



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

SOUTH AFRICA

1. The Committee against Torture (“the Committee”) considered the initial report of South Africa (CAT/C/52/Add.3) at its 736th and 739th meetings (CAT/C/SR.736 and 739), held on 14 and 15 November 2006, and adopted, at its 750th meeting, on 23 November 2006 (CAT/C/SR.750) the following conclusions and recommendations.

A. Introduction

2. The Committee takes this opportunity to express its profound satisfaction for the termination of the apartheid regime, which brought so much suffering to the South African people, as well as for the measures taken to ensure that no such regime, based on systematic grave human rights violations, especially torture and cruel, inhuman or degrading treatment, could ever come to being again.

3. The Committee welcomes the initial report of South Africa, as well as the opportunity to initiate a constructive dialogue with the representatives of the State party. It regrets, however, that the report, due in January 2000, was submitted in June 2005. It also notes that the report does not fully conform to the Committee’s guidelines for preparation of initial reports and limits itself mainly to statutory provisions rather than analysing the implementation of the Convention’s provisions. However, through the dialogue with the State party’s delegation, the Committee was able to obtain information on how the Convention’s provisions are applied in practice in the State party.

4. The Committee commends the State party's delegation for the detailed responses provided both in writing and orally to the questions posed by the members during the examination of the report. The Committee expresses its appreciation for the large and high-level delegation, comprising representatives from several departments of the State party, which facilitated a constructive oral exchange during the consideration of the report.

B. Positive aspects

5. The Committee commends the State party for the peaceful transition from the apartheid regime and the establishment of a democratic South African society as well as for the adoption of the Constitution of 1996, which includes a Bill of Rights enshrining, inter alia, the rights "to be free from all forms of violence from either public or private sources", "not to be tortured in any way" and "not to be treated or punished in a cruel, inhuman or degrading way", and sets legal safeguards for detained persons.

6. The Committee acknowledges with appreciation the wide ratification of international human rights instruments by the State party since the end of apartheid, in particular: the International Covenant on Civil and Political Rights, and its Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Rome Statute of the International Criminal Court; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention relating to the Status of Refugees, and its Protocol; and the Convention against Transnational Organized Crime.

7. The Committee welcomes the adoption of numerous legislative measures designed to entrench, promote and enforce human rights, including the abolition of the death penalty and solitary confinement, the adoption of the Standard Minimum Rules for the Treatment of Prisoners and, especially, the enactment of: (a) the Correctional Services Act of 1998, prescribing the Code of Ethics and Conduct for Correctional Officials; (b) the Refugees Act of 1998; (c) the Domestic Violence Act of 1998; (d) the Immigration Act of 2002; and (e) the Prison Act of 2004.

8. The Committee also welcomes the establishment of the Law Reform Commission, the South African Human Rights Commission, the Independent Complaints Directorate, with specific investigation powers regarding allegations of torture and the appointment, under the Correctional Services Act, of Independent Prisons Visitors, who report to the Judicial Inspectorate of Prisons.

9. The Committee notes with satisfaction the State party's assurances that more financial and human resources have been allocated to the Independent Complaints Directorate, that its independence is guaranteed, and that an amendment to its structure is being considered to reinforce and broaden its powers.

10. The Committee also acknowledges with satisfaction the establishment of a Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service, and the issuing of Standing Orders for the Police.

C. Factors and difficulties impeding the implementation of the Convention

11. The Committee recognizes that the heritage of the apartheid regime, in which torture and cruel, inhuman or degrading treatment, including arbitrary detention, enforced disappearances and other grave human rights violations, were widespread and institutionalized, continues to have some impact on the State party's criminal justice system and presents obstacles impeding the full implementation of the Convention.

12. Beyond the dismantling of the former apartheid structures, the Committee acknowledges that the establishment of a justice system respectful of human rights in general, and of the provisions of the Convention in particular, represents a challenge for South Africa and it encourages the State party to strengthen this reform. The Committee points out, however, that, as stated in article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Principal subjects of concern and recommendations

13. Notwithstanding the provisions of the Constitution and the fact that courts may consider torture as an aggravating circumstance, the Committee is concerned with regard to the absence of a specific offence of torture, as well as of a definition of torture, in the State party's criminal law, more than seven years after the Convention entered into force (arts. 1 and 4).

The State party should enact legislation with a specific offence of torture under its criminal law, with a definition fully consistent with article 1 of the Convention, which should include appropriate penalties that take into account the grave nature of the offence, in order to fulfil its obligations under the Convention to prevent and eliminate torture and combat impunity.

14. Notwithstanding the provisions of the Constitution, the Committee regrets the absence of clear legal provisions in the State party's domestic legislation ensuring that the absolute prohibition against torture is not derogated from under any circumstances (arts. 2 and 15).

The State party should adopt appropriate legislation implementing the principle of absolute prohibition of torture, prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture.

15. While acknowledging the jurisprudence of the Constitutional Court on this matter (*Mohamed and Another v. President of the Republic of South Africa and Others*, of 2001, and *S v. Makwanyane*, of 1995), the Committee is concerned by the return of persons by the State party to States where there are substantial grounds for believing that they would be in danger of being subjected to torture or sentenced to death (art. 3).

Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that this person would be in danger of being subjected to torture. When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party

should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and ensure effective post-return monitoring arrangements.

The State party should provide detailed information to the Committee on all cases of extradition, return or removal that are subject to receipt of assurances or guarantees and that have occurred since the entry into force of the Convention; what the minimum contents for such assurances or guarantees are; and what measures of subsequent monitoring it has undertaken in such cases. The State party should also provide the Committee with updated information regarding the cases of Mr. Rashid and Mr. Mohamed.

16. The Committee is concerned with the difficulties affecting documented and undocumented non-citizens detained under the immigration law and awaiting deportation in repatriation centres, who are unable to contest the validity of their detention or claim asylum or refugee status and without access to legal aid. The Committee is also concerned about allegations of ill-treatment, harassment and extortion of non-citizens by law enforcement personnel as well as with the absence of an oversight mechanism for those centres and with the lack of investigation of those allegations (arts. 2, 13 and 16).

The State party should take all necessary measures to prevent and combat ill-treatment of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre, provide non-citizens with adequate information about their rights and the legal remedies available against any violation of these rights and continue to accelerate its measures to reduce the backlog of asylum applications. Prompt, thorough and independent investigation of all allegations of ill-treatment of non-citizens should also be ensured and an effective monitoring mechanism should be established for those centres.

17. The existence of the necessary legislative measures establishing the State party's jurisdiction over acts of torture in accordance with the provisions of the Convention remains unclear for the Committee (arts. 5, 6, 7 and 8).

The State party should take the necessary measures to establish its 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.

18. While noting with appreciation the remarkable work of the Truth and Reconciliation Commission and its role in the peaceful transition in the State party, the Committee notes that de facto impunity persists regarding persons responsible for acts of torture during apartheid and that compensation has not yet been given to all the victims (arts. 12, 2 and 14).

The State party should consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid and grant adequate compensation to all victims. The State party should also consider other methods of accountability for acts of torture committed under the apartheid regime, and thus combat impunity.

19. The Committee is concerned about the wide discretionary powers available to the National Prosecuting Authority with regard to criminal justice (art. 12).

The State party should take all appropriate measures to ensure that its criminal justice system effectively guarantees that everyone is entitled to a fair trial.

20. The Committee is concerned at the high number of deaths in detention and with the fact that this number has been rising. The Committee is also concerned at the lack of investigation of alleged ill-treatment of detainees and with the apparent impunity of law enforcement personnel (art. 12).

The State party should promptly, thoroughly and impartially investigate all deaths in detention and all allegations of acts of torture or cruel, inhuman or degrading treatment committed by law enforcement personnel and bring the perpetrators to justice, in order to fulfil its obligations under article 12 of the Convention.

21. Noting the existence of legal-aid mechanisms, the Committee is concerned about the difficulties vulnerable persons or groups experience in efforts to exercise their right to complain, including for linguistic reasons, to obtain redress and fair and adequate compensation as victims of acts of torture. It is further concerned at the lack of awareness of the Convention's provisions by vulnerable groups (arts. 13 and 10).

The State party should take the necessary measures to strengthen legal-aid mechanisms for vulnerable persons or groups, ensuring that all victims of acts of torture may exercise their rights under the Convention and disseminate the Convention in all appropriate languages, in particular to groups made vulnerable.

22. While recognizing some improvement of the situation in the State party's detention system, the Committee remains concerned about the overcrowding in prisons and other detention facilities as well as with the high rate of HIV/AIDS and tuberculosis amongst detainees. The overcrowding affects, inter alia, detainees on remand and children, and the Committee is particularly concerned about detention conditions of pretrial detainees placed in police cells, which are inappropriate for long periods of detention, and which place detainees in a situation of great vulnerability. The Committee also expresses its concern that there is no effective oversight mechanism established to monitor the conditions for persons placed in police custody and that time spent in pretrial detention is not taken into account for the calculation of the final sentence (arts. 16 and 11).

The State party should 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; periodic examinations of prisoners should be carried out. The State party should also ensure that detained children are kept in facilities separate from those for adults in conformity with international standards, reconsider the systematic pretrial detention for certain crimes, especially for children, and establish an effective monitoring mechanism for persons in police custody.

23. The Committee is concerned about widespread acts of violence against women and children, especially rapes and domestic violence, and with the lack of an effective State policy to prevent and combat such violence (arts. 16 and 1).

The State party should adopt all necessary measures to prevent, combat and punish violence against women and children and reinforce its cooperation with civil society organizations in combating such violence. The State party should also undertake research into the root causes of the high incidence of rape and sexual violence so that effective preventive measures can be developed; establish awareness-raising campaigns; investigate thoroughly those grave human rights violations; and work towards a “no tolerance” policy.

24. The Committee is concerned with human trafficking in the State party and notes the lack of effective specific measures to combat such a phenomenon, including the absence of national legislation criminalizing human trafficking (art. 16).

The State party should adopt legislation and other effective measures, in order to adequately prevent, combat and punish human trafficking, especially that of women and children.

25. While noting that the State party’s legislation, as well as the jurisprudence of the Constitutional Court (*S v. Williams and Others*, of 1995), prohibits corporal punishment, the Committee remains concerned at even its infrequent use in some schools and other public institutions and at the absence of an oversight mechanism to monitor these institutions (art. 16).

The State party should ensure that legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children, and establish a monitoring mechanism for such facilities.

26. While the Committee expresses its satisfaction that the State party has recognized 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 Convention, it notes the absence of communications received (arts. 22 and 10).

The State party should widely disseminate the Convention and information about it, in all appropriate languages, including the mechanism established under its article 22.

27. The Committee requests the State party to provide in its next periodic report 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. It further requests the State party to provide detailed information on compensation and rehabilitation provided to the victims.

28. The Committee also requests detailed information on the bills criminalizing torture and on child justice and on any other bills or laws related to the implementation of the Convention. It further request information on the existing training programmes for law enforcement officials

and on monitoring mechanisms in mental health and other welfare institutions as well as 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.

29. The Committee requests the State party to provide, within one year, information on its response to the recommendations in paragraphs 15, 16, 21, 23, 27 and 28 above.

30. The Committee requests the State party to disseminate its report, with the written answers to the Committee's oral questions, and the conclusions and recommendations of the Committee widely, in all appropriate languages, through official websites, the media and non-governmental organizations.

31. The Committee, having concluded that during the consideration of the report of South Africa sufficient information was presented to cover the seven-year period of delay in submitting the initial report, decided to request the second periodic report by 31 December 2009.
