



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

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## Committee against Torture Sixty-sixth session

### Summary record of the 1733rd meeting

Held at the Palais Wilson, Geneva, on Wednesday, 1 May 2019, at 3 p.m.

*Chair:* Mr. Modvig

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(*continued*)

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Second periodic report of South Africa (continued)* ([CAT/C/ZAF/2](#);  
[CAT/C/ZAF/Q/2](#), [CAT/C/ZAF/Q/2/Add.1](#) and [CAT/C/ZAF/Q/2/Add.2](#))

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*
2. **Mr. Jeffery** (South Africa) said that his delegation was disappointed in the decision by the Court of Arbitration for Sport on 1 May 2019 to dismiss requests for arbitration by the South African athlete Caster Semenya, in particular because the Special Rapporteur on torture, among others, had issued a statement in support of Caster Semenya's position.
3. A number of issues covered in the various treaty body reviews overlapped. The simplified reporting procedure assisted both treaty bodies and States in focusing questions and answers on the matters of specific relevance to the body in question. Many of the questions posed by the Committee went beyond the scope of the Convention. For example, xenophobia was a topic covered by the Committee on the Elimination of Racial Discrimination; albinism was considered a disability and thus fell within the mandate of the Committee on the Rights of Persons with Disabilities; and violence against women was dealt with by the Committee on the Elimination of Discrimination against Women.
4. Some of the points that had been raised seemed to refer to unsubstantiated information, such as the allegation of female genital mutilation among the Venda community in Limpopo province, which appeared to be based on one article published in February 2018, with no supporting data. His Government had been unable to find any reported cases of the practice, nor had any such cases been dealt with by the courts in Limpopo.
5. The Government had identified the need to review parole policies as part of its reform of the integrated criminal justice system. In 2018, consideration of the minimum period to be considered for parole of persons who had been sentenced to life imprisonment before October 2004 had been made a priority and, as a result, the number of eligible offenders whose profiles had not yet been submitted to the Minister of Justice and Correctional Services for review had decreased dramatically.
6. A victim of torture did not need to secure a criminal conviction to claim compensation from the perpetrator. Victims could seek redress through civil or criminal proceedings, although the burden of proof was more stringent in criminal cases, which required proof beyond a reasonable doubt. The law did not provide for damages as a merely administrative remedy; rather, judicial processes had to be initiated by a civil claim.
7. The Department of Correctional Services coordinated the provision of primary health care to the inmate population, including the babies of incarcerated women. Primary health-care services were provided in accordance with the relevant international and national standards and compliance with those standards was monitored and reported to the relevant authorities.
8. Turning to the issues raised regarding long periods of detention, he pointed out that case flow management was the responsibility of the judiciary. The postponement of cases was dealt with through the judiciary, which in general would grant postponements to accommodate accused persons or their legal representatives. Some of the factors that caused delays included the number of bail applications and changes in legal representatives, a tactic sometimes used by accused persons to delay a matter being heard. Accused persons must be brought to court within 48 hours of their arrest. If they were not released on bail, they were usually remanded in custody in correctional service facilities.
9. Correctional services legislation had been amended so that remand detainees could be referred to the courts before completion of a period of 2 years in detention. If the court decided that a remand detainee must remain in detention after that period, subsequent applications were submitted annually. In the 2017/18 financial year, 397 of 4,309

applications submitted had been successful and, in 2018/19, 105 of 3,844. Successful applications led in general to supervision by a correctional official, a warning or release on bail. There were approximately 46,000 remand detainees in South Africa. Those detained for longer than 2 years constituted less than 5 per cent of the remand detainee population.

10. Segregation as a penalty did not amount to solitary confinement under any circumstances. It was imposed upon an inmate's written request or in order to give effect to the penalty of restriction of amenities. It was also used when such detention was prescribed by the prison doctor on medical grounds or when an inmate displayed violence or was threatened with violence, or was recaptured after escape and there was reason to believe that the inmate would attempt to escape again, among other reasons. Amenities could not be restricted for a period exceeding 42 days and an inmate who was subjected to segregation could refer the matter to the inspecting judge who must make a decision within 72 hours. There had been a reduction in the number of such penalties between 2015 and 2018.

11. The Independent Correctional Centre Visitors programme was an oversight mechanism of the Judicial Inspectorate for Correctional Services, whose inspecting judge was mandated to appoint correctional centre visitors. The judge was empowered to inspect or arrange for the inspection of correctional centres and remand detention centres in order to report on the treatment of inmates and detention conditions.

12. Regarding unnatural deaths in correctional facilities, all deaths in custody were reported to the Judicial Inspectorate regardless of whether or not they were natural. In the 2017/18 financial year, there had been 61 unnatural deaths. An experienced independent official was appointed to conduct investigations into the death of prisoners. If the death was owing to an unknown or undetermined cause, a post-mortem and full investigation must be conducted. The head of the prison was also required to launch a full investigation to determine the circumstances that had preceded or contributed to the unknown cause of death. In short, there were extensive investigations into deaths in custody, in particular unnatural deaths. Any allegations that unnatural deaths had been covered up should be further substantiated.

13. Replying to the question raised as to whether the Department of Correctional Services was understaffed, he said that, as at 31 March 2018, the Department had had 41,462 positions available, of which 39,296 had been filled, translating into a vacancy rate of 5.2 per cent. There was a South African Police Service custody register at all police stations. It was accessible for monitoring by Police Service management, the judiciary, the Independent Police Investigative Directorate and others.

14. South Africa had chosen not to provide for minimum sentences under its anti-torture legislation. Minimum sentences had been introduced for certain sexual offences such as rape, however, in order to overcome some of the biases relating to gender issues in the judiciary. However, the discretion of the judiciary could not be taken away entirely. Minimum sentences were to be followed unless there were substantial and compelling reasons for not doing so. The fact that there were minimum sentences had led to an increase in inmates serving sentences of life imprisonment.

15. The President of South Africa was personally leading the fight against gender-based violence and had called a summit on the topic in November 2018, where he had acknowledged the brutal reality of such violence and pledged to tackle the scourge head on. The declaration that had emerged from the summit was currently being implemented. South Africa regularly engaged in the 16 Days of Activism against Gender-based Violence campaign.

16. The 2017/18 annual report of the Police Service had found that there had been nearly 50,000 reported cases of sexual offences in 2017. To help deal with those cases, South Africa had established 84 sexual offences courts since August 2013. Serious sexual offences were heard by regional or higher courts. District courts did not try cases related to such offences. The courts made every effort to ensure that the victims were treated in a sensitive and age-appropriate manner. It was for that reason that they were increasingly being considered as a best practice model. Many countries had sent teams to visit the courts, with the latest being from Ireland in September 2018. In addition, victims had the

opportunity to testify in private rooms via closed-circuit television to avoid being in the presence of the accused. There were also victim support centres known as Thuthuzela care centres attached to hospitals or clinics, where survivors could receive medical attention and have evidence of the crime collected.

17. Domestic violence included emotional, verbal, psychological and economic abuse, intimidation, stalking, damage to property or any other controlling behaviour where such conduct harmed or could cause imminent harm to the safety, health or well-being of the complainant. One of the proposals made during the above-mentioned summit had been for the introduction of an automated national register of persons subject to protection orders. In March 2018, the Police Service had established 1,049 victim-friendly rooms at certain police stations, which were private rooms where the statements of victims of gender-based violence were taken.

18. The law made provision for persons other than the complainant to seek a protection order, including a parent, a counsellor, a health service provider, a member of the police, a teacher and others. Complainants did not have to bring a criminal case in order to apply for such an order. The police could not refuse to register a complaint of domestic violence. Complainants were entitled to apply for criminal proceedings to be brought at any time. They were also entitled to file civil claims.

19. The Government had embarked on the first phase of the Femicide Watch project, which entailed, among other things, a national preventive strategy against femicide and a monitoring mechanism.

20. With a view to defending the rights of lesbian, gay, bisexual, transgender and intersex persons, a national task team had been established to track crimes motivated by sexual orientation or gender identity. The work of that team had resulted in closer monitoring of cases of gender-based violence in the criminal justice system, 10 of which had led to significant convictions, including sentences of 15 years' imprisonment for murder, 13 for rape and 10 for rape and assault. His delegation could provide further information in writing if necessary.

21. Between January 2018 and the end of January 2019, all of the cases of trafficking in persons had led to terms of imprisonment, mainly life in prison, with the exception of one case in which the victim had not wished to testify and had sought compensation from the accused. The accused had agreed to compensate her and the matter had been disposed of via a plea and sentence agreement.

22. Regarding the United States Department of State Trafficking in Persons Report, he said that, as a committed multilateralist, South Africa had particular difficulty with being held to the standards of a single Security Council member, which itself had not ratified the Optional Protocol to the Convention and had recently left the Human Rights Council, among other things. It was not correct for sovereign States to be held to account through reports produced by other individual sovereign States, whose findings were not peer reviewed or necessarily based on agreed international human rights laws. However, the report, which reflected one country's view, had been directly cited by two of the Committee members. The 2018 report had downgraded the rating of South Africa from tier 2 to tier 2 watch list. To place South Africa on the watch list was unwarranted. The report's findings were myopic, putting South Africa in the same category as countries that did not have similar anti-trafficking initiatives in place. Unsurprisingly, the United States of America placed itself in tier 1. To ensure greater fairness, his Government would rather see an international body monitor human trafficking and his country's compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

23. Turning to the issue of sentencing, he recalled that South Africa had moved away from the death penalty with the advent of democracy. Minimum sentences had been introduced for various serious offences, which in turn had brought about a significant increase in the number of life sentences passed.

24. The South African Human Rights Commission was independent and its members were appointed in accordance with a process set out in the Constitution. Public funding for the Commission was channelled through the Department of Justice and Constitutional Development. During the current year, the budget allocation had been approximately 190 million rand and it would increase to 200 million rand in the coming year and 220 million in 2021. The Commission would be the coordinating body for the national preventive mechanism. As such, it would produce a report on places of detention, coordinate research and address shortcomings in monitoring and reporting to Parliament, the Committee and the Subcommittee on Prevention.

25. A bill on withdrawal from the International Criminal Court had been tabled in both Houses of Parliament, neither of which had acted on it. Parliament had since adjourned owing to the forthcoming elections. It would be for the new legislature to decide what to do about the bill. South Africa continued to be a State party to the Rome Statute. He wondered why the three permanent members of the Security Council that were not parties to the Statute could veto warrants of arrest issued by the Court. The recent United States decision to revoke the visa of the Court prosecutor to prevent her from entering the country was outrageous. The international community should consider restructuring the Court. Currently, all cases under investigation or prosecution by the Court related to countries in Africa. The success rate in recent cases had been poor and suggested that political agendas had been followed in terms of who had been prosecuted.

26. **Mr. Toni** (South Africa) said that non-profit organizations provided shelter services in the provinces, with financial support from the Department of Social Development. The shelters provided accommodation and comprehensive psychological and social services to victims of crime and violence for a period ranging from one day to six months.

27. In addition to shelters, the Department of Social Development had also set up White Doors/Safe Spaces of Hope to provide emergency temporary accommodation for victims of gender-based violence of all ages, whether female or male. White Doors were identified by communities as safe spaces for victims until they could be placed in a shelter. There were currently 206 White Doors throughout the country. Khuseleka one-stop centres were community-based facilities where victims of crime and violence could obtain a range of services from a multidisciplinary team made up of social workers, nurses, doctors, police officers, court preparation officers and prosecutors. One of the goals of the centres was to avoid re-victimization caused by poor access to services. In addition, the Department had established a gender-based violence command centre to provide professional trauma counselling. The command centre also operated a 24-hour toll-free hotline through which victims could receive support and counselling from social workers; the services could also be accessed via Skype and text message. A programme had been introduced in shelters to empower victims, in particular victims of trafficking in persons, and to promote their recovery and reintegration. Service providers received training in the treatment of victims.

28. Regarding persons with albinism, an invitation would be extended to the Independent Expert on the enjoyment of human rights by persons with albinism with a view to addressing the shortcomings in efforts to raise awareness of the adverse effects of stigmatization. Statistics in that domain were unavailable, but one court case had culminated in a life sentence while two other cases remained before the courts. International Albinism Awareness Day was marked each year, and South Africa observed National Albinism Awareness Month every September. A bill on preventing and combating hate crimes and hate speech had been tabled and defined hate crimes as offences motivated by prejudice, bias or intolerance relating to the victim's characteristics, including albinism. However, owing to the upcoming elections, its discussion would have to be resumed under the next administration. As for the Life Esidimeni tragedy, lessons had been learned, for instance the need to strengthen contractual obligations between the Government and non-governmental organizations, that would inform policy and systemic reforms. A status report on convictions and redress had been presented to the Committee on the Rights of Persons with Disabilities in 2018.

29. **Mr. Jeffery** (South Africa) said that under South African law, a child – in other words a person under the age of 18 – could be found to have criminal capacity from the age of 10, but the burden of establishing that capacity was on the State when the child was

between the ages of 10 and 14. A bill was currently before Parliament that would raise the age of criminal capacity to 12 while maintaining 14 as the age until which the State had to prove capacity. The goal was eventually to raise the age of criminal capacity to 14, but the Government wished to move slowly to avoid unexpected consequences. Pursuant to the Child Justice Act, the focus was on getting children out of the criminal justice system by placing them in diversion programmes where they were taught appropriate behaviour. The Act had been quite successful in dramatically reducing the number of child convicts and child remand detainees by 97 per cent and 92 per cent, respectively, over a period of 16 years. There were currently only a few hundred children in custody.

30. **Mr. Sesoko** (South Africa) said that, between 2014 and 2018, the criminal courts had handed down 1 conviction and 3 acquittals in cases of death in police custody, 100 convictions and 26 acquittals in cases of death as a result of police action, 1 conviction and 1 acquittal in cases of torture and 103 convictions and 11 acquittals in cases of assault. The relevant disciplinary boards, on the recommendation of the Independent Police Investigative Directorate, had imposed disciplinary measures in hundreds more cases. Post-mortem examinations were conducted by a pathologist in all cases of death in custody investigated by the Directorate. It should be noted that some alleged cases of torture referred to the National Prosecution Authority were prosecuted as assault with intent to cause grievous bodily harm pursuant to investigation findings, while others were prosecuted as assault following plea bargains. There were currently 23 torture cases before the Authority, two of which had been referred for prosecution. The Directorate had met with the newly appointed Director of Public Prosecutions to prioritize all high-profile Directorate cases, including torture cases.

31. Regarding the treatment of university protesters, two police officers would shortly be tried for murder in relation to a case at the University of Technology; police action had been found to have been justified in three cases relating to the discharge of an official firearm; and three cases involving the use of rubber bullets were still under investigation. The bill to amend the law on the Directorate, including to elevate torture to the rank of a stand-alone offence under the Directorate's purview, was before the National Council of Provinces.

32. **Mr. Machethe** (South Africa) said that the management of international migration was a complex task that placed a burden on host States. The arrest of asylum seekers and refugees was governed by the Immigration Act. Whenever such situations arose, the police notified the Department of Home Affairs to determine whether the person was in the country legally and to take appropriate action. The Department did not detain migrant children; however, those who were intercepted in cases of migrant smuggling or trafficking in persons were immediately handed over to the Department of Social Development. Under the Children's Act, migrant, refugee and unaccompanied children were recognized as potentially in need of protection and were, therefore, placed in temporary care while enquiries were made about their parental or family situation. Provision was made for issuing documentation to stateless children.

33. The principle of non-refoulement was an integral part of South African law and jurisprudence. A standing committee had been established to develop and implement asylum procedures and to regulate and oversee the work of the refugee offices. It reviewed the decisions of refugee status determination officers in cases where applications had been deemed manifestly unfounded. In addition to hearing appeals, the Refugee Appeal Board advised the standing committee and the Minister of Home Affairs.

34. The Department of Home Affairs received an average of 20,000 asylum applications per year. Decisions on asylum applications took up to five days, though the process could be longer depending on the complexity of a case. There were nearly 83,000 refugees in South Africa and appeals were pending in respect of 140,000 asylum applications. South Africa did not have or intend to put in place a refugee encampment system. However, it was considering the creation of dedicated refugee centres near ports of entry to improve the efficiency of services and ensure the protection of asylum seekers and refugees. Any persons intending to seek asylum in South Africa who presented themselves to a port of entry were issued with an asylum transit visa. He was not aware of any instances when such visas had been denied by border officials.

35. Asylum seekers were held at Lindela Repatriation Centre only when their applications had been deemed manifestly unfounded. The Centre had a 24-hour health clinic, which conducted pre-admission examinations and referred migrants to public hospitals where warranted. It was regularly inspected by the International Committee of the Red Cross and the South African Human Rights Commission. Once established, the national preventive mechanism would further improve the Centre's compliance with international standards. There were plans to set up an anonymous reporting system for migrants detained at the Centre to report abuse. In line with the Constitutional Court's ruling on the constitutionality of section 34 of the Immigration Act, the Department of Home Affairs brought migrants before the courts within 48 hours of arrest. In addition, the Department submitted quarterly reports to the Human Rights Commission and was formulating an immigration bill to put into effect the white paper on international migration and the Constitutional Court ruling. The Department had an anti-corruption branch that worked closely with the police and other law enforcement agencies to investigate and prosecute alleged cases of corruption within the Department. It had also adopted a whistle-blower policy to encourage the reporting of misconduct.

36. **Mr. Jeffery** (South Africa) said that, with regard to protests, the Constitutional Court had found sections of the Regulation of Gatherings Act to be unconstitutional and, in accordance with established practice, had given the Government a time frame in which to make the necessary amendments. The sections concerned were no longer operative even if they had not been officially rescinded. At the height of the student protests in 2015–2016, an estimated 492 million rand in damage to university facilities had been incurred.

37. Inquests into deaths in detention during the apartheid period had been slow to begin in the period immediately following the Truth and Reconciliation process; however, more cases were coming to light. The Timol inquest had led to legal action, whose outcome would influence future cases. The new approach was to look into the cases of all political detainees who had died at the Johannesburg central police station during that period, rather than into individual cases, in order to detect any patterns. Inquests were a useful mechanism because the family of the deceased had a right to legal representation. If sufficient evidence was gathered during an inquest, criminal proceedings could be initiated.

38. **Ms. Racu** (Country Rapporteur) said that the Committee was concerned that the lack of a minimum sentence for acts of torture might lead to the imposition of suspended sentences, which would not be commensurate with the seriousness of the offence. She wished to know whether the definition of torture contained in the Anti-Torture Act was in line with the Convention, notably with regard to discrimination as a motive for torture. She also wished to know how efficient the visits by the Independent Correctional Centre Visitors were and what would happen to them once the national preventive mechanism was fully functional. She would appreciate the delegation's comments on reports of a lack of regular monitoring of police detention facilities by an independent body.

39. With reference to fundamental legal safeguards and access to medical care in places of detention, she wished to know what specific measures were in place to ensure that persons in police custody, in particular, had access to a doctor, including details of how they could request a medical examination. Information received by the Committee indicated that there was no mandatory medical oversight of police detention and that the cost of a consultation with a medical practitioner had to be borne by the detainees themselves. Moreover, there were concerns that medical practitioners were required to inform police station commanders of any allegations of torture made by a detainee. In that connection she would like to know how many medical reports documenting signs of torture or ill-treatment had been sent to public prosecutors in the past five years and how many of them had resulted in investigations, prosecutions and convictions.

40. It would be useful to hear an account of the procedures that had been put in place or were envisaged by the State party to improve the protection of unaccompanied migrant, asylum-seeking and refugee children in the Lindela Repatriation Centre. She noted that there had been a notable increase in the number of prisoners sentenced to life imprisonment and wondered how many life-term prisoners there currently were, whether they were able to submit complaints and speak privately with Independent Correctional Centre Visitors and what measures were being taken to reduce the seeming overreliance on life sentences.

In that connection, she would be grateful to receive specific information on staffing levels, including the number of medical personnel, in correctional facilities and on any steps taken to address staff shortages and prevent burnout or overwork among prison officers.

41. She would appreciate a reply to her questions on the Judicial Inspectorate for Correctional Services, in particular whether it was sufficiently independent and had the necessary resources to fulfil its prison oversight mandate; and on the preventive measures that had been put in place by the State party to prevent violence, self-harm and suicide in prisons. Lastly, an update on the progress made to investigate and prosecute those responsible for the Life Esidimeni tragedy, in which more than 140 persons with psychosocial disabilities had died after being transferred to unlicensed and underfunded mental health facilities, would be helpful, as would information on any redress and compensation that had been offered to the victims' families.

42. **Ms. Belmir** said that she wished to know what steps had been taken by the State party to reduce the length of pretrial detention, which could last as long as two years; ensure that pretrial detainees and convicted prisoners were held separately; and review the procedures for requesting bail, since, as things stood, if bail had been refused, a further application could only be made if new evidence came to light.

43. She noted that detainees could appeal against the use of disciplinary measures such as segregation, which seemed to have replaced the use of solitary confinement. She wondered whether there were plans to reduce the current 72 hours during which an inspecting judge had to decide on such appeals and, if not, why not. Moreover, she would like to know why so few appeals had been lodged by persons deprived of their liberty. Were they informed of the appeal procedures that were available to them?

44. She would be interested to know the reasons for the reportedly high number of cases of violence and deaths in custody. In that connection, she wondered what measures the State party intended to take to combat impunity and ensure that police officers involved in violent acts were prosecuted and convicted. Lastly, she was concerned at widespread anti-migrant rhetoric, which branded migrants as criminals and led, inter alia, to their being subjected to expulsion or detention for lengthy periods without justification, and at the fact that minors in conflict with the law were not separated from other young people with different care needs.

45. **Mr. Tuzmukhamedov** said that the Committee remained concerned that the bill on international crimes, if adopted, would lead to the State party's withdrawal from the Rome Statute of the International Criminal Court; moreover, the bill provided that certain persons would enjoy immunity from prosecution in respect of the crime of torture, undermining the absolute prohibition of torture.

46. **Ms. Gaer** said that she wished to emphasize the universality, indivisibility, interdependence and interrelatedness of human rights. For instance, the crime of apartheid was not addressed solely by the International Convention on the Suppression and Punishment of the Crime of Apartheid, since it also involved racial and gender-based discrimination; torture and cruel, inhuman and degrading treatment or punishment; and the violation of civil and political rights, among other human rights violations. For that reason, human rights could not – and should not – be treated in a compartmentalized manner.

47. She would appreciate replies to the questions she had raised at the 1730th meeting. In particular, she wished to know why, of the eight traffickers that had been convicted in 2018, four had received suspended sentences and what action had been taken to ensure that perpetrators were given sentences that were commensurate with the gravity of the offence. Similarly, she invited the delegation to comment on reports that, according to the 2018 Trafficking in Persons Report of the United States Department of State, a number of public officials complicit in trafficking had escaped prosecution. She would especially like to know whether investigations had been launched into allegations that officials of the Department of Home Affairs had produced fraudulent identification documents that facilitated trafficking in persons and, if so, what the outcomes of those investigations had been.



48. With regard to sexual and gender-based violence, she would be grateful for data on the relationship between the perpetrators of those crimes and their victims and would like to know more about the use of protection orders, which, according to the Special Rapporteur on torture, were only granted in 28 per cent of cases. With reference to paragraph 30 of the State party's replies to the list of issues (CAT/C/ZAF/Q/2/Add.2), she would be interested to hear more about the programmes and policies established to prevent the secondary traumatization of victims and, in particular, the training provided to front-line desk staff in police stations to ensure that they dealt with victims in a more sensitive manner.

49. Lastly, she would welcome information on how the recommendations made in the 2017 judgment regarding the death in custody of Ahmed Essop Timol were being implemented, and in particular, whether the South African Human Rights Commission had sufficient resources to fulfil its task of gathering information from the family members of other victims.

50. **Mr. Rodríguez-Pinzón**, welcoming the information provided by the State party regarding article 14 of the Convention, said that he would be interested in receiving data on the number of cases in which victims of torture had filed a civil claim for compensation, even when the perpetrator had not been convicted of the crime of torture. He was concerned, however, that victims were unable to seek compensation without first having had recourse to the civil or criminal courts. He wondered whether the State party planned to remedy that shortcoming to enable victims to obtain redress through alternative, out-of-court avenues.

51. **Mr. Hani** said that, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), solitary confinement was defined as the confinement of a prisoner for 22 hours or more a day without meaningful contact, while prolonged solitary confinement was categorized as solitary confinement that lasted in excess of 15 consecutive days. The practice of segregation used by the State party was, to all intents and purposes, prolonged solitary confinement and should therefore be prohibited, in accordance with rule 43 of those Rules.

52. Regarding the decisions of the Constitutional Court in the cases of *Ruta v. Minister of Home Affairs* and *Minister of Home Affairs and Others v. Emmanuel Tsebe and Others*, he would be interested to learn what measures had been taken by the State party to comply with those decisions, including by amending its asylum procedures and reviewing its use of diplomatic assurances.

53. **The Chair** said that, regarding the Life Esidimeni tragedy, he would like to hear an account of the process through which the Government had contracted the services of the organizations concerned, including whether their credentials had been verified and any medical oversight mechanism had been put in place to ensure the quality of the treatment for patients.

54. **Ms. Racu** said that she wished to know whether detainees' lawyers, family members and monitoring entities had access to the information contained in police custody registers and occurrence books and what other measures were being taken by the State party to implement fundamental legal safeguards, including by ensuring that audio and video recordings were mandatory in interrogation rooms.

55. **Ms. Belmir** said that she would like to know what measures were being taken by the State party to combat trafficking in children.

56. **Mr. Jeffery** (South Africa) said that the introduction of minimum sentences for crimes of torture had been considered, and ultimately rejected, by Parliament during its consideration of the Prevention and Combating of Torture of Persons Act. Indeed, the exponential increase in life sentences for other offences was due to the use of minimum sentencing. He would be interested to know how the definition of torture contained in that Act differed from that enshrined in article 1 of the Convention, since, in his view, they were almost identical.

57. The Judicial Inspectorate for Correctional Services and the Independent Correctional Centre Visitors would continue to perform their monitoring functions after the national preventive mechanism had been established. They would be coordinated by the South

African Human Rights Commission. In that connection, the prison system was not affected by shortages of prison staff. In fact, the vacancy rate was just 5 per cent. Information on the number of medical personnel could be provided in writing. He emphasized that segregation was not akin to solitary confinement, as had been claimed by Committee members. The procedure for the segregation of an inmate in a detention facility was outlined in detail in the Correctional Services Act, including maximum periods for which such disciplinary measures could be applied. Judges had 72 hours to issue a decision in the event that a person deprived of liberty appealed against disciplinary sanctions, which seemed reasonable.

58. With regard to redress for victims of torture, the State party's legal system was in line with article 14 of the Convention. Victims of torture could receive compensation through civil claims, even if the accused had been acquitted. Procedures for redress necessarily involved the courts in order to guard against corruption. While persons deprived of their liberty did, admittedly, sometimes stay in detention for excessively long periods, they were able to apply for bail and appeal against negative bail decisions. Pretrial detainees and convicted prisoners were held separately. He had been surprised to hear of the allegations of high numbers of deaths in custody referred to by Ms. Belmir.

59. The question relating to the Rome Statute of the International Criminal Court was, he believed, a matter for Parliament. The practice of suspended sentences being given to perpetrators of trafficking in persons had arisen as a result of plea bargains; the relevant legislation had been fairly new at the time and prosecutors had been hesitant to take cases to trial. Practice had since changed, and severe sentences were now handed down.

60. **Ms. Mxakato-Diseko** (South Africa), endorsing the comment that had been made about the indivisibility and interdependence of human rights, said that in the previous six months South African delegations had made several trips to Geneva, and had reported extensively to different human rights treaty bodies; information was now being requested that had already been provided to those mechanisms. As a developing country, with the constraints that that entailed, it would be useful if South Africa could simply reproduce for the Committee against Torture the relevant information it had already submitted to other treaty bodies.

61. **Mr. Jeffery** (South Africa), in response to the Chair's question concerning the Life Esidimeni events, said that the process for contracting services from, and accrediting, the organizations involved had not been carried out properly. Hearings into those events had been conducted by former Deputy Chief Justice Dikgang Moseneke in 2018, which had included the cross-examination of officials. He would shortly submit a recently published report on the matter to the Committee.

62. **Mr. Sesoko** (South Africa) said that the police were obliged under the Independent Police Investigative Directorate Act to report all cases of police violence or deaths in custody immediately to the Independent Police Investigative Directorate. Failure to do so was a criminal offence. Most cases of death in custody were the result of hanging or illness. Specific standing orders had been issued to police on action to prevent deaths, including checking that persons entering custody had no objects in their possession that they could use to harm themselves. Most convictions of police officers in cases of death in custody related to non-compliance with the standing orders. Custody police were required to keep registers, specify in the registers if detainees were on medication, check detainees on an hourly basis for self-harm, and ensure medical attention for detainees complaining of illness or injury.

63. **Mr. Machethe** (South Africa) said that there was no anti-migrant rhetoric branding migrants as criminals in South Africa; indeed, the recent white paper on international migration had made a clear, positive link between migration management and development. However, international migration management had to take security considerations into account and it was necessary to prevent abuse of the asylum-seeking process.

64. Pursuant to the Constitutional Court ruling in *Ruta v. Minister of Home Affairs*, Mr. Ruta had been granted leave to apply for asylum. It was a principle of law in South Africa that no person was returned to a country unless it had been established that there was no risk of persecution or torture there; it was therefore unnecessary to amend existing

legislation. He would follow up the allegations that officials of the Department of Home Affairs had produced fraudulent identification documents that facilitated trafficking in persons, and report back to the Committee.

65. **Ms. Maluleke** (South Africa) said that, according to the most recent survey, the perpetrators of the high levels of sexual and gender-based violence against women had been their current or most recent partners. Moreover, 13 per cent of women had reported experiencing physical, sexual or emotional violence in the 12 months preceding the survey. Detailed figures would be provided to the Committee in that regard.

66. **Mr. Jeffery** (South Africa) said that South Africa had appreciated the opportunity to present its report to the Committee and the frank, constructive discussion that had ensued. While significant progress had been made in South Africa, the critical challenges of poverty, inequality and unemployment remained, as did that of eradicating the legacy of over 300 years of colonialism and apartheid. Respect for human rights and the creation of a better life for all nevertheless remained a priority and was at the centre of the work of every department of Government, informing all policies, programmes and initiatives. While the country's recent ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment demonstrated its commitment to the eradication of torture, South Africa would continue its efforts to ensure an integrated approach to the development of a comprehensive strategy for torture prevention.

*The meeting rose at 6 p.m.*