



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

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## Committee against Torture

### List of issues prior to submission of the third periodic report of South Africa\*

#### Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

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

1. In its previous concluding observations,<sup>1</sup> the Committee requested the State party to provide information on the follow-up to the Committee's recommendations on ensuring the prompt investigation and prosecution of all deaths in custody; speeding up the ratification of the Optional Protocol to the Convention; and ensuring that all allegations of torture by law enforcement officials are referred by the Independent Police Investigative Directorate to the National Prosecuting Authority (paras. 23 (a), 25 (a) and 33 (a), respectively). Noting that replies concerning the information sought by the Committee were provided on 20 April 2021,<sup>2</sup> and with reference to the letter dated 28 July 2021 from the Committee's Rapporteur for follow-up to concluding observations,<sup>3</sup> the Committee considers that the recommendations contained in paragraph 25 (a) have only been partially implemented, and that the State party has not provided enough information on the measures taken to implement the recommendations contained in paragraphs 23 (a) and 33 (a).

##### Articles 1 and 4

2. With reference to the Committee's previous concluding observations,<sup>4</sup> please indicate whether the State party's criminal laws have been amended to ensure that acts amounting to torture are punishable by appropriate penalties commensurate with the grave nature of the acts, in accordance with article 4 (2) of the Convention. Further to the Committee's previous concluding observations,<sup>5</sup> please indicate the status of the international crimes bill.

\* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

<sup>1</sup> CAT/C/ZAF/CO/2, para. 42.

<sup>2</sup> See CAT/C/ZAF/FCO/2.

<sup>3</sup> See

[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ZAF/INT\\_CAT\\_FUL\\_ZAF\\_45338\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ZAF/INT_CAT_FUL_ZAF_45338_E.pdf).

<sup>4</sup> CAT/C/ZAF/CO/2, paras. 6–7.

<sup>5</sup> Ibid., paras. 8–9.



## Article 2<sup>6</sup>

3. With reference to the Committee's previous concluding observations,<sup>7</sup> please provide information on any new measures taken by the State party during the reporting period to ensure that all persons arrested or detained are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty. Please indicate measures taken to monitor compliance by law enforcement officials with the fundamental legal safeguards and to ensure that there is mandatory and systematic medical oversight of police detention and interrogation. Please provide information on any disciplinary measures taken, since the consideration of the State party's previous periodic report, against law enforcement officials who did not immediately allow persons deprived of their liberty to benefit from those safeguards. Please also indicate whether the State party has taken any steps to amend its legislation with a view to raising the age of criminal responsibility in accordance with international standards.<sup>8</sup>

4. Further to its previous concluding observations<sup>9</sup> and the State party's follow-up replies,<sup>10</sup> and in view of the designation of a multi-body national preventive mechanism under the Optional Protocol to the Convention, under the coordinating leadership of the South African Human Rights Commission, please provide information on the mechanism's powers and functions, as well as detailed information regarding the allocated budget and resources, including staffing. Please also provide information on the mechanism's activities and achievements with respect to the prevention of torture and ill-treatment during the period under review. In this regard, please include information about the steps taken by the State party in response to the recommendations made by the national preventive mechanism.

5. In view of its previous concluding observations,<sup>11</sup> please provide information on the measures taken by the State party to combat all forms of violence against women, particularly with regard to cases involving the actions and omissions of State authorities or other entities that engage the State party's international responsibility under the Convention.<sup>12</sup> Please also provide information on the protection and support services. Please include statistical data on the number of complaints of gender-based violence and the investigations, prosecutions, convictions and sentences resulting from those complaints since the consideration of the State party's previous periodic report. Please also provide up-to-date information on the measures taken to strengthen training programmes on the investigation and prosecution of gender-based violence by law enforcement officers and justice officials. Furthermore, please provide information on the resources allocated for the implementation of the National Strategic Plan on Gender-Based Violence and Femicide for the period 2020–2030.<sup>13</sup>

6. Please provide information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the numbers of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous report. Please also provide information on the provision of redress to victims of trafficking

<sup>6</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

<sup>7</sup> CAT/C/ZAF/CO/2, paras. 12–13.

<sup>8</sup> Ibid., paras. 10–11.

<sup>9</sup> Ibid., paras. 24–27.

<sup>10</sup> CAT/C/ZAF/FCO/2, paras. 6–10. See also the letter dated 28 July 2021 from the Rapporteur for follow-up to concluding observations.

<sup>11</sup> CAT/C/ZAF/CO/2, paras. 34–35.

<sup>12</sup> See CEDAW/C/ZAF/CO/5, paras. 9–14; Office of the United Nations High Commissioner for Human Rights, "Turning the tide on gender-based violence and femicide in South Africa", press release, 29 November 2019.

<sup>13</sup> See CEDAW/C/ZAF/CO/5, paras. 9 and 12 (b).

during the reporting period, including data on the number of persons who benefited from protection and support measures for victims.

### Article 3

7. In view of the Committee's previous concluding observations,<sup>14</sup> please provide information on the measures that have been taken to revise domestic legislation on refugees and asylum-seekers to fulfil all obligations under article 3 of the Convention. In this regard, please describe the measures taken during the period under review to ensure that, in practice, no person is returned to a country where that person would be in danger of torture. Please indicate how the State party ensures effective access to the refugee status determination procedure, especially since the beginning of the coronavirus disease (COVID-19) pandemic. Please provide detailed information on the measures taken to eradicate corruption related to arbitrary cancellation and non-renewal of asylum transit visas and to ensure that refugees and asylum-seekers do not experience harassment and abuse by the authorities.

8. Please indicate whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision, including through a judicial procedure. If so, please also indicate whether such an appeal has a suspensive effect. Please provide detailed information on the measures taken to identify vulnerable persons seeking asylum in the State party, including victims of torture or ill-treatment, trauma or trafficking, and to ensure that their specific needs are taken into consideration and addressed in a timely manner, including by providing access to medical services. Please explain how the State party guarantees access to free legal assistance and interpretation services during the asylum procedure.<sup>15</sup>

9. Please provide information on the number of asylum applications received during the period under review, the number of successful applications and the number of asylum-seekers whose applications were accepted because they had been tortured or might be tortured if returned to the country of origin. Please provide updated information on the types of appeals that have been made and their outcomes. Please include information, disaggregated by sex, age and country of origin or receiving country, on the number of persons who have been returned, extradited or expelled since the consideration of the State party's previous periodic report. Please provide information on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please also indicate whether the State party has put in place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation. Please indicate the number of returns, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof. Please provide information on any instances in which the State party has offered such diplomatic assurances or guarantees, and the measures that have been taken in such cases with regard to subsequent monitoring.

### Articles 5–9

10. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please describe the legislative and administrative measures taken by the State party to ensure that the Convention may be invoked as a legal basis for extradition in respect of the offences referred to in article 4 of the Convention when it receives an extradition request from a State with which it has no extradition agreement or treaty. Please indicate what measures have been adopted by the State party to comply with its obligation to extradite or prosecute (*aut dedere aut judicare*). Please clarify what treaties or agreements on mutual legal and judicial assistance the State party has entered into, and whether such treaties or agreements have led

<sup>14</sup> CAT/C/ZAF/CO/2, paras. 36–37.

<sup>15</sup> Ibid., para. 37 (b).

in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

#### **Article 10**

11. With reference to the Committee's previous concluding observations,<sup>16</sup> please provide updated information on educational programmes developed by the State party to ensure that all public officials, in particular law enforcement officials, prison staff and medical personnel employed in prisons, are fully aware of the provisions of the Convention and the absolute prohibition of torture, and know that breaches will not be tolerated and will be investigated and that any offenders will be prosecuted. Please indicate whether law enforcement officials receive adequate training on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please also provide details of the training programmes for police officers and other law enforcement officials on non-coercive investigation techniques. Please indicate in each case the number, the institutions and the percentage of public servants who have benefited from such training programmes. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and, if so, please provide information on the methodology. Lastly, please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether they contain specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

#### **Article 11**

12. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or arrangements for custody, in particular those that may have been introduced or updated since the consideration of the State party's previous periodic report. Please indicate the frequency with which they are reviewed.

13. Taking note of the Committee's previous concluding observations,<sup>17</sup> please describe the measures taken to reduce prison overcrowding and improve the material conditions in all places of detention, including any measures to increase the use of alternatives to imprisonment both before and after trial. Please indicate the measures that have been taken to address concerns about inadequate infrastructure, poor conditions of hygiene and sanitation, insufficient ventilation, inadequate access to food and lack of exercise. Please also provide information on the concrete measures taken by the State party to address concerns about deficiencies in access to appropriate health and medical services, including mental health, in places of detention. Furthermore, please indicate the measures taken to combat the spread of infectious diseases and implement programmes for drug treatment and harm reduction in prison.

14. Further to the Committee's previous concluding observations,<sup>18</sup> please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners, including those serving life sentences, and the occupancy rates of all places of detention. Please provide information on the State party's efforts to meet the specific needs of women and minors in detention. Please also indicate whether protocols are in place to meet the requirements of other groups of prisoners with particular needs, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons.

15. In the light of the Committee's previous concluding observations,<sup>19</sup> please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards, such as the United Nations Standard

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<sup>16</sup> Ibid., paras. 31 (d) and (e) and 33 (d).

<sup>17</sup> Ibid., paras. 14–17.

<sup>18</sup> Ibid., paras. 14–15 and 18–19.

<sup>19</sup> Ibid., paras. 20–21.

Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Please inform the Committee about the measures taken to address concerns regarding segregation regimes. Please include data on the use of solitary confinement and other isolation or segregation regimes during the period under review and indicate their duration. Furthermore, please clarify the policy regarding the application of means of restraint to persons deprived of their liberty.

16. Bearing in mind the Committee's previous concluding observations<sup>20</sup> and the State party's follow-up replies,<sup>21</sup> please provide information about the frequency of inter-prisoner violence, including any cases involving negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome. Please also provide statistical data regarding deaths in custody during the period under review, disaggregated by place of detention, sex, age and ethnicity or nationality of the deceased person and the cause of death. Please include information on the results of the investigations into those deaths and on the measures taken to prevent similar cases occurring in the future. Please indicate whether relatives received compensation in these cases.

17. With reference to the Committee's previous concluding observations,<sup>22</sup> please provide data on visits to places of detention, including immigration detention facilities and psychiatric institutions, carried out by the national preventive mechanism and other existing monitoring bodies during the period under review and on the measures taken by the State party in response to the recommendations made by these entities. Please indicate whether independent monitors, including non-governmental organizations, have unhindered access to all places of detention without prior notice, and the ability to speak with detainees in private.

18. With regard to the Committee's previous concluding observations,<sup>23</sup> please indicate the measures taken by the State party during the reporting period to ensure that the detention of asylum-seekers and migrants is only used as a last resort, where necessary and for as short a period as possible, and to further implement alternatives to detention in practice. Please indicate the measures taken to guarantee judicial review or other meaningful and effective avenues to challenge the legality of administrative immigration detention. Please provide information on the State party's efforts to improve the material conditions and health-care services in all immigration centres. Lastly, please provide statistical data, disaggregated by sex, age and country of origin, on the number of asylum-seekers and migrants in administrative detention awaiting deportation in the State party.

19. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with intellectual or psychosocial disabilities, including care homes. Please indicate what the situation is with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment of programmes.

### Articles 12–13

20. Further to the Committee's previous concluding observations<sup>24</sup> and the State party's follow-up replies,<sup>25</sup> please provide updated statistical data, disaggregated by sex, age and ethnicity or nationality of the victims, on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State authorities during the reporting period. Please include information on investigations, disciplinary and criminal proceedings and convictions and on the criminal or disciplinary sanctions applied. Please provide updated information on the measures taken to ensure that officials suspected of having committed acts of torture or

<sup>20</sup> Ibid., paras. 22–23.

<sup>21</sup> CAT/C/ZAF/FCO/2, paras. 3–5. See also the letter dated 28 July 2021 from the Rapporteur for follow-up to concluding observations.

<sup>22</sup> CAT/C/ZAF/CO/2, paras. 24–25.

<sup>23</sup> Ibid., paras. 36 (d) and 37 (e).

<sup>24</sup> Ibid., paras. 30–33.

<sup>25</sup> CAT/C/ZAF/FCO/2, paras. 11–21. See also the letter dated 28 July 2021 from the Rapporteur for follow-up to concluding observations.

ill-treatment are immediately suspended from duty for the duration of the investigation. Please also include examples of relevant cases and/or decisions.

21. In the light of the Committee's previous concluding observations,<sup>26</sup> please provide information on the concrete measures taken by the State party to implement the recommendations of the Marikana Commission of Inquiry and to ensure the prompt prosecution of the police officers allegedly implicated in the deaths of 34 mineworkers during a strike on 16 August 2012, with another 78 mineworkers injured. Please also provide information on the investigation of the potential liability of the Lonmin mining company for the Marikana incident. Furthermore, please provide information on the civil claims related to this case, including compensations to the victims and/or their families.

22. Please provide updated information on any investigation into or prosecution of abuses reportedly committed by South African peacekeepers, and on any redress, including compensation, provided to victims.<sup>27</sup>

#### **Article 14**

23. In view of the Committee's previous concluding observations,<sup>28</sup> please provide information on the measures taken to amend the Prevention and Combating of Torture of Persons Act and other relevant legislation in order to operationalize redress for all victims of acts of torture, including appropriate compensation and rehabilitation. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts or other State bodies and actually provided to the victims of torture or their families since the consideration of the State party's previous periodic report. Please include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including the treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment and on the material, human and budgetary resources allocated for their effective functioning.

24. Further to the Committee's previous concluding observations,<sup>29</sup> please indicate the measures taken to implement the recommendations of the Truth and Reconciliation Commission relating to the investigation and prosecution of apartheid-era cases of torture, ill-treatment, enforced disappearances and other serious human rights violations documented by the Commission. Please indicate whether any assistance has been provided to the families whose relatives died in detention with regard to obtaining records and gathering further information in order to have the initial inquests reopened and to solve the cases of other suspicious deaths. In particular, please indicate the measures taken by the State party to give effect to the judgment of the Gauteng Division of the High Court of South Africa concerning the death of Ahmed Essop Timol.

#### **Article 15**

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

#### **Article 16**

26. In the light of the Committee's previous concluding observations,<sup>30</sup> please indicate the measures taken by the State party to prohibit corporal punishment of children in all settings.

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<sup>26</sup> CAT/C/ZAF/CO/2, paras. 30–31.

<sup>27</sup> CAT/C/ZAF/CO/1, para. 27 and CAT/C/ZAF/CO/2, para. 5. See also Conduct in UN Field Missions, Sexual Exploitation and Abuse, available at <https://conduct.unmissions.org/sea-data-introduction>.

<sup>28</sup> CAT/C/ZAF/CO/2, paras. 38–39.

<sup>29</sup> Ibid., paras. 28–29.

<sup>30</sup> Ibid., paras. 40–41. See also CRC/C/ZAF/QPR/3-6 and CRC/C/ZAF/QPR/3-6/Corr.1, para. 17 (b).

27. Further to the Committee's previous concluding observations,<sup>31</sup> please provide information on any measures taken to combat xenophobic attacks, including threats and acts of violence, against foreign nationals, refugees and asylum-seekers.

### **Other issues**

28. Please provide updated information on the measures taken by the State party to respond to the threat of terrorism. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that counter-terrorism measures are compatible with all its obligations under international law, especially the Convention. Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to counter-terrorism measures; and whether there have been complaints of the non-observance of international standards and, if so, what the outcome was.

29. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the COVID-19 pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement, such as homes for the elderly, hospitals or institutions for persons with intellectual or psychosocial disabilities.

### **General information on other measures and developments relating to the implementation of the Convention in the State party**

30. Please provide detailed information on any other relevant legislative, administrative, judicial or other measure taken since the consideration of the previous periodic report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party may consider relevant.

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<sup>31</sup> [CAT/C/ZAF/CO/2](#), paras. 36 (e) and 37 (i).