



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

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 739th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 15 November 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.739/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

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

1. At the invitation of the Chairperson, the members of the delegation of South Africa resumed their places at the Committee table.
2. Mr. NQAKULA (South Africa) said that his delegation's replies to questions raised by the Committee concerning the initial periodic report of South Africa (CAT/C/52/Add.3) would comprise two parts: a general statement; and detailed written replies (document without a symbol distributed in the meeting room).
3. South Africa's human rights ethos was founded on the preamble to its Constitution and key declarations made by Nelson Mandela, the first President of the democratic Republic of South Africa, and his successor, Thabo Mbeki, which he read out. The essence of those statements was the driving force behind the South African people's pursuit of the ideals set forth in the Constitution and their commitment to democracy.
4. Due note had been taken of the Committee's comments regarding the definition of torture. An appropriate definition would be incorporated into the Torture Criminalization Bill that was currently under discussion and would be circulated to civil society organizations for comment.
5. The Truth and Reconciliation Commission (TRC) had been established to deal with the atrocities of the former Government. It was not intended to undermine the international principle of combating gross human rights violations, in particular the commission of torture with impunity. His Government was mindful of the TRC recommendations concerning the granting of amnesty and reparation. In his speech on the winding-down of the work of the TRC in 1999, the President of South Africa had indicated the need for a mechanism to deal with outstanding cases. The National Prosecuting Authority was devising a mechanism to deal with the cases of persons who had not been granted amnesty or had not appeared before the TRC to disclose the atrocities they had committed, with a view to possible prosecutions. With regard to reparation, almost 90 per cent of 18,000 victims had received compensation of R 30,000. The problem with the remaining 650 outstanding cases was that the victims could either not be traced or had died. A public awareness campaign aimed at tracing victims and their relatives with a view to awarding them compensation would be launched.
6. New legislation relating to extradition would be passed, but he did not wish to anticipate what it would entail.
7. The Constitution was the supreme law of the land. Any statutory or common law inconsistent with the Constitution was deemed invalid. That principle also applied to customary international law. Section 231 (4) provided that any international agreement became law when it was enacted through national legislation. Thus the Convention against Torture had been incorporated into domestic law and dealt with issues such as punishment of torture.

8. The Constitution recognized three tiers of government at the national, provincial and local levels. Under section 212 of the Constitution, a traditional authority that observed the system of customary law was allowed to function subject to any applicable legislation and custom. Furthermore, the ordinary courts had the power to apply customary law subject to the Constitution and any legislation relating to customary law. When aspects of customary law were found to be unconstitutional, legislation was passed to rectify the anomalies. By way of illustration, the Recognition of Customary Marriages Act, 1988, placed women on an equal footing with men and provided for equal ownership of matrimonial property.

9. Obedience and recourse procedures available to a subordinate to oppose orders involving acts of torture were dealt with through a Bill of Rights in the Constitution, the Defence Act and the Criminal Procedure Act. Any form of torture was illegal and not in conformity with the Geneva Conventions of 1949 to which South Africa was a party. Domestic legislation did not, therefore, encourage commanders to issue illegal orders, and he believed that where such orders were given, subordinates would have recourse to a higher authority.

10. Questions had been asked concerning sexual misconduct by members of the South African National Defence Force (SANDF) deployed in peacekeeping missions in other African countries. The Ministry of Defence had requested the United Nations to help in identifying the alleged offenders with a view to their prosecution. That information had not yet been made available, but two trials were already under way involving SANDF soldiers deployed in the Democratic Republic of the Congo and Burundi.

11. The Independent Complaints Directorate (ICD) had been established on the basis of a constitutional provision. No one interfered with the work of the ICD. Although there had been some opposition within the police force to its continued existence, the ICD would not be disbanded since it was intended to buttress South African democracy. It received its budget from Parliament, to which it reported through the Minister for Safety and Security. As the executive authority concerned, he had responded immediately to the remarks of the National Commissioner of the South African Police Service by saying that the ICD would not only continue to exist, but would be given more human and material resources to do its work properly. He had answered parliamentary questions on the matter in the same vein.

12. The ICD had conducted an investigation into events that had occurred in Harrismith in August 2004, and charges had been brought against three policemen. They had been acquitted largely on the basis of a defence pathologist's view that the death of the victim had been due to negligence by the doctors treating him.

13. The ICD was also responsible for monitoring implementation of the Domestic Violence Act and reported to Parliament on the subject every six months. Stricter compliance with the provisions of the Act must be ensured.

14. There was a variety of legislation to deal with organized crime, vigilantism and paramilitarism, including the Prevention of Organized Crime Act and the Foreign Military Assistance Act. People were by law prohibited from taking the law into their own hands.

15. In response to concerns expressed about arms trafficking, he said that much had been achieved since the promulgation of the Firearms Control Act in 2002. To date, some 248,868 firearms had been collected by the South African police following investigations, confiscations and voluntary hand-ins. Given the problem posed by the illegal circulation of firearms in the African continent, South Africa had participated in programmes to provide assistance in finding and destroying firearms, for example in Mozambique and the Democratic Republic of the Congo.

16. Maximum security prisons had become a fixture of the South African correctional system owing to the prevalence of serious and violent crimes, particularly those involving organized aggravated robberies. Organized crime crossed the boundaries of States; the criminal gangs concerned were highly skilled and sophisticated.

17. Of the 160,213 inmates in correctional facilities 113,453 had committed serious and violent crimes, including rape and murder; some of them had committed serial crimes. There had been cases of inmates escaping and being rearrested. A case in point was that of a 33-year-old repeat offender who had been sentenced to 30 years' imprisonment for 16 counts of car hijacking. While awaiting the outcome of his appeal, he had committed more serious and violent crimes, and during his trial he had escaped and been rearrested. He had been sentenced to 30 years' imprisonment for the escape, and 96 years for the violent crimes.

18. Between August and November 2006, the police had made arrests in connection with 23 bank robberies and 193 cash-in-transit heists, some of which had been linked to other cases of organized aggravated robbery. Between July and October 2006, 1,192 suspects had been arrested in connection with 1,508 serious and violent crimes.

19. There was a serious overcrowding problem in South Africa's correctional facilities which compromised the health of inmates and was not conducive to rehabilitation. The approved capacity was 114,505, but the number of prisoners was currently 160,213, comprising 46,393 unsentenced and 113,820 sentenced prisoners. The Justice Crime Prevention and Security Cluster had been requested by the Government to address overcrowding as a priority and had established a committee and strategy for that purpose. The strategy was aimed at lowering the numbers of detainees awaiting trial, inter alia, through: legislation allowing release on bail and the serving of sentences outside correctional facilities; swifter court procedures; improvements in the parole system; greater use of prosecutors and clerks of courts; the upgrading of existing facilities and construction of new facilities; creating the necessary social and economic conditions to ensure the reintegration of former convicts and to curb reoffending.

20. In accordance with the Refugees Act of 1998, no one could be refused entry, expelled, extradited or returned to any country, or subjected to any similar measure, if as a result he or she feared prosecution on the grounds of race, religion, nationality or political opinion, or feared his or her life, safety or freedom would be threatened. There had been a backlog in processing applications for refugee status, but it had now been virtually cleared. Under the law, refugees were entitled to remain in South Africa pending determination of their status. During that period they enjoyed freedom of movement; there were no refugee camps in South Africa. Persons arrested under the Immigration Act who indicated their intention to apply for asylum or refugee

status were granted an asylum transit permit valid for 14 days and released for the purpose of the application. In response to a question about Zimbabwean immigrants and refugees, he said there was no discrimination based on nationality.

21. Providing clarification on the case of Khalid Mehmood Rashid, he said that on 31 October 2005 that Pakistani national has been arrested by the South African police and Department of Home Affairs officials. The legislative provisions relating the rights of the detainee having been complied with, Mr. Rashid had been deported to Pakistan. While in detention, Mr. Rashid had acknowledged that he had entered South Africa illegally. He had also signed documentation waiving his right to the review procedure provided for under law.

22. The Department of Home Affairs was the competent authority for deportation matters, while extradition matters were the responsibility of the Department of Justice and Constitutional Development. The latter could refuse extradition if it was deemed not to be in good faith or in the interests of justice. With regard to deportation, he drew attention to the case of Mohammed and Another v. President of the Republic of South Africa and Others, in which the Constitutional Court had ruled that in handing over Mr. Mohammed to the United States authorities, South African officials had breached the Aliens Control Act, 1991, in particular his constitutional right to life and dignity and his right not to be subjected to cruel, inhuman or degrading punishment. The Court had found that South Africa could not expose a person to the risk of execution through deportation or extradition, regardless of his or her consent. His Government was committed to amending the relevant legislation so as to prevent the recurrence of such cases.

23. The Correctional Services Act prescribed the code of ethics and conduct for prison officials. The purpose of the Act was to contribute to a just society by enforcing court sentences and detaining prisoners safely, while ensuring human dignity and promoting the social responsibility and human development of all prisoners. The Act also provided for the protection of the rights of prisoners and regulated searches, the use of force, firearms and segregation. Violations of the Act resulted in criminal and disciplinary proceedings.

24. The Jali Commission of Inquiry had been appointed by the President in 2001 to investigate alleged cases of corruption, violence and intimidation in the Department of Correctional Services. The Commission's report was currently being considered by the President, together with action plans drawn up by the Department to implement the Commission's recommendations. Interim recommendations had already been implemented, as a result of which disciplinary and criminal proceedings had been initiated against corrupt and criminal elements who had been removed from the Department. An anti-corruption strategy and a policy on whistle-blowing had also been formulated.

25. The St. Albans prison incident, according to allegations by an NGO, was an attempt by the Department of Correctional Services to interfere with the right to legal representation of certain prisoners allegedly implicated in the killing of an employee. Since civil court proceedings were pending, he could not comment publicly on the matter, into which a departmental investigation was also under way.

26. Under the Correctional Services Act, the Department of Correctional Services was obliged to provide adequate health-care services within its available resources. Every prisoner

could be examined by a doctor, and qualified nursing and medical staff were employed by the Department. When a prisoner died and a doctor could not certify that the death was due to natural causes, the prison governor was obliged under the law to report the death to the Department of Health for a possible post-mortem or inquest and to inform the next of kin and inspecting judge. The latter could carry out or order an investigation.

27. His Government was reviewing the question of detainees awaiting trial in order to provide secure facilities for them. Five working teams had been established to address the relevant policy, procedure and legislation questions. On the basis of the principle that a person was innocent until proved guilty, convicted prisoners were separated from prisoners awaiting trial.

28. The CHAIRPERSON, speaking as Country Rapporteur, welcomed the fact that some of the issues raised by the Committee were already being dealt with through new or proposed legislation. As far as the definition of torture was concerned, he urged the State party to comply with that contained in article 1 of the Convention. The same applied to legislation relating to expulsion, refoulement and extradition, and the requirement under article 3, paragraph 1, of the Convention, which was, of course, non-derogable even during states of emergency.

29. He also noted with satisfaction the delegation's assurance that the ICD would be given additional resources to continue its work.

30. With regard to events in Harrismith, he expressed surprise that a sentence for a less serious offence had not been handed down, instead of a verdict of acquittal. He also found the sentence of 96 years' imprisonment for the repeat offender somewhat strange; perhaps it was intended to underscore the severity of the crime involved.

31. He asked whether the South African Government had conducted any inquiries to establish what had happened to Mr. Rashid following his deportation. One positive result of the Jali report was the removal of corrupt elements from the Department of Correctional Services; he wondered whether there were any other results. Lastly, he enquired whether any criminal or disciplinary proceedings had been initiated in connection with the St. Albans prison incident.

32. Mr. WANG Xuexian, Alternate Country Rapporteur, drew attention to the importance of training and education in the prevention of torture. If he had understood correctly, law enforcement officials were only obliged to report deaths in custody to the ICD, so that an investigation could be carried out. He suggested that there should also be a requirement to report all allegations of ill-treatment. Given the importance of monitoring and oversight in the prevention of criminal acts during detention, he recommended the establishment of an independent oversight mechanism to report on all persons, including children, held in places of detention, psychiatric institutions or hospitals. A similar mechanism could also be set up in relation to centres for illegal immigrants.

33. Training and awareness-raising on the issue of corporal punishment were necessary in all schools. He wondered whether the Children's Act of 2005 could be amended to include provisions on corporal punishment in schools.

34. Mr. MARIÑO MENÉNDEZ said he would welcome information on any legal aid provided by the State to detainees having insufficient resources, and to victims wishing to bring a torture-related case before the courts. Similarly, what legal assistance was provided to ethnic-minority groups, particularly bearing in mind the different languages spoken?
35. Ms. SVEAASS asked whether allegations of violence, including sexual violence, made in the context of South Africa's peacekeeping work were investigated by the ICD. If so, how did the process work? She would welcome information on how persons charged with multiple rapes were dealt with, given the regrettably high incidence of that crime. She would also be interested to know more about the legislation being considered concerning the granting of amnesty.
36. Ms. BELMIR sought clarification concerning who was responsible for establishing criminal policy in South Africa, particularly in connection with the reference in the initial report to the development by the police of the "Policy on the prevention of torture and treatment of persons in custody of the South African Police Service". She would welcome comment on the inherent contradiction of the police force developing the very policy it was in some cases accused of breaching, and on the sometimes lengthy periods of pretrial detention in police stations.
37. Mr. CAMARA expressed concern at the consecutive 30- and 96-year prison sentences imposed on a 33-year-old man, which appeared to be inconsistent with the delegation's stated aim of rehabilitating persons convicted of crimes. That practice should be brought into line with modern criminal justice systems in which judges, when imposing life sentences, could stipulate a minimum term to be served, for example 30 years. In that way the State party would both meet its obligations under article 16 of the Convention and provide for the possibility of rehabilitation.
38. Mr. GALLEGOS CHIRIBOGA drew attention to the fact that legislation must yield tangible results. It must be possible in practice to exercise the rights established in law, and to effectively impose sanctions, thereby demonstrating that there was no impunity.
39. Discussing and raising awareness of all aspects of the legal reforms in South Africa - particularly the message that torture and other cruel or inhuman treatment would not be tolerated, nor impunity granted - was a matter of national and international importance. That also applied to South Africa's peacekeeping troops, for example in the Democratic Republic of the Congo: sexual abuse by soldiers of people under their protection must not be tolerated.
40. Mr. GROSSMAN asked what follow-up there had been to the case of Mr. Rashid Khalid, who had been deported to Pakistan. Did the Government know what had happened to him in Pakistan, whether he had been visited by diplomatic representatives, and what his current situation was? The principle of non-refoulement must be respected for all individuals, including persons illegally resident.
41. Mr. NQAKULA (South Africa) said that Mr. Rashid Khalid had been visited in Pakistan, inter alia by officials from the Ministry of Safety and Security. To his knowledge, Mr. Khalid was still in Pakistan.

42. Work would be carried out on bringing the definition of torture in South African legislation into line with that contained in the Convention. Issues of deportation and other matters relating to illegal immigrants would also be examined.
43. The Government was currently working on a strategy for improved monitoring of ministries in terms of security, involving the establishment of an overall monitoring structure, whose scope would go beyond that of the ICD.
44. He would be reporting on the discussions held with the Committee to the relevant judicial and government authorities, with a view to implementing some of the Committee's recommendations and drafting relevant legislation.
45. Because of the separation of powers of the judiciary and the executive, the Government had played no role in the unfortunate outcome of the Harrismith case. He acknowledged that shortcomings at the preparatory stages of judicial cases sometimes resulted in inappropriate judgements.
46. He would provide further details on the case of the 33-year-old man serving lengthy consecutive prison sentences. The rehabilitation of prisoners was important, as was the need to prevent reoffending.
47. "Safety valves" existed in the South African correctional system, including the use of parole boards and the possibility of early release, but violent crimes such as murder were viewed very severely.
48. The Government had so far been unable to obtain information from the United States in relation to Mr. Mohammed following his deportation (see paragraph 22). Further efforts would be made to establish what had happened to him, and the Committee would be kept informed.
49. While corporal punishment in schools was not widespread, he acknowledged the possibility that it might occur in some instances. Cases where teachers had assaulted pupils had been taken up by the relevant law enforcement agencies. He would look more closely into the matter.
50. The ICD was not responsible for investigating allegations of misconduct in the armed forces, including peacekeeping troops abroad. That task would fall within the remit of the overall monitoring structure he had mentioned earlier. In the meantime, the Ministry of Defence would look into the questions raised and take appropriate action.
51. There were very severe penalties for the crime of multiple rape in South Africa. He explained that there was to be no new law concerning the granting of amnesty, and described the existing process relating to amnesty, which had been implemented since the abolition of the Committee on Amnesty. If a judge considered, in that connection, that a person accused of violent acts had given full disclosure of his or her crimes, that person could be released. However, families of victims were entitled to bring civil proceedings against the perpetrator.
52. Criminal policy was laid down in South African legislation. The South African Police Service was in no way responsible for defining policy, but rather defined the rules relating to the conduct of police officers in enforcing the law.

53. He acknowledged that the matter of sometimes lengthy pretrial detention in police cells gave cause for concern; it was being looked into. Consideration was also being given to the possibility of alternative facilities for pretrial detention.
54. Ms. SISHUBA (South Africa) said that the Jali Commission of Inquiry had been set up in 2001 to investigate the Department of Correctional Services. Its report had contained a number of recommendations on policy reform and several of its interim recommendations had already been implemented. In particular, the Commission had identified corruption in the recruitment process. New legislation, approved by the Cabinet in February 2005, took its recommendations into account and a new integrated human resources strategy had been adopted. The sources of corruption had been pinpointed, recruitment had been outsourced and training had begun in earnest. All correctional service managers now received training in ethics and ways of combating corruption. The Department had also revised its code of conduct and the disciplinary code. An investigation unit had been set up and a whistle-blowing policy introduced, with a view to detecting and sanctioning corruption.
55. Another Commission recommendation was that all prisoners should have access to health care and be examined immediately upon admission to identify any special medical needs and detect any injuries. It was being implemented as far as available resources allowed. The Department of Health made its medical staff available and the Department of Correctional Services employed full-time nurses for that purpose.
56. New legislation, drafted in response to another of the Commission's recommendations, would require all prisoners to be given three proper meals a day. That was easier in smaller prisons, but special strategies were required in the larger ones owing to overcrowding and limited resources. Recruitment of prison warders had been stepped up and their initial training had been extended and intensified.
57. The murder of a warder at St. Albans prison was believed to be gang-related. A civil court case was pending and a departmental investigation was in progress.
58. Ms. MTIMKULU (South Africa) said that, following an assessment of human rights training for police officers in South Africa, a new manual had been produced, explaining, inter alia, how to deal with persons remanded in custody. All police officers throughout the country, regardless of seniority, now received human rights training that took into account the State's obligations under the Convention against Torture. Of course, training and awareness-raising were ongoing processes.
59. Mr. XINWA (South Africa) said that the 1969 Legal Aid Act had established the Legal Aid Board. In theory, the national legal aid scheme was available to anyone deemed unlikely to be given a fair trial unless provided with a counsel or if the sentence was likely to exceed three years in prison. Indigent persons were means-tested and the very poor automatically qualified for legal aid, but financial restraints ruled out universal coverage. His Government faced a threefold challenge: modernizing the Legal Aid Board to meet present-day needs; making universal legal aid affordable; and raising awareness of human rights among the most vulnerable, including the very poor.

60. There were 11 official languages in South Africa and, in keeping with the egalitarian values enshrined in the Constitution, everyone was entitled to interpreting services in a court of law.

61. Mr. MAKHUBELA (South Africa), answering questions about the ICD, said that under existing legislation the Directorate was required to investigate all complaints lodged by members of the public relating to deaths occurring in police custody or as a result of police action. It had recently also received complaints against members of the municipal safety and security services. Complaints were also lodged by the Minister for Safety and Security and by members of the executive council responsible for safety and security in the provinces, while the ICD could also investigate allegations of unlawful police action on its own initiative. The President of the Republic had recently ordered the ICD to investigate complaints concerning members of the Directorate of Special Operations, also known as the “Scorpions”. Most of the Directorate’s work was carried out in the provinces but it also operated a very small anti-corruption unit at its Pretoria headquarters, set up to investigate cases of alleged police corruption.

62. The CHAIRPERSON thanked the delegation for its close cooperation and productive dialogue with the Committee.

The public part of the meeting rose at 4.40 p.m.