribed notification form within 12 hours after the incident and send it to the relevant provincial office of the IPID.

190. The SAPS is also currently busy with the drafting of guidelines regarding the prevention of the death of persons in police custody. A division of the SAPS — Visible Policing of the Police Service — which is responsible for custody management meets with the IPID on a monthly basis to discuss and verify complaints arising from the detention of persons in police cells.

191. All complaints are investigated in order to determine whether the complaints arose from police action and how to prevent future incidents of this nature.

192. Moreover, the Police Service is currently in a process of reviewing the South African Police Act, 1995 (Act No. 68 of 1995). It is envisaged that the review will lead to the extension of the powers of the Inspecting Judge specifically to facilitate the inspection of cells and report on the treatment of persons in the custody of the Police Service.

193. The investigation of deaths and allegations of torture in correctional centres is conducted by the Judicial Inspectorate of Correctional Services. The Correctional Services Act establishes a mandatory reporting system under which all heads of correctional centres are required to submit reports to the Inspecting Judge concerning incidents of death, segregation, and the use of mechanical restraints in correctional centres.

194. Over the years, the number of unnatural deaths in correctional centres has reduced. For the period 1 April 2013 to 31 March 2014, the Department of Correctional Services recorded 55 unnatural deaths. The number of deaths for 2013/14 was down by 5% when compared with the number for 2012/13. Considering that the average number of inmates in custody during 2013/14 was 154 360, the number of unnatural deaths in 2013/14 translates to a death rate of 0.36 per 1000 inmates. This is slightly lower than the rate of 0.48 per 1000 inmates during 1998/99.

195. Reports of deaths in correctional centres are classified either as natural or unnatural. The Judicial Inspectorate has, since 2009, intensified its efforts to establish and investigate the circumstances under which such deaths occur. In this regard, the Judicial Inspectorate has resuscitated the Legal Services Unit which is staffed by well-qualified and experienced lawyers. The Inspectorate has also created a Case Administration Unit, which has as its primary objective, the effective monitoring and recording of death reports. The table below shows statistical data on unnatural deaths in correctional facilities.

Table 2
Deaths in correctional centres (1998-2008)

<i>Year</i>	<i>Unnatural</i>	<i>Average number of inmates</i>	<i>Unnatural deaths as a percentage of the inmate population</i>
1998/1999	68	143 003	0.05%
1999/2000	61	158 681	0.04%
2000/2001	12	166 587	0.01%
2001/2002	10	172 204	0.01%
2002/2003	3	181 553	0.002%
2003/2004	75	184 576	0.04%
2004/2005	70	185 501	0.04%
2005/2006	56	162 659	0.03%
2006/2007	57	158 955	0.04%
2007/2008	62	158 029	0.04%
2008/2009	62	160 643	0.04%
2009/2010	49	162 861	0.03%
2010/2011	52	160 060	0.03%
2011/2012	46	160 245	0.03%
2012/2013	58	152 205	0.04%
2013/2014	55	154 360	0.04%
Average	50	163 883	0.03%

Table 3
Unnatural deaths in correctional centres (1998-2014), graphic presentation

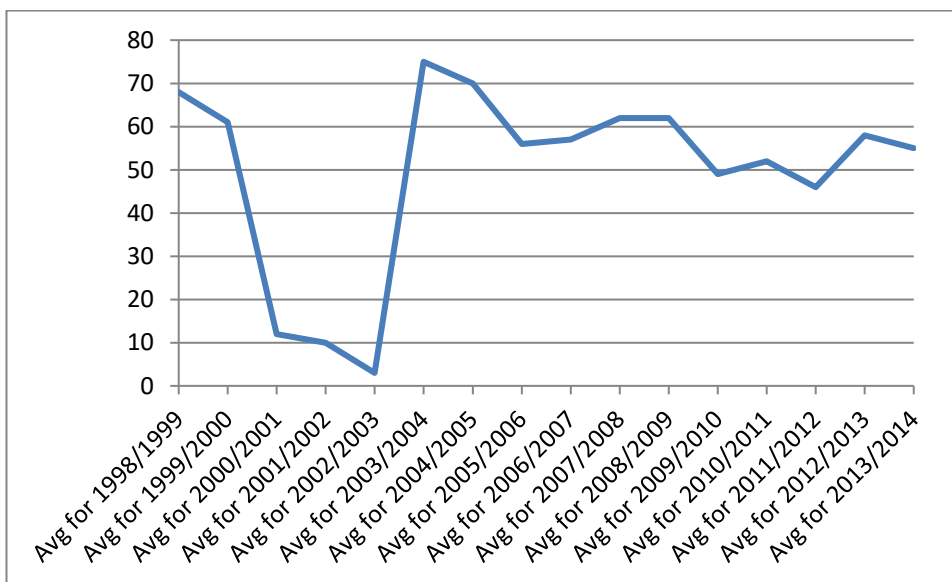
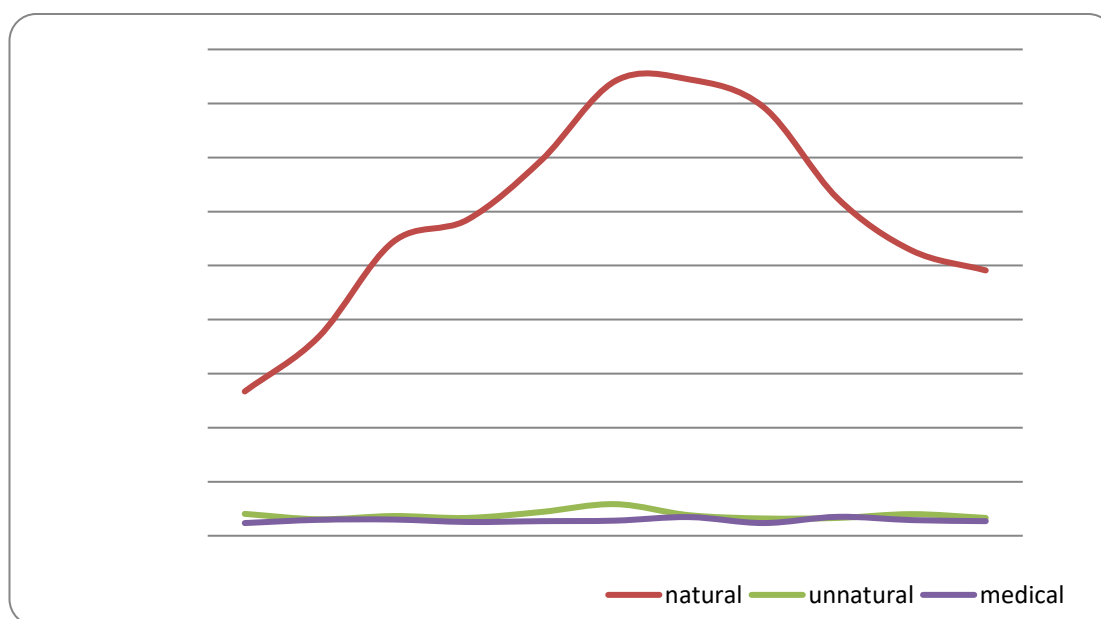


Table 4
Deaths in correctional centres (1998-2013), graphic presentation



196. The Judicial Inspectorate has consistently paid particular attention to deaths caused by alleged assaults on inmates by correctional officials. In June 2009, three correctional officials were convicted of murder arising from their involvement in the deaths of three inmates at the Krugersdorp Correctional Centre during April 2007. The officials were each sentenced to 20 years' imprisonment.

197. In 2012/13, the Judicial Inspectorate received a total of 7 493 reports of segregation, compared to 8 585 during 2011/12. In order to bolster its capacity to deal with complaints received from inmates, the Judicial Inspectorate has developed a system of Independent Correctional Centre Visitors (Independent Visitors), being community members appointed by the Inspecting Judge after a process of publicly calling for nominations and consulting with community organizations. The work of the Independent Visitors is supported by an electronic system which allows them to record complaints, to submit reports to the Inspecting Judge and to enquire about the progress made in the internal resolution, where applicable, of such complaints.

198. The electronic system also provides a data base of all visits to correctional centres, the time spent on such visits and the number and nature of complaints received at each correctional centre, over a specific period of time. The data collected in this fashion has been used to good effect to identify systemic problems that may exist at a particular correctional centre, and has been made freely available, for purposes of research, to universities, NGOs, the media and various other stakeholders. This constitutes a collective effort to inform public opinion on the conditions prevailing in correctional centres and on the treatment of inmates being detained there.

199. During 2012/13 a total of 283 Independent Correctional Centre Visitors were distributed across all the provinces of South Africa. The table below provides the number of complaints regarding alleged assaults dealt with by Independent Visitors during 2012/13.

Table 5
Complaints

<i>Nature of Complaints</i>	<i>2011/2012</i>	<i>2012/2013</i>	<i>Change</i>	<i>Change %</i>
Alleged Assault (Inmate on Inmate)	3 928	6 127	+2 199	+56%
Alleged Assault (official on inmate)	1 945	3 370	+1 425	+73%

200. The number of alleged assaults by officials against the total inmate population, increased by 0.99%, from 1.21% during 2011/12 to 2.20% during 2012/13.

Article 13: Rights of torture victims

201. In its initial report (para 183), South Africa reported that it has in place a Victims Charter which, inter alia, outlines the rights of victims of crime including the right to protection, compensation and restitution. To further intensify its efforts to respond to the needs and plight of victims, the National Policy Guidelines for Victim Empowerment was adopted in July 2009. The Policy Guidelines provides a framework for sound inter-departmental and inter-sectoral collaboration and for the integration of effective institutional arrangements for a multi-pronged approach in managing victim empowerment. The South African Government believes that such an approach facilitates the establishment of partnerships in the victim empowerment sector to effectively address the diverse needs of victims holistically.

202. Notably, the definition of victims in the Policy Guidelines is broad and covers a wide range of victims, including victims of torture. The Policy Guidelines define a victim as ‘any person who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of the criminal law’.

203. Under the Policy Guidelines, the SAPS are expressly required to provide professional, accessible and sensitive services to victims of crime and violence during the reporting and investigation of crime. In this regard, the duties of the SAPS include the following:

- (a) Professional and sensitive treatment of victims and witnesses during statement taking and investigation of crime;
- (b) Informing victims of their rights, taking statements in private, referral to victim support services, notification of case number;
- (c) Feedback regarding status of their case (including outcome of bail hearings) and notification of closing of case or referral of case to court;
- (d) Training of personnel in victim empowerment and related legislation; and
- (e) Establishment of Victim Support rooms at all police stations for privacy.

204. The NPA is also enjoined to ensure that victims of crime and violence and witnesses are treated professionally and with dignity and respect during court proceedings to facilitate optimal participation in the criminal justice process.

205. SAPS have developed the Human Rights in Policing Learning Programmes and have been providing training on same from 1998 to all law enforcement officials in its employ.

Compensation and Redress of Victims

206. Victims of assault, assault GBH and attempted murder committed by police over the years have been successful in claiming compensation/damages from government. This includes instances where the courts have pronounced some of the above offences as torture. In future, the courts will be able to ensure compensation and rehabilitation of victims in line with the Prevention and Combatting of Torture of Persons Act, 2013.

Measures to strengthen legal aid mechanisms for vulnerable persons or groups

207. The State endeavours to fulfil its constitutional obligations and to provide access to justice through Legal Aid South Africa, an autonomous statutory body established by the Legal Aid Act, 1969 (Act No. 22 of 1969). Its objectives are:

- (a) To render or make available legal aid to indigent persons as widely as possible within its financial means;

(b) To provide legal representation at the cost of the State, in accordance with the Constitution; and

(c) To provide legal services in terms of any cooperation agreement that may be enforced between the board and any other body from time to time.

208. Legal aid is a fundamental human right. Without adequate legal aid there can be no fair trial, no functioning criminal justice system and no respect for the rule of law. Without adequate legal aid an accused person can be unlawfully arrested and detained, coerced into pleading or plea-bargaining, they can incriminate themselves, be wrongfully convicted and face a plethora of other rights' violations.

209. For us, in South Africa, legal aid is all the more relevant because of our history. Under the apartheid regime, many were charged with crimes, mostly political crimes, and left to face a repressive, unjust and inhumane justice system without adequate legal representation. Most South Africans were denied access to courts or legal services during apartheid. The apartheid government recognised the need for civil legal aid and therefore established the Legal Aid Board in 1969. However, legal services and the legal aid offered to the majority of our people were either non-existing or inadequate. For example, in 1992, a mere two years before the dawn of our democracy, a staggering 150 890 convicted persons were sentenced to imprisonment without any legal representation.

210. At the dawn of democracy in 1994, we inherited a legal aid dispensation that was unable to meet the growing demands of our new democracy; a democracy with a Constitution which now guaranteed certain categories of persons legal representation by the state and at state expense. The Board became responsible for providing legal aid in criminal cases where accused persons could not afford lawyers and "a substantial injustice would otherwise result" if they were not represented. This brought with it its own problems, as the *judicare* model of referring cases to private attorneys simply became unaffordable and the Board was subsequently compelled to consider other, more cost-effective, models of delivery. The Board was unable to cope with the explosion in the demand for legal representation.

211. But through the dedicated efforts the Department, along with the parliamentary Portfolio Committee, academics, law clinics and a board under the leadership of Judge Mohammed Navsa, the ship was turned around. This led to the implementation of a public defender model and sound organizational governance practices. Today we can proudly say that Legal Aid South Africa has been revamped and remodelled to one of the best legal aid systems in the world. It continues to discharge its mandate to facilitate access to justice by providing public funded legal representation to the poor and the indigent, and has done so in a commendable manner.

212. Legal Aid SA has grown significantly. Where there were a total of 79 501 matters in 1993/94, the number of total cases has grown dramatically to 736, 679 in 2012/13. This includes legal representation in 438, 844 criminal and civil matters and advice in a further 297, 835 matters, including through a national legal aid call-centre. The total number of staff has grown from 100 in 1993/94 to 2578 in 2012/13.

213. One of Legal Aid SA's core values is "a passion for justice." This service to the poorest of the poor amongst our communities bears testimony to our commitment to our constitutional imperatives and to ensure access to justice for all our people. This sterling work is done by a dedicated, motivated and representative team of 183 staff at national office and 2 395 staff based at 128 justice centres nationally — comprising 64 main and 64 satellite offices.

214. The budget for the Legal Aid Board, as it was called then, in 1993/94 was R62 million. Government has, over the years, incrementally allocated more and more funding to improve access to legal aid. In 2002/03 the Board's budget was R341,8 million (about \$57 million). A year later, in 2003/04, the amount allocated was R367,9 million (about \$61,3 million). In 2008/09 the budget again increased significantly to R869,5 million and the budget in 2012/13 was R1,25 billion (about \$118, 6 million).

215. Legal Aid SA has maintained a mixed-model legal aid delivery system, with the bulk of the service (96%) provided by in-house salaried lawyers employed at our Justice

Centres. During 2013/14 Legal Aid SA assisted nearly 17 000 children, with 69% being assistance to children in conflict with the law and 31% to children in civil matters.

216. In order to counter linguistic challenges that have long impeded indigenous groups' access to courts, the South African Government has launched a project that aims at introducing the use of indigenous languages as official court languages. Under apartheid policy, indigenous languages were excluded from use in courts. Only Afrikaans and English were recognized as the official languages of the courts. So far, at least one court in each province has been designated an indigenous language. The choice of an indigenous language in each province has been determined on the basis of the most common language that most users of the court speak in a particular province.

217. Government has also been running the 'accessibility programme' which aims at ensuring that all court buildings are accessible for persons with disabilities. In 2009/10, for instance, a total of 535 court buildings were provided with ramps and bathroom facilities for persons with disabilities. During the same period, an amount of R120 million was allocated to further implement the accessibility programme.

Article 14: Redress for torture victims

218. SAPS have compensated a number of victims of common assault, assault GBH and attempted murder from 2003 to 2013. Compensation or an award for damages is in terms of statutory law, notably section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, and the common law.

219. In the case of *Ndlazi v. Minister of Safety and Security*²⁸ the Court found that that the plaintiff had been tortured and had suffered humiliation and degradation. Judgment was given in favour of the plaintiff and she was awarded a sum of R220, 000 plus interest as compensation for the trauma and distress that she suffered.

220. In the matter of *K v. Minister of Safety and Security*²⁹ the applicant sought damages in delict from the Minister of Safety and Security the respondent on the basis that she was raped by three uniformed and on-duty policemen after she had accepted a lift home from them when she found herself stranded in the early hours of the morning. The case raised the scope of the vicarious liability of the Minister of Safety and Security under our law. A charge of rape was laid and the three policemen were arrested, charged and convicted of rape and kidnapping on 25 May 2000 in the Johannesburg High Court. They were sentenced to life imprisonment for rape and 10 years' imprisonment for kidnapping.

221. The Constitutional Court held that, in committing the crime the policemen not only did not protect the applicant, they infringed her rights to dignity and security of the person. The judgment emphasized that the Constitution mandates members of the police to protect community members and that for this mandate to be performed efficiently reasonable trust must be placed in members of the police service by members of the public. The Court accordingly held that in these circumstances the Minister was vicariously liable to pay damages to the applicant for the wrongful conduct of the policemen and referred the matter back to the High Court for the amount to be determined by that Court.

222. Section 7 of the Prevention and Combating of Torture of Persons Act, 2013 provides for civil liability of persons convicted of torture and states that — "Nothing contained in this Act affects any liability which a person may incur under common law or any other law". This provision is wide enough to include compensation under article 14 of the CAT. Legal Aid South Africa is assisting victims through the provision of legal aid in seeking redress from perpetrators as outlined elsewhere in the report.

Article 15: Statements obtained under torture

223. As indicated in the initial report, section 35 (5) of the Constitution provides that — "Evidence obtained in a manner that violates any right in the Bill of Rights must be

²⁸ (69480/09) [2012] ZAGPPHC 147 (3 August 2012).

²⁹ 2005 (9) BCLR 835 (CC).

excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.”

224. Where evidence has been obtained by means of torture, it may be inadmissible and thus excluded from trial. The Supreme Court of Appeal reiterated the prohibition of admission of evidence obtained through torture in the matter of *Mthembu v. The State*, discussed elsewhere in the report. In this matter the court relied on the definition of torture contained in the CAT. The Court held that the admission of evidence induced by torture had the potential of corroding the criminal justice system. Such evidence must, therefore, be excluded in the public interest. The case concerned the admissibility of evidence obtained through the use of torture from an accomplice.

Article 16: Other acts of cruel, inhuman or degrading treatment or punishment

225. Other acts of cruel, inhuman or degrading treatment or punishment, which do not constitute torture, have been addressed in the report under articles 10, 11, 12 and 13 with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

III. Concluding Remarks

226. Our Constitution enjoins the State to respect, promote, protect, and fulfil universally recognised human rights and fundamental freedoms.

227. The UN Bill of Rights recognises the importance of human dignity and under no circumstances may the right to dignity be limited. Torture undermines the basic democratic principles of human dignity. South Africa played an important role in the negotiation, drafting and adoption of the Optional Protocol to the Convention on the Prevention of Torture in both New York and Geneva.

228. South Africa has made significant progress in the fight against torture and cruel, inhuman and degrading punishment. South Africa has created a number of oversight mechanisms to combat torture such as the IPID, the Judicial Inspectorate of Correctional Services and the Human Rights Commission.

229. The promulgation of the Prevention and Combating of Torture of Persons Act, 2013 is a milestone in South Africa’s fight against torture. For the first time in South Africa’s history, torture is a crime. This will allow for the accountability and attempt at ending impunity of all public officials or other persons acting in an official capacity if their actions are deemed to be consistent with the crime of torture.

230. While, admittedly, there is still much to be done, we are optimistic that the new legislation will be instrumental in assisting us to meet our obligations under the Convention.

231. Furthermore, our courts reinforce and uphold the Constitutional principles of dignity and the freedom and security of persons. Section 12 of the Constitution articulates the principle that all persons have the right to freedom and security of their person and the right not to be tortured in any way. Our courts have not been afraid to uphold these rights and in this regard an impressive body of jurisprudence has, and continues to be, developed.

232. The Government of South Africa is committed towards pursuing the realisation of its aspirations of the people and the fulfilment of its international obligations of the respect for, promotion, protection and fulfilment of human rights and fundamental freedoms, in particular to protect persons from being tortured.

233. Government continues and will continue to work tirelessly towards the development of the country as a developmental state that responds to the needs and aspirations of its people. To this end, it is striving to strengthen the public sector to improve the provision of services within a Developmental State. This includes the improvement of detention conditions and humane treatment of suspected and convicted persons.

234. During its second cycle review, under the UN Universal Peer Review Mechanism, Government pledged its commitment to do all in its power to sign and ratify all outstanding

instruments in the area of international human rights and humanitarian law. This includes the OPCAT, which is aimed at the prevention of torture through independent visits to places of detention. There has been progress in this regard.
