



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

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COMMITTEE AGAINST TORTURE
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**List of issues prior to the submission of the second periodic
report of SOUTH AFRICA***

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

Articles 1 and 4

1. With reference to the previous conclusions and recommendations of the Committee¹ and the Bill criminalizing torture², please provide detailed information on the measures taken to enact legislation with a specific offence of torture under the State party's criminal law, including a definition fully consistent with article 1 of the Convention, which includes appropriate penalties taking into account the gravity of the offence.

2. Currently, under which specific norms are perpetrators of acts of torture prosecuted? What other measures have been taken to combat the impunity of perpetrators of acts of torture in the State party?

Article 2

3. With reference to the previous conclusions and recommendations of the Committee³, please provide detailed information on the measures taken to adopt appropriate legislation implementing the principle of absolute prohibition of torture and establishing that orders from a

* The present list of issues was adopted by the Committee at its thirty-ninth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ CAT/C/ZAF/CO/1, para. 13.

² Ibid., para. 28.

³ Ibid., para. 14.

superior may not be invoked as a justification of torture, in case this is not included in the Bill criminalizing torture. Please, also provide detailed information⁴ on the Bill on child justice and on any other bills or laws related to the implementation of the Convention. Has the Government passed legislation enabling legislation in respect to Section 12 (d) and (e) of the Constitution?

4. Please provide specific information with regard to the results of the implementation of the Correctional Services Act of 1998 (prescribing the Code of Ethics and Conduct for Correctional Officials), the Refugees Act of 1998, the Domestic Violence Act of 1998, the Immigration Act of 2002 and the Prison Act of 2004, and their concrete objectives and results.⁵

5. Specific information with regard of the implementation of the Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service, as well as the results achieved by the newly issued Standing Orders for the Police, also need to be provided.⁶

6. Please, provide detailed information on the mandate, resources, activities, and results of the South African Human Rights Commission, including the relevant statistical data.⁷

7. According to the State party's delegation, the Independent Complaints Directorate, which has specific investigation powers regarding allegations of torture, has received more financial and human resources, its independence has been guaranteed, and amendments to its structure were being considered to reinforce and broaden its powers. Please provide detailed information supporting such a statement as well as on the activities and results of the visits undertaken by the Independent Prisons Visitors.⁸

Article 3

8. What effective measures have been taken to ensure that under no circumstances a person should be expelled, returned or extradited to a State where there are substantial grounds to believe that he or she would be in danger of being subjected to torture?⁹ Since the initial report was submitted, has any expulsion, return or extradition taken place? If so, which adequate judicial mechanisms for the review of the decision have been put in place and which post-return monitoring arrangements have been adopted?

9. Pursuant to the Committee's recommendations,¹⁰ please provide detailed information on all cases of extradition, return or removal subject to receipt of assurances or guarantees that have occurred since the entry into force of the Convention. What are the minimum contents for such assurances or guarantees and what measures of subsequent monitoring have been taken in such cases? Please, provide detailed updated information regarding the cases of Mr. Rashid and Mr. Mohamed, including on the visit to the detained returnee that South African officials undertook to Pakistan.

⁴ Ibid., para. 28.

⁵ Ibid., para. 7.

⁶ Ibid., para. 10.

⁷ Ibid., para. 8.

⁸ Ibid., para. 9.

⁹ Ibid., para. 15.

¹⁰ Ibid.

10. According to information before the Committee, Zimbabweans refugees have been repatriated indiscriminately without due concern to individual cases. What specific measures have been taken to ensure that those refugees are not subjected to any form of torture or cruel, inhuman or degrading treatment or punishment upon return to their country? Please provide statistical data on the number of immigrants, asylum-seekers and refugees in South Africa.

Articles 5, 6, 7 and 8

11. With reference to the Committee's recommendations, please provide information¹¹ about the measures taken to establish the State party's jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

Articles 10 and 13

12. Please indicate¹² which specific measures have been taken to strengthen legal aid mechanisms for vulnerable persons or groups, ensuring that all victims of acts of torture, irrespective of language constraint, may exercise their rights under the Convention and obtain redress and fair and adequate compensation as victims. How have those measures concretely improved the victims' rights? How has the Convention been disseminated in the appropriate languages to groups made vulnerable?

13. With regard to the State party's recognition of the competence of the Committee to consider communications from or on behalf of individuals claiming to be victims of a violation by the State party of the provisions of the Convention¹³, please provide information on the dissemination of the mechanism established under article 22 of the Convention.

14. Please indicate¹⁴ which training programmes currently exist for:

(a) Judges and prosecutors, including on the prosecution and punishment of perpetrators of acts of torture in a manner reflecting the gravity of the crime;

(b) Medical personnel, including on the specific training in forensic documentation of torture and other forms of physical and psychological abuse; and

(c) Law enforcement officials, including on the absolute prohibition of torture.

Please, submit any relevant training manuals.

Article 12

15. With regard to the Committee's concern about the high number of deaths in detention, please provide information¹⁵ on the impartial investigations of all deaths in detention as well as on all allegations of acts of torture or cruel, inhuman or degrading treatment committed by law enforcement personnel. How many perpetrators of such acts have been brought to justice?

¹¹ Ibid., para. 17.

¹² Ibid., para. 21.

¹³ Ibid., para. 26.

¹⁴ Ibid., para. 28.

¹⁵ Ibid., para. 20.

16. Please provide detailed information on the investigation and prosecution regarding the death of three inmates at the Krugersdorp prison in April 2007. Which entity is investigating this case? Have any law enforcement officers been accused and on what specific charges? If so, have they been suspended from duty during the investigation?

17. As prompt, thorough and independent investigation of all allegations of ill-treatment must be undertaken by the State party, please provide information¹⁶ on the investigation of all allegations of ill-treatment, harassment and extortion of non-citizens by law enforcement personnel. What effective monitoring mechanisms have been established in repatriation centres, including in the Lindela Repatriation Center, as well as for law enforcement personnel responsible for border and aliens control?

18. Pursuant to the Committee recommendations, please indicate¹⁷ the steps undertaken to bring to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate the apartheid regime, and to grant adequate compensation to all victims, thus combating de facto impunity. What methods of accountability for acts of torture committed under the apartheid regime, other than the Truth and Reconciliation Commission, have been considered?

19. With regard to the Committee's concern about the wide discretionary powers available to the National Prosecuting Authority with regard to criminal justice¹⁸, please indicate what appropriate measures have been taken to ensure that the State party's criminal justice system effectively guarantees that everyone is entitled to a fair trial.

20. Please provide¹⁹ detailed disaggregated statistical data on complaints related to acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials as well as of the investigations, prosecutions and convictions relating to such acts, including with regard to the abuses reportedly committed by South African peacekeepers and on compensation and rehabilitation provided to the victims. Please, also provide information on the number of officers accused of torture that have been suspended from duty during investigation of torture or ill-treatment.

21. Please provide information on the suspension of the director of the National Prosecution Authority, Mr. Vusi Pikoli, and on the charges against the National Police Commissioner and Interpol Head, Mr. Jackie Selebi. What measures exist to guarantee that criminal investigation and prosecution are independent from politics, including the anti-corruption unit, known as the "scorpions"?

Article 14

22. What measures are in place in the State party with regard to compensation and rehabilitation of victims of torture? Please provide relevant statistical information.

¹⁶ Ibid., para. 16.

¹⁷ Ibid., para. 18.

¹⁸ Ibid.

¹⁹ Ibid., para. 27.

Article 15

23. Please provide information²⁰ on the measures adopted to implement the principle that evidence obtained under torture cannot be invoked as evidence in any proceedings, in case this is not included in the Bill criminalizing torture.

Article 16

24. Concerned about the overall situation of the State party's detention system²¹, the Committee recommended that State party adopt effective measures to improve the conditions in detention facilities, reduce the current overcrowding and meet the fundamental needs of all those deprived of their liberty, in particular regarding health care. In this regard, what measures have been taken, and with which results, including concerning anti-retroviral therapy? Have periodic examinations of prisoners been carried out? Are detained children kept in facilities separate from those for adults in conformity with international standards? Has systematic pre-trial detention for certain crimes, especially for children, been reconsidered? Which effective monitoring mechanisms for persons in police custody have been established? Has time spent in pre-trial detention been taken into account for the calculation of the final sentence? If not, please provide an explanation for each of those issues.

25. With regard to the Committee's concern about widespread acts of violence against women and children, especially rapes and domestic violence, and about the lack of an effective State policy to prevent and combat such violence²², please indicate what measures have been adopted to prevent, combat and punish violence against women and children. Please provide relevant statistical information. How has cooperation with civil society organizations on combating such violence been carried on, and in regard to which projects? Has any research into the root causes of the high incidence of rape and sexual violence been undertaken? What preventive measures have been developed? Has any awareness-raising campaigns been initiated? Has a "no tolerance" policy been implemented? If not, please provide an explanation for each of those issues.

26. Please provide information²³ on the measures taken to prevent and combat ill-treatment of non-citizens detained in repatriation centers, including in the Lindela Repatriation Center, to provide them with adequate information about their rights and the legal remedies available against any violation of their rights and to accelerate the reduction of the backlog of asylum applications, and with which results.

27. Has the State party adopted legislation²⁴ to criminalize human trafficking, in order to adequately prevent, combat and punish human trafficking, especially that of women and children? What other effective measures have been taken, and with which results, to combat such phenomenon?

²⁰ Ibid., para. 14.

²¹ Ibid., para. 22.

²² Ibid., para. 23.

²³ Ibid., para. 16.

²⁴ Ibid., para. 24.

28. Please provide information²⁵ on the measures taken to ensure that the legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children. Has a monitoring mechanism for such institutions been established?

29. Please indicate²⁶ which monitoring mechanisms currently exist for mental health, welfare institutions and other places where persons are deprived of their liberty against their will.

Other issues

30. Please provide information²⁷ on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.

31. Please indicate the concrete measures²⁸ that have been taken to widely disseminate the Convention as well as the Committee's conclusions and recommendations and the written answers of the State party to the Committee's oral questions, in all appropriate languages in the State party, including through the media and non-governmental organizations. Please indicate how civil society organizations have been involved in the preparation of the report.

32. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national preventive mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

33. Taking into consideration the relevant resolutions of the Security Council, please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, explain if these measures have affected human rights safeguards in law and practice and how it has ensured that those measures taken to combat terrorism comply with all its obligations under international law.

34. Please provide detailed information on any difficulties preventing the State party from fully implementing the provisions of the Convention and the Committee's previous recommendations.

35. The Committee notes that, to date, it has not received a response from the State party to its recommendations in paragraphs 15, 16, 21, 23, 27 and 28²⁹. Please, provide the requested information.

²⁵ Ibid., para. 25.

²⁶ Ibid., para. 28.

²⁷ Ibid.

²⁸ Ibid., para. 30.

²⁹ Ibid., para. 29.

**General information on the national human rights situation,
including new measures and developments relating to the
implementation of the Convention**

36. Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the initial report, including any relevant jurisprudential decisions.

37. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the initial report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

38. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 2006, including the necessary statistical data, as well as on any events that occurred in the State party which are relevant under the Convention.
