United Nations CAT/C/SR.736

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

Distr.: General
11 January 2007
English
Original: French

COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 736th MEETING

Held at the Palais Wilson, Geneva
on Tuesday 14 November 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (item 6 of the agenda) (*continued*)

Initial report of South Africa (CAT/C/52/Add.3; HRI/CORE/1/Add.92)

1. *At the invitation of the Chairperson, the South African delegation took places at the Committee table.*

2. M. NQAKULA (South Africa) said that that the presentation of the initial report of South Africa on the implementation of the Convention against Torture was a historic moment for the South African Government and people, who had lived through the dark period during which the apartheid régime had held on to its existence by means of State torture and violations committed in total impunity against the black majority of the population.

3. The initial report, which covered the period 1999 2002, was the fruit of consultations with various stakeholders, a group which Mr. Nqakula wished had been larger, all the more so because South African democracy was the fruit of the struggle of liberation movements, non-governmental organizations and other civil society groupings. His country was however resolved to ensure that its subsequent reports would be the fruit of a wider collaborative effort.

4. Apartheid was based not only not only on violations of fundamental rights, including the right not to be subjected to cruel, inhuman or degrading treatment, but also on assaults on the social, economic and cultural rights of the black majority of the population and on a systematized discrimination, in particular as regards access to education and employment. Thus, the apartheid régime had created inequalities that were the cause of a large number of the major problems facing South Africa at the present time, which were impeding the fight against torture.

5. After setting out on the path of reconciliation and establishment of democracy, South Africa had begun by drawing up an interim constitution, and then a final one, in 1996. Laws, policies and practices contrary to the Constitution of 1996 could be contested through complaints brought before the ordinary courts and, if necessary, before the Constitutional Court. In conformity with the international obligations contracted by South Africa, the Constitution also comprised a bill of rights. In two important precedent-setting cases, *Makwanyane* and *Williams*, the provisions of articles 10 (Human dignity) and 11 (Right not to be detained without trial and right not to be subject to cruel, inhuman or degrading treatment or punishment) of the Constitution had been invoked to stipulate that the death penalty and corporal punishment constituted violations of the Constitution.

6. Given that domestic law did not yet contain a definition of torture, the Constitution served as the legal framework to penalize acts that comprised torture, notably assault, assault with intent to do grievous bodily harm, attempted murder and murder, and non bodily harm, pending the adoption of the draft law against torture drawn up in 2005. That draft, which would criminalize torture, would be widely distributed so that all parties concerned, including non-governmental organizations, could make comments on it. Implementing legislation for the Rome Statute of the International Criminal Court had been adopted in 2002. In that legislation, torture was classified as a crime against humanity when committed as

part of a generalized or systematic attack against any civilian population and in awareness of such an attack.

7. The Truth and Reconciliation Commission had accomplished remarkable work in shedding light on the violations committed under the apartheid régime and in facilitating the transition from a society characterized by massive human rights violations perpetrated by the forces of law and order towards a society at peace with itself and freed from racism and sexism. The South African Government had abrogated a number of laws adopted under the apartheid régime, in particular the Internal Security Act of 1982, the Terrorism Act of 1967, as well as several other internal security laws dating from before 1994, which authorized detention without trial and various administrative measures against persons, the media, demonstrators and associations. Those laws had been replaced by the Safety Matters Rationalisation Act of 1996.

8. The South African Government had set out to put an end to the culture of impunity and, in order to do so, it ensured that all law enforcement officials, in other words the police officers, the prison guards and the members of the armed forces, received training on human rights and, in particular, on the prohibition against and prevention of torture in their dealings with suspects or persons already found guilty. That objective was still far from being achieved, since some of the personnel concerned were completely unqualified and since, under the former régime, torture had been a systematic practice. At the present time, the conduct of the forces of law and order was monitored closely by means of a system of surveillance performed by civil society organizations, including the Independent Complaints Directorate − which had responsibility for examining complaints against the police − as well as by the Independent Judicial Inspectorate covering the correctional services and the Intelligence Services Inspectorate.

9. Although cases of mistreatment inflicted by the police on suspects and detainees were occasionally reported, the culture of human rights and, in particular, of respect for the rights of detainees was gaining ground in the country. The members of the police force were aware of the provisions of the Constitution, of the Police Services Act of 1995 and of the Code of Criminal Procedure of 1977 and they were aware that they were required to inform suspects of their rights at all stages of the investigation, in particular the right to remain silent and the right to have access to a lawyer.

10. The judiciary, which had competence to hear matters related to torture such as assault, mistreatment and the murder, was independent and impartial. The Office of the Director of Public Prosecutions played a crucial role in investigations and prosecutions and had the task of monitoring the implementation of the Witness Protection Act of 1998. The Department of Correctional Services was required to treat detainees humanely, in conformity with the Constitution and the Correctional Services Act (No. 111 of 1998). The criminal justice system was, however, facing the problem of a backlog of pending cases and of overcrowding in the prisons. In order to improve the situation, strategies directed towards speeding up the processing of cases and measures intended to reduce the prison population, in particular by making use of conditional release, had been adopted. It should be pointed out that the criminal justice system treated non-natives and refugees in the same manner as South Africans.

11. South Africa had concluded extradition treaties and treaties on mutual judicial assistance in criminal matters with several countries. The Extradition Act (No. 67 of 1962) and the International Co-operation in Criminal Matters Act (No. 75 of 1996) stipulated that the South African Government could cooperate in an investigation relating to acts of torture committed in another country, even if it was not bound to that country by an extradition treaty or mutual judicial assistance treaty.

12. Turning to recent events, Mr. Nqakula reported that the Government of South Africa had signed the Optional Protocol to the Convention on 20 September 2006 and that it would shortly be examining the question of incorporation of the provisions of that instrument into domestic law, which would open the way to its ratification. Overall, although encouraging initiatives had been taken to combat torture, South Africa still had a great deal to do in order to overcome numerous difficulties due, in particular, to the inherited burden of the colonial system and apartheid.

13. The CHAIRPERSON (Country Rapporteur) thanked the South African delegation for its presentation. He noted that, according to a recent report sent to the Committee by a South African non-governmental organization, the situation in the prisons did not seem to have improved very much despite the increased awareness of the prison staff of the principles relating to human rights. He wished to know whether that observation could also apply to the police and how the State party reacted when it became aware of that sort of allegation.

14. With regard to article 1 of the Convention, the Rapporteur observed that it was the only article not mentioned in the report. He stressed that categories such as assault and assault with intent to inflict grievous bodily harm, used in the legal system of South Africa as a basis to prosecute and punish the perpetrators of acts of torture, were not sufficient to embody the specific nature of torture and, therefore, to punish torturers appropriately. He therefore strongly urged the State party to incorporate the definition given in article 1 of the Convention into its legislation.

15. In the *Williams* case, the Constitutional Court had taken the view that the whipping of minors was contrary to the law of 1996 banning torture. In addition, Act No. 33 of 1997 had abrogated or modified all of the provisions allowing the use of corporal punishment. The Rapporteur was astonished at reports brought to the knowledge of the Committee to the effect that children were still subjected to the practice, notably in educational establishments, and asked the delegation to indicate what specific measures the State party intended to take in order to guarantee application of the law. It would also be useful to know to what extent the rules of customary law and the indigenous laws of the African communities referred to in paragraph 61 of the report were compatible with the Constitution and the Convention and what was the standing of the international instruments ratified by South Africa in domestic law. In that connection, the Rapporteur encouraged the State party to include a definition of torture in its legislation. Article 35 of the Constitution stipulated the inadmissibility of any evidence obtained in violation of a fundamental right. That was a very positive measure, which, however, should be complemented by enshrining the principle that all testimony obtained through torture was illegal.

16. With regard to article 2, the Rapporteur was pleased at the measures taken by the State party to combat acts of torture committed by members of the police force, and encouraged it to do the same in the prison system. Further, he wished to know

whether in the event of a threat to the security of the State, owing particularly to terrorist activities, there could be a derogation from the principle of the absolute prohibition against torture. Noting that the law prohibited members of the security forces from obeying a manifestly illegal order, he asked whether the police training manuals and those of the armed forces made reference to such a prohibition. He also requested the delegation to comment on reports that acts of torture were said to have been committed by guards at the St. Albans prison in Port Elizabeth in July 2005. Expressing appreciation for the creation in 1995 of a Independent Complaints Directorate with the task of investigating infringements committed by members of the police force, the Rapporteur urged the State party to give the body the resources needed to carry out rapid and effective investigations.

17. In the context of article 3 of the Convention, he asked for some information on the measures taken by the State party to guarantee observance of the principle of non-refoulement with regard to asylum-seekers and persons in an irregular situation, who would appear to be particularly numerous in South Africa. It would be enlightening in particular to have more information on the cases of persons returned to their countries of origin before consideration of their petition for asylum. Given that the Refugees Act (No. 130 of 1998) withdrew refugee status from anyone suspected of a crime against peace, the Rapporteur wished to know whether the application of that provision did not infringe the principle that no person should be returned to a country where there were substantial grounds for thinking that he or she would be at risk of being tortured.

18. With regard to article 4, the Rapporteur considered it a cause for concern that the State party continued to apply the general rules of common law to acts of torture and suggested once again that it should classify torture as a specific offence. He recalled in that connection that while the interim Constitution had improved the situation in that area, up to the very recent past evidence had been admissible no matter how obtained.

19. Turning to article 5, he pointed out that the State party did not describe the measures that it had taken to give effect to all of the provisions contained in it. The Rapporteur inquired whether the South African courts had jurisdiction to hear cases concerning acts of torture committed by foreigners outside the territory of the State party, in accordance with the principle of universal jurisdiction. Contrary to what was suggested in the report, South Africa's signing of the Rome Statute of the International Criminal Court was not sufficient to establish a universal jurisdiction. In the opinion of the Rapporteur, as the State party's legislation currently stood, the State party was not meeting the obligations set forth in articles 5, 6 and 7 of the Convention.

20. Concerning article 8, the Rapporteur reminded the delegation that a State party that made extradition dependent on the existence of a treaty could, when it received a petition for extradition from a State party to which it was not bound by such a treaty, consider the Convention as constituting the legal basis for such a measure. Article 8 was extremely important. in that it made it possible to prevent perpetrators of torture from escaping any punishment at all.

21. With regard to article 9, the Rapporteur noted that South Africa had signed various treaties on mutual judicial assistance in criminal matters (para. 129 of the report). However, he sought further information on the way in which the State party met its obligation to communicate all necessary items of evidence within the context

of proceedings to do with an act of torture in a State party to which it was not bound by such a treaty.

22. While being fully aware of the crucial importance of the work carried out by the Truth and Reconciliation Commission in dealing with infringements committed in the past, the Rapporteur took the view that other criteria should apply to acts of torture, owing to the gravity of such offences. For those acts, it was important not only to shed light on the facts, but also to prosecute the perpetrators. Finally, finding it surprising that the Committee should have received not a single communication under article 22 of the Convention making a complaint about South Africa, the Rapporteur asked the delegation to offer some explanations in that regard. Had measures been adopted to keep the population informed of the existence of that remedy?

23. Mr. WANG Xuexian (Alternate Country Rapporteur) thanked the delegation for having submitted its report and paid tribute to the major efforts being made by the State party to turn a dark page of its history. While appreciating the measures taken to make the members of the police force aware of the principle of the prohibition against torture, he observed a disconnect between the political will and the practice. Since numerous reports of violence committed by the police had been received, he hoped that the delegation could indicate what measures were envisaged to make the training given to police officers more effective. Mr. Wang Xuexian said that he was profoundly troubled by the significant increase in the number of deaths in the prisons of South Africa, a number which according to certain non-governmental organizations had risen from 400 in 1995 to 2,624 in 2004. It would appear that deaths were related to the overcrowding in prisons and to the lack of medical care. Mr. Wang Xuexian wished to know whether measures were envisaged by the State party to remedy the situation. Recalling that under article 11 of the Convention States parties were required to exercise systematic surveillance of their places of detention, he wished to know whether visits from Independent Prison Visitors, as reported in paragraph 139 of the report, were truly effective. According to reports coming from non-governmental organizations, the police detention centres were not monitored at all. He would welcome clarification on that point. It also appeared that complaints of mistreatment suffered by detainees in police custody were not examined by the Independent Complaints Directorate. He would also appreciate further information on that point.

24. While taking cognizance of the efforts expended by the State party to ensure that child offenders were placed in detention centres for minors, Mr. Wang Xuexian observed that certain reports indicated that those establishments and the shelters for juveniles in general were not monitored at all. He asked the delegation to give further information on that point. Information on the treatment of refugees and asylum-seekers in the various detention centres across the country would also be useful, in the light of reports to the effect they suffered harassment, mistreatment and financial extortion.

25. In connection with article 12 of the Convention, Mr. Wang Xuexian was pleased that the Independent Complaints Directorate had been established. He observed, however, that the institution came under the supervision of the Ministry of the Interior and asked the delegation whether that did not impair the impartiality of the examination of complaints.

26. An incident that had occurred in August 2004 was said to have resulted in an abusive use of weapons by the police, including in fact the use of illegal weapons, resulting in loss of life. It had also been reported that pepper sprays had been used on persons already under arrest and in no state to do any harm. Could the delegation comment on those allegations, because apparently the investigation that had been started had not reached any useful result owing to a lack of cooperation by the police, and indicate in particular whether it was planned to reopen the investigation?

27. The laws and measures promulgated to protect the victims pursuant to article 14 of the Convention were praiseworthy, in particular the creation of the President's Fund and the adoption of the Victims' Charter. The decision to establish an amnesty law in order to turn the page and look to the future was very understandable, because national reconciliation was an essential objective. However, the debate on the advantages and disadvantages of amnesty was far from over, and the country needed to take care not to perpetuate a culture of impunity. In June 2001, when the Committee on Amnesty of the Truth and Reconciliation Commission had concluded its work, it had granted amnesty or immunity from prosecution to 1,160 persons out of the 7,094 who had made an application. What was the situation of those who had not benefited from those measures? And what would be decided with regard to those individuals who had not fully admitted the actions of which they stood accused, including, perhaps, acts of torture?

28. By 30 September 2006, 15,520 of the 21,769 victims identified by the Truth and Reconciliation Commission had received compensation. As for the remainder, and perhaps their families if they had died, would they also be compensated? Additionally, it would be useful to learn of the measures that had been taken in recent years for purposes of rehabilitation of the victims of torture.

29. Article 35 of the Constitution of South Africa stated that the courts must exclude any evidence that had been obtained in a manner that infringed a fundamental right if the admission of such evidence might render the trial unfair. That unquestionably represented progress relative to the common law principle that had previously been applicable; but was there not a danger that that article might give rise to differing interpretations owing to the condition that was attached to it? In practice, it appeared that the South African courts took differing approaches, and one of them, for example, had ruled that some evidence obtained through torture was admissible, in a so-called concern for balance between exclusion and acceptance of the evidence.

30. Violence seemed extremely widespread in the country and the mistreatment committed against women and children was particularly troubling. Between April 2003 and March 2004, not less than 52,733 rapes or attempted rapes had been reported to the police. Even more alarming was the number of cases of sexual mistreatment of children: between February 2002 and June 2003, 21,494 cases of child rape had been reported. Such a situation did not seem tolerable and it would be important to know what measures had been taken or were envisaged to rectify the situation as a matter of urgency. As another issue: South African law authorized corporal punishment in the home but not outside it; however, there were some allegations that corporal punishment was widely applied in schools; it would be useful to know whether that was indeed the case and whether any measures were envisaged in this area.

31. The moderation of the policy pursued with regard to detention appeared to apply also to immigrants in an irregular situation and asylum seekers; however, some cases of harassment and mistreatment of such vulnerable persons did seem to have occurred and Mr. Wang Xuexian hoped that additional measures would be taken to protect them.

32. Mr. MARIÑO MENÉNDEZ paid tribute to a country that had been the scene of a crime against humanity and had overcome many obstacles, and with which the international community had a duty to show solidarity. The work of establishing the rule of law had been admirable and the Committee was pleased to be entering into dialogue on the occasion of the presentation of the present initial report. Several members of the Committee had already referred, in connection with articles 3 and 16 of the Convention, to the way in which asylum seekers and immigrants in an irregular situation were treated. It would be useful to learn for how long such people could be interned pending a decision on what was to happen to them, because it appeared that their detention could be extended for many months. Anyone entering South Africa irregularly was breaking the law and could consequently be taken into custody; in such a case, could the person concerned request asylum or was deportation the only measure provided for? Did the South African authorities take cognizance of the Convention relating to the Status of Refugees, which prohibited States from imposing penalties on asylum seekers who had entered their territory illegally?

33. The South African legal system apparently offered the victims of the torture the possibility of bringing an action thmselves if no other remedy was available to them. Were there any statistics on complaints lodged directly with the courts by private parties? And did such complaints have to be first examined by the prosecutor, as paragraph 165 of the report appeared to say? In the event that the prosecutor decided not to take any action, did the victim have any possibility of appealing against that decision and had there been cases of such appeals, and what had been the outcome of them? Also, if a victim lacked financial resources was there any assistance for him or her to bring an action? It was known that there was a legal aid service, that had been set up in 1969, but it would be useful to know to know how it operated. It would also be enlightening to learn about the mode of operation of the private agencies which came to the assistance of private individuals wishing to lodge a complaint. Given that there were 11 official languages in South Africa, it might be supposed that the poorest ethnic groups could not, without legal aid, bring the least action: was that type of assistance organized on behalf of marginalized groups?

34. The treaties and the rules of international law took an important place in the legal framework of South Africa, but were subordinate to the Constitution, article 233 of which obliged the authorities to interpret “to the extent reasonable” the provisions of the Constitution and national law on the basis of international law in force. As an example, paragraph 120 of the report indicated that foreign detainees could demand application of the provisions of article 36 of the 1963 Vienna Convention on Consular Relations of 1963, but was that convention incorporated in South African domestic law? If not, it was not applicable and no advantage could be taken of it.

35. South Africa had high-security prisons: Mr. Mariño Menéndez wished to obtain some information about them, and in particular to know what categories of

prisoner were held in them, what were the details of their detention and whether they could be held in solitary confinement. Also, were there prisons run by private groups under contract to the State and, if so, how did they operate?

36. Turning to the matter of the use of evidence in a criminal case where it was suspected that such evidence had been obtained by torture, he understood that it was apparently possible for the perpetrator to admit to his guilt. Did that admission of guilt produce a legal effect allowing the judge to pronounce a guilty verdict in a case of torture?

37. It would be useful for the Committee to know how the State party combated paramilitary groups and organized crime. It appeared that private groups provided security on a vigilante basis: did Parliament have any concerns about that, and did the law cover that type of illegal activity? It also appeared that trafficking in persons and especially in children existed in South Africa for purposes of organ trafficking. Although that phenomenon had been reported, it did not appeared to be mentioned in the legislation, and since it appeared to be growing in scale, were measures being taken to suppress it? Finally, given that armed violence was tending to become more widespread in the country for reasons related in particular to poverty, it would be important to know how the sale of weapons was regulated, whether it was easy for private individuals to obtain them, whether a firearms licence was required and whether there were any statistics on the sale of weapons.

38. Mr. CAMARA expressed the hope that the dialogue that was starting up with South Africa would be beneficial to its people. He wished to return to the essential question of the definition of torture. The offence of torture as described in article 1 of the Convention was strikingly complex. In normal matters of criminal law, an offence comprised one material element and one moral element, whereas article 1 listed several material elements and several moral elements that made up the offence of torture, with the article speaking of "any act" that caused physical or mental pain. Such a lack of precision was unusual in criminal law, which was always as precise as possible in order to avoid arbitrary consequences. It had been a deliberate choice by the framers of the Convention to use terms that not only could cover physical blows but also, for example, screaming and shouting that could be considered as forms of torture if aimed at someone in a fragile state. The only way for a country such as South Africa to fulfil its treaty obligations was to take into its law *in extenso* the definition of torture given in the Convention. In that regard, one factor that often went unnoticed was the fact that torture, as defined in international law, could be created by an act of discrimination: that was an important factor not only in the case of South Africa but also in the case of other countries where violence was inflicted on the basis of discrimination. On the basis of the information available to the Committee, it appeared very important to highlight that element. Very recently the Committee on the Elimination of Racial Discrimination, in its concluding observations on the report of South Africa, had expressed the view that there was a de facto segregation in the country and that the justice system did not appear to be trying very actively to rectify it. In the area of prevention and punishment of acts of torture, the discrimination aspect appeared fundamental.

39. In conclusion, Mr. Camara was pleased at the dialogue that had just started with the State party, which was important not only for the country itself but also for the whole region, owing to the leading role that South Africa played in it and the stimulus effect it could have on the other countries of the area.

40. Ms. BELMIR congratulated the delegation on its very instructive report and on the fruitful dialogue that the report now made possible. In that context, it would be useful to have further information on the bodies that had responsibility for defining criminal policy; it was stated that the police were empowered to draw up a policy with regard to prevention of torture and treatment of persons taken into police custody and that, together with the defence forces and the prison services, it implemented programmes directed towards training not only their own personnel but also offenders and the citizenry in general. However, that same police force, which thus had fairly wide powers, was apparently also responsible for a number of serious acts of violence and brutality, while enjoying total impunity. Did the responsibilities which were thus entrusted to the police force derive from a more general framework of criminal policy, or alternatively was the police the only body empowered to make those decisions, thus being at the same time judge and judged?

41. With regard to the powers and responsibilities of the Office of the Public Prosecutor, it appeared from the report that prosecutors enjoyed discretionary powers ranging from whether or not to prosecute to whether or not to grant a request for a discharge from custody; they were able to decide not only on the content of a charge but also on the court before which the accused would be brought. These broad powers, perhaps acceptable under common law, were considered in other legal systems as jurisdictional powers, falling within the remit of a court. Was, in fact, the judicial power shared between the prosecutor and the court?

42. The State party itself acknowledged that persons in pretrial detention were exposed to violations. Furthermore, if they were then sentenced to a prison term, the time spent in pretrial detention was not counted towards their sentence. With regard to justice for minors, it would be useful to learn the precise age of criminal liability which, depending on the source, was stated variously as 10 years, or 14, or even 16 for the most serious offences.

43. On the question of extradition, Ms. Belmir asked whether it was right that natives of South Africa could be extradited to a foreign State if an extradition treaty was in place between South Africa and the country in question. If that was so, on what grounds could a native of South Africa be extradited? With regard to admissibility of evidence, she would welcome some information concerning the circumstances in which evidence could be excluded. Furthermore, the report indicated that torture, as a criminal offence, was not specifically cited in domestic law but could constitute an aggravating circumstance and sometimes be considered a form of assault. It would be desirable for the definition of torture given in article 1 of the Convention to be reflected in the domestic legislation.

44. Ms. GAER, referring to the report drawn up by the Working Group on Arbitrary Detention following its visit to South Africa in September 2005 (E/CN.4/2006/7/Add.3), said that the number of cases of death in police custody was very high. She wished to know whether there was a specific procedure applicable in such cases and whether police officers had ever been accused and prosecuted. With regard to extradition, paragraph 104 of the report said that the extradition of a person to a country that practised the death penalty required that South Africa obtain assurances from the country's authorities that the person would not be executed. Did the same situation apply to the extradition of a person who was at risk of being tortured? If so, what exactly was required in the way of guarantees? In its report of November 2006, Amnesty International drew attention to the high

number of cases of rape of women while in police custody. In one such case, an investigation had been undertaken, although late, and at the end of it three police officers had been arrested, then released on bail and kept in their jobs pending the outcome of the trial. Did that indicate that there were no rules making it mandatory to suspend from duty any police officers against whom a prosecution for rape had been started and whose trial was in progress?

45. With regard to the jurisdiction covering military offences, paragraph 84 of the initial report stated that when an incident of torture or cruel treatment or punishment occurred outside the borders of the Republic, for example if the accused was a member of the South African National Defence Force (SANDF) on a peacekeeping mission, then the jurisdiction would generally fall within the realm of the military courts, unless the Status of Forces Agreement gave the SANDF itself exclusive jurisdiction. How did that work in practice? Did the SANDF have the means to undertake, itself, investigations in another country? Additionally, since the Status of Forces Agreement granted the members of the SANDF immunity from prosecution in the country where they were on mission, was there a procedure guaranteeing the repatriation of offenders for them to stand trial? Ms. Gaer referred to the case of Lieutenant-Colonel Koos van Breda, a member of the South African military contingent forming part of the United Nations Organization Mission in the Democratic Republic of the Congo. He had been accused of sexual abuse and had been repatriated to South Africa in October 2005 to be tried by a court martial. It would be interesting to know what the outcome of the trial had been. According to a recent SANDF report, investigations had been set in motion in 36 other cases of sexual abuse involving South African soldiers on mission in the Democratic Republic of the Congo and in Burundi. She would welcome information on those investigations.

46. Mr. GALLEGOS CHIRIBOGA said that, in order truly to develop a culture of peace and respect for human rights, South Africa must not only guarantee the enforcement of its laws; it must also take every step necessary to put an end to impunity.

47. Ms. SVEAASS, referring to the high number of AIDS-related deaths, asked what measures were being taken to provide orphans with an environment favourable to their development and thus to prevent their descending into violence and crime as they grew up. She noted with concern that, according to the World Organization against Torture (OMCT), a large number of offences were not reported to the police and only 5.7 per cent of those which were reported resulted in sentences for the perpetrators. She wished to know whether the delegation could confirm those findings and, if so, whether the Government did not fear that a climate of impunity would be created, encouraging a rise in violence. As for crimes committed under the apartheid régime, Ms. Sveaass asked for how much longer the provisions of the Promotion of National Unity and Reconciliation Act − under which amnesty had been granted to those who gave a complete accounting of all the relevant facts relating to criminal acts, including torture, committed under apartheid − would remain in force. It would be truly regrettable if the remarkable efforts made since 1994 to ensure a peaceful transition and to restore the rule of law should ultimately lead to the development of a culture of impunity. In that context, it would also be interesting to learn about the measures of redress and compensation that had been put into effect for the victims of torture, in line with article 14 of the Convention.

48. Mr. GROSSMAN, quoting statistics from the OMCT, observed that the number of deaths in prison had increased from 492 in 1995 to 2,624 in 2003. It would be interesting to have similar figures for the year 2006, broken down by age, sex and especially by cause of death in order to assess the proportion of those deaths that might be linked to acts of torture or to cruel, inhuman or degrading treatment or punishment. Information on detainees' real access to medical care, on whether or not there were incidents of police brutality and, if there had been, on the investigations into them that were in hand would also be useful. While the figures given in the table in paragraph 157 of the report showed that the number of cases of torture had gone down between April 1997 and March 2002, up-to-date statistics in that area would be welcome. Mr. Grossman asked for information concerning the case of Khalid Mehmood Rashid, a Pakistani who had been handed over to the authorities of Pakistan by the South African police in 2005 and had not been seen again since his return to Pakistan. In particular, he wished to know whether the matter had been examined in the light of article 3 of the Convention and the principle of non refoulement. Also, he wished to know to what extent public policies, especially those having to do with security, made it possible to for civil society to participate effectively in their implementation and in the monitoring of the effects of them.

49. The CHAIRPERSON thanked the delegation, the Rapporteurs and the other members of the Committee for their participation and suggested that they should continue the dialogue at a subsequent meeting.

The public part of the meeting rose at 12.30 p.m.