



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

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## Committee against Torture

### Concluding observations on the second periodic report of South Africa\*

1. The Committee against Torture considered the second periodic report of South Africa (CAT/C/ZAF/2) at its 1730th and 1733rd meetings, held on 30 April and 1 May 2019 (see CAT/C/SR.1730 and 1733), and adopted the following concluding observations at its 1750th meeting held on 14 May 2019.

#### A. Introduction

2. The Committee regrets that the submission of the State party's second periodic report was eight years late and that the Committee did not receive any follow-up reply to its previous concluding observations (CAT/C/ZAF/CO/1). It welcomes, however, the receipt of the State party's second periodic report, in 2017, and the replies (CAT/C/ZAF/Q/2/Add.2), in April 2019, to the list of issues (CAT/C/ZAF/Q/2/Add.1) sent by the Committee in January 2019. The Committee welcomes the dialogue conducted with the State party's delegation and the oral and written replies provided to the concerns raised by the Committee. It also welcomes the State party's acceptance of the simplified reporting procedure announced by the delegation at the end of the dialogue.

#### B. Positive aspects

3. The Committee welcomes the accession to or ratification of the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 18 October 2005;

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 30 November 2007;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 30 June 2003;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 24 September 2009;

(e) The International Covenant on Economic, Social and Cultural Rights, on 12 January 2015.

4. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

\* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).



- (a) The Criminal Law (Sexual Offences and Related Matters) Amendment Act, in 2007;
- (b) The Correctional Services Amendment Act, in 2008;
- (c) The Child Justice Act, in 2008;
- (d) The Independent Police Investigative Directorate Act, in 2011;
- (e) The Protection from Harassment Act, providing for protection orders against harassment in the context of domestic violence, in 2011;
- (f) The Military Ombud Act, in 2012;
- (g) The Prevention and Combating of Torture of Persons Act, in 2013;
- (h) The Prevention and Combating of Trafficking in Persons Act, in 2013;
- (i) The South African Human Rights Commission Act, in 2013;
- (j) The Superior Courts Act, providing a uniform framework for judicial management, in 2013.

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

5. In its previous concluding observations (CAT/C/ZAF/CO/1, para. 29), the Committee requested the State party to provide further information regarding areas of particular concern, including expelling, returning or extraditing persons where there were substantial grounds for believing that they would be in danger of being subjected to torture (para. 15); ill-treatment of non-citizens awaiting deportation in the Lindela Repatriation Centre (para. 16); the strengthening of legal aid mechanisms for vulnerable groups (para. 21); measures to prevent and combat violence against women (para. 23); statistical data relating to acts of torture and to abuses reportedly committed by South African peacekeepers (para. 27); and legislation criminalizing torture and on child justice (para. 28). The Committee regrets that the State party did not send any follow-up reply despite a reminder from the Committee.

### Categorization of torture and appropriate penalties

6. While welcoming the adoption of the Prevention and Combating of Torture of Persons Act and taking into account the explanations provided by the State party during the dialogue, the Committee is concerned:

(a) At the absence of a categorization of torture as a serious crime with a mandatory minimum sentence, as compared to other serious crimes under criminal law, such as assault, assault with intent to do grievous bodily harm, murder and various sexual offences, which may result in a suspended sentence for perpetrators of acts of torture that would not be commensurate to the gravity of the crime;

(b) That the Act does not provide for claims for redress by victims of torture, who are obliged to seek redress and remedy through civil claims of damages for common assault, assault with intent to do grievous bodily harm, indecent assault or attempted murder, which are long and costly and may lead to the victim's retraumatization;

(c) About the use of the Act in practice, since it does not provide for investigation of acts of torture and since no public officials have been prosecuted under the Act to date (arts. 2 and 4).

### 7. The State party should:

(a) **Consider amending the Prevention and Combating of Torture of Persons Act with a view to introducing mandatory minimum or graduated penalties leading up to the maximum penalty for acts of torture, including by citing aggravating factors,**

which take into account the gravity of the nature of the acts, as set out in article 4 (2) of the Convention;

(b) **In order to operationalize the Act, consider introducing procedural provisions to ensure the documentation, effective and independent investigation and prosecution of acts of torture and cruel, inhuman or degrading treatment or punishment, including those perpetrated by persons employed by private institutions or organizations that are contracted to carry out work on behalf of the State as well as other non-State actors;**

(c) **In order to further operationalize the Act and provide full reparation to victims of torture, consider amending it in order to include specific provisions relating to the right of victims of torture to seek civil redress and remedy under the Act and access all five forms of reparation outlined in the Committee's general comment No. 3 (2012) on the implementation of article 14, namely, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;**

(d) **Inform the Committee about the number of torture cases prosecuted under the Act during the period under review and about the number of cases of torture prosecuted under the Independent Police Investigative Directorate Act relating to complaints "of torture or assault against a police officer in the execution of his or her duties", by the Judicial Inspectorate for Correctional Services and under any other legislation;**

(e) **In order to prevent impunity, ensure prompt and fair prosecution and punishment of perpetrators of torture and ill-treatment.**

#### **International crimes bill**

8. The Committee is gravely concerned about the proposed international crimes bill that is currently being considered by the National Assembly. If enacted into law, the bill would amend the Prevention and Combating of Torture of Persons Act so as to provide immunity for certain persons from prosecution in respect of the crime of torture. If implemented, the respective provisions of the Act, as amended, will run counter to the Convention and, if applied in practice, will constitute a gross violation of the Convention (arts. 2 and 4).

9. **The State party should align its legislation with the provisions of the Convention and refrain from enacting into law provisions of the international crimes bill amending the Prevention and Combating of Torture of Persons Act, which, if enforced, will provide immunity for certain persons from prosecution in respect of the crime of torture.**

#### **Age of criminal responsibility**

10. The Committee is concerned that the age of criminal responsibility in the State party is 10 years (art. 2).

11. **The State party should amend its legislation with a view to raising the age of criminal responsibility in accordance with international standards.**

#### **Fundamental legal safeguards**

12. While taking note of the information provided by the State party, the Committee is concerned that detained persons may not enjoy all fundamental legal safeguards from the outset of their deprivation of liberty, such as the right to be informed immediately, rather than within a reasonable time after arrest, of the reasons for the arrest or detention; to have access to a lawyer or legal aid; to be informed of their right to undergo a medical examination by an independent doctor upon apprehension – not only of their right to have access to a doctor at their own expense; to have their detention recorded in a register to which they, their family members and their lawyers have access, including the custody register and the occurrence book. The Committee is also concerned that medical oversight of police detention is not mandatory and that police service officials have the discretion to

decide whether detained persons should receive urgent medical treatment if the detained persons themselves do not request it (art. 2).

**13. The State party should:**

(a) **Guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be informed immediately of the charges against them; to have prompt access to a lawyer or to free legal aid during all proceedings; to receive free interpretation services; to be able to notify a relative or another person of their choice about their detention or arrest; to request and receive a medical examination by an independent doctor upon their deprivation of liberty, including by an independent doctor of their choice upon request; and to have their deprivation of liberty recorded at all stages, including transfers to different facilities, in registers that are accessible to their family members and lawyers;**

(b) **Ensure that there is mandatory and systematic medical oversight of police detention and interrogation, including with respect to staffing, equipment and medication, and that police station commanders are automatically informed about allegations of torture, take the necessary action and ensure that the medical practitioner's report is sent to the Independent Police Investigative Directorate; the State party should also compile statistical data on the number of cases identified through the Directorate, and detailed information on the outcome of investigations concerning these cases;**

(c) **Systematically monitor compliance by all public officials with the fundamental legal safeguards, penalize any failure on the part of officials to comply and inform the Committee in its next periodic report about the results of the monitoring of compliance of public officials with fundamental legal safeguards;**

(d) **Provide information on the complaints received regarding failure to respect fundamental legal safeguards, including the number of complaints received, and on their outcome.**

**Prolonged pretrial detention**

14. The Committee is concerned about the persistence of recourse to pretrial detention in the State party, which may not be monitored regularly by a judge and is often prolonged owing to congestion in the judicial case flow, and about the absence of information on whether pretrial detention, which significantly contributes to overcrowding in places of detention, is taken into account in all cases when the serving of the final sentence is calculated (arts. 2, 11 and 16).

**15. The State party should:**

(a) **Take all measures necessary to ensure that pretrial detention, in particular of children, is reduced to the extent possible, is exceptional, is appropriately regulated in law and is closely monitored by courts;**

(b) **Ensure that time spent in pretrial detention is taken into account when calculating the time to be served under the final sentence and is carried out in keeping with the provisions of the Convention and of the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa;**

(c) **Facilitate the work of judicial case-flow management committees and envisage using alternatives to remand detention, as laid out in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(d) **Adopt the measures, including in terms of training for judges, necessary to promote the use of alternatives to pretrial detention, in accordance with international standards.**

### Conditions of detention

16. The Committee is concerned about poor conditions of detention in places of deprivation of liberty, including overcrowding, poor materials, dilapidated infrastructure and sanitary facilities, inadequate food, poor ventilation, limited access to health and medical services, lack of exercise, and inadequate working conditions for prison staff due to the overcrowding. It is also concerned about the regime in super-maximum security prisons, where prisoners are locked in their cells for 23 hours per day for a minimum of six months (art. 11).

17. **The State party should:**

(a) **Take all measures necessary to improve conditions of detention, in particular with regard to overcrowding, by substantially reducing the number of persons held in pretrial detention, loosening bail requirements, reviewing the use of arrest quotas as indicators of police performance, introducing mandatory minimum sentencing, substantially reducing the number of persons sentenced to life imprisonment, reducing the sluggish pace of the parole process, providing for restorative justice and actively promoting alternatives to detention in keeping with the Tokyo Rules;**

(b) **Ensure that persons deprived of their liberty are treated humanely in all places of detention, including super-maximum security prisons and those run by private contractors, in keeping with the Nelson Mandela Rules;**

(c) **Improve the material conditions in places of deprivation of liberty, including sanitary and hygiene conditions, ventilation, food and access to health and medical services and proper exercise; repair dilapidated detention facilities and, if required, build new ones, in order to bring them into line with the Nelson Mandela Rules;**

(d) **Organize the health-care services provided to detainees in close liaison with the general public health system, on the basis of the principle of access for all detainees to health care of the same quality as that available to the public, increase the number of medical personnel and ensure the provision of adequate mental health care;**

(e) **Ensure adequate working conditions for prison staff.**

### Prisoners serving life sentences

18. The Committee is gravely concerned at the inordinately high number of prisoners serving life sentences, which grew by 818 per cent between 2000 and 2014, and the increasing reliance on life sentences in the State party, which contributes considerably to overcrowding in prisons. It is also concerned about the State party's explanation that setting minimum sentences for offences would give rise to an increase in the number of prisoners, including those serving life sentences (arts. 2, 4, 11–14 and 16).

19. **The State party should:**

(a) **Provide specific information on and statistics relating to the reasons why inmates are serving life sentences, including their previous offence profiles;**

(b) **Consider revising legislation in order to introduce a gradation of sentencing in accordance with the gravity of the offence;**

(c) **Implement reforms in legislation regarding eligibility criteria for parole; abolish life sentences without parole; ensure that minors cannot be punished with life sentences; speed up parole proceedings; and harmonize conditions for parole, maintaining those that are most favourable to the prisoners.**

### Segregation and mechanical restraints

20. While taking into account the explanations provided by the delegation of the State party, the Committee is concerned that the conditions under which detained persons are placed in segregation constitute de facto solitary confinement, albeit while being used for a range of purposes. It is also concerned that amenities for persons placed in segregation can

be restricted for up to 42 days, with a loss of their gratuity for up to two months. It is particularly concerned that an inspecting judge has 72 hours to decide on the use of mechanical constraints such as handcuffs and leg irons (arts. 2, 11 and 16).

**21. The State party should ensure that measures such as segregation, which amount to de facto solitary confinement, are used only in the most exceptional circumstances and for short periods of time, in accordance with the Nelson Mandela Rules. The State party should treat prisoners with humanity and dignity and regulate the use of physical restraints such as handcuffs and leg irons with a view to avoiding their use to the extent possible in all settings.**

#### **Violence in places of detention and deaths in custody**

22. The Committee is seriously concerned at numerous incidences of violence in places of deprivation of liberty, including excessive use of force, torture, sexual violence and other forms of ill-treatment. It is also concerned at the high number of deaths in custody resulting, notably, from actions of police and prison officials and from the absence of medical treatment, and at the low number of investigations into and prosecutions relating to such deaths (arts. 2, 11–14 and 16).

**23. The State party should:**

(a) **Ensure that all deaths in custody and all cases of violence and other forms of ill-treatment in State or contract-managed prisons are investigated promptly, thoroughly and impartially by an independent mechanism, with no institutional or hierarchical connection between the investigators and the alleged perpetrators; that those responsible are brought to justice and, if found guilty, duly punished; and that the victims or their dependants obtain adequate redress;**

(b) **Ensure independent forensic examinations, provide autopsy reports to the family members of the deceased and, if requested, permit family members to commission private autopsies;**

(c) **Ensure that the courts in the State party take into consideration the reports of independent forensic examinations and autopsies as evidence in criminal and civil cases;**

(d) **Provide updated information to the Committee on the steps taken to implement the results of the arbitration hearings conducted by Judge Dikgang Moseneke into the death of at least 144 patients with psychosocial and mental disabilities who died after being transferred from Life Esidimeni facilities to 27 other centres, of which some did not have operating licences, and to deal with the cases of persons who are still missing;**

(e) **Ensure that custodial staff are required to thoroughly record the circumstances in all cases in which physical force and special means have been used against inmates, and also ensure adherence to the rules regarding the use of force in the police and penitentiary units by implementing regular independent monitoring;**

(f) **Provide training to custodial staff on the management of prisoners in order to prevent the commission of inter-prisoner violence, suicide and self-harm incidents, and speed up the finalization of the guidelines regarding the prevention of deaths of persons in custody.**

#### **Monitoring of places of detention and complaints mechanisms**

24. While welcoming the parliamentary approval of the ratification of the Optional Protocol to the Convention and the designation of the South African Human Rights Commission as the coordinating body for the national preventive mechanism, the Committee is concerned about the limitations currently faced by oversight bodies in terms of mandates, budgets and institutional independence from the government departments that are supervised. It is gravely concerned at reports that there is, at present, no monitoring of police stations and their detention facilities. It is also concerned about allegations that there are no adequate safeguards in place to protect complainants from reprisals in all places of

deprivation of liberty, that there have been no examples of complaints leading to prosecutions and that judges are reported to not always take seriously the affirmations of persons deprived of their liberty that their confessions were obtained under torture (arts. 2, 11–13 and 16).

**25. The State party should:**

(a) **Speed up the ratification of the Optional Protocol to the Convention and ensure that the future national preventive mechanism is provided with the resources necessary to fully implement its mandate;**

(b) **Enact legislative amendments for bodies that will form part of the national preventive mechanism under the Optional Protocol;**

(c) **Ensure that the currently existing oversight bodies are able to visit all places of deprivation of liberty, including without prior notice, and are able to meet and speak in confidence with persons deprived of their liberty;**

(d) **Ensure regular visits to places of deprivation of liberty other than prisons, in particular to police detention units and psychiatric and social care establishments;**

(e) **Ensure that oversight bodies can deal promptly and effectively with complaints and investigations and hold the relevant authorities accountable;**

(f) **Ensure confidential mechanisms for receiving and processing complaints filed by persons deprived of their liberty; provide adequate safeguards to ensure that complainants will not be subjected to reprisals; and ensure that complaints of torture are investigated in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

**South African Human Rights Commission**

26. While noting that the South African Human Rights Commission has been given additional powers to give effect to its constitutional mandate, through the South African Human Rights Commission Act of 2013, and has been designated to serve as the national preventive mechanism upon the ratification of the Optional Protocol to the Convention by the State party, the Committee is concerned that the Commission lacks the adequate financial and human resources to carry out all of its mandates (art. 2).

**27. The State party should ensure the financial and functional independence of the South African Human Rights Commission by providing it with the resources necessary to enable it to fulfil its mandate effectively, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and the guidelines on national preventive mechanisms issued by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

**Cases of torture considered by the Truth and Reconciliation Commission**

28. Since the application of the Prevention and Combating of Torture of Persons Act is not retroactive, the Committee is concerned at the absence of prosecution of apartheid-era cases of torture and other gross human rights violations, in particular with regard to persons who were considered ineligible for amnesty by the Truth and Reconciliation Commission. The Committee is also concerned that the State party has not investigated cases of death in detention and other unsolved cases of death relating to gross human rights violations, and at the lack of implementation of the judgment of the North Gauteng High Court concerning the death of Ahmed Essop Timol (arts. 2 and 12–14).

**29. The State party should implement the recommendations of the Truth and Reconciliation Commission relating to the investigation and prosecution of apartheid-era cases of torture, ill-treatment, enforced disappearances and other serious human rights violations documented by the Commission. It should prosecute the perpetrators, where possible, and provide adequate redress and appropriate compensation to the**

victims. The State party should provide assistance to all families whose relatives died in detention with regard to obtaining records and gathering further information in order to have the initial inquests reopened and to solve the cases of other suspicious deaths. In particular, the State party should indicate how it intends to give effect to the judgment of the North Gauteng High Court concerning the death of Ahmed Essop Timol.

#### **Marikana incident**

30. The Committee is gravely concerned at reports about the violent conduct and lethal use of force by the police and security forces on 16 August 2012 against striking mineworkers at Marikana, which resulted in 34 deaths and serious injury to 78 persons, and at the slow pace of investigations into the criminal responsibility of South African Police Service officials and into the potential liability of the Lonmin mining company (arts. 2, 4, 10–14 and 16).

31. **The State party should:**

(a) **Implement the recommendations of the Marikana Commission of Inquiry, ensure the prompt prosecution of the police officers implicated in the Marikana deaths and punish those convicted of illegal killings;**

(b) **Investigate the potential liability of the Lonmin mining company for the Marikana incident and review the compliance of companies with their responsibilities under all relevant legal standards for operations in the mining sector;**

(c) **Give priority to the speedy settling of civil claims in relation to the killings perpetrated during the protests of 16 August 2012 in order to provide effective remedies to the families of the victims;**

(d) **Revise laws and policies regarding public order policing and the use of force, including lethal force, by law enforcement officials in order to ensure that all policing laws, policies and guidelines are consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and inform the Committee, in the State party's next periodic report, of the implementation of those laws, policies and guidelines;**

(e) **Ensure that the training for law enforcement and security forces on the use of force emphasizes the absolute prohibition of torture and the need to respect the principles of necessity and proportionality in accordance with the Convention and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Police brutality and excessive use of force**

32. The Committee is concerned:

(a) At numerous reports of acts of torture committed by police officials, including the report by the Independent Police Investigative Directorate of 217 cases of torture and 3,661 cases of assault recorded during the period 2017/18, as well as reports of 112 rapes committed by police officers, including 35 committed while the officers were on duty;

(b) That such acts have resulted in a significant increase in the number of deaths in police custody, including 394 deaths as a result of police action and 302 deaths in police custody for the 2016/17 period, while less than half are investigated;

(c) At the absence of recommendations for prosecution submitted by the Independent Police Investigative Directorate, which has the legal mandate to receive, log and investigate complaints against assault or torture by the police, to the National Prosecuting Authority, to institute criminal proceedings (arts. 2, 4, 10–14 and 16);

(d) At the unambiguous and openly hostile language of some politicians in this connection, which may amount to hate speech or instigation to hate crimes.



33. **The State party should:**

(a) **Ensure that all law enforcement officials cooperate with and notify the Independent Police Investigative Directorate regarding all allegations of torture by law enforcement officials, recommend disciplinary actions to the police service, and ensure that the Directorate refers all criminal cases to the National Prosecuting Authority;**

(b) **Ensure that all allegations of torture, excessive use of force and ill-treatment by law enforcement officials are investigated promptly, effectively and impartially by mechanisms that are structurally and operationally independent and with no institutional or hierarchical connection between the investigators and the alleged perpetrators;**

(c) **Ensure that all persons under investigation for having committed acts of torture or ill-treatment are suspended immediately from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;**

(d) **Increase its efforts to systematically provide training to all law enforcement officials on the use of force, especially in the context of crowd control, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

**Acts of gender-based and domestic violence attributable to the State**

34. The Committee is concerned about the continuing prevalence of all forms of violence, including gender-based and domestic violence, primarily against women and girls, which encompasses murder, attempted murder and sexual offences that may be committed at the instigation, or with the support, of State actors. It is also concerned that a large number of cases continue to be unreported, with few cases opened by the police and a failure to investigate the crimes and gather forensic evidence, which has resulted in less than 20 per cent of cases going to trial and only 8.6 per cent of cases resulting in a guilty verdict. The Committee is concerned that victims of violence, in particular in rural areas, may not have access to White Door Safe Space facilities, Khuseleka One-Stop Centres, Thuthuzela Care Centres and shelters. It is also concerned at reports that the manner in which victims of violence are questioned by the police leads to their retraumatization (arts. 2, 11–14 and 16).

35. **The State party should:**

(a) **Enhance further its already significant efforts to combat all forms of gender-based and domestic violence engendered by acts or omissions by State agents and others that engage the State's responsibility in accordance with the Convention;**

(b) **Ensure that all complaints of gender-based and domestic violence, especially that involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, and that the alleged perpetrators are prosecuted and, if convicted, punished with penalties commensurate to the gravity of the crime;**

(c) **Ensure that victims have unhindered access to White Door Safe Space facilities, Khuseleka One-Stop Centres, Thuthuzela Care Centres and shelters throughout the country, as well as to victim-friendly rooms in police stations; and ensure the effective functioning of the Gender-Based Violence Command Centre;**

(d) **Ensure that victims of violence and their families receive full redress for the harm suffered, including fair and adequate compensation and the fullest rehabilitation possible;**

(e) **Provide mandatory training on the investigation and prosecution of gender-based and domestic violence to all law enforcement and justice officials, with a view to ensuring efficient prosecutions, and provide training to police on questioning victims in a gender-sensitive manner in order to avoid their retraumatization;**

(f) **Implement vigorously the six-point plan on gender-based violence, sexual offences and victim support.**

**Asylum seekers, refugees, and xenophobic attacks against foreign nationals**

36. While taking note of the State party's large caseload of refugees and asylum seekers, the Committee is concerned:

(a) At reports that the State party is currently reviewing legislation that would require that asylum seekers report to a refugee reception office by no later than five days after arriving in the country, or face exclusion from refugee status, which may jeopardize the principle of non-refoulement, which was confirmed by the *Ruta v. Minister of Home Affairs* case;

(b) At the increase in difficulties in gaining access to the refugee status determination procedure owing to the closure of a number of refugee reception offices and the lack of adequate safeguards against refoulement; and at the dismissal of cases without consideration of the evidence, which has resulted in a significant reduction in the number of persons being granted refugee status and has led to asylum seekers living in constant fear of deportation;

(c) At allegations that some immigration officers refuse to provide even genuine asylum seekers with asylum transit visas at the port of entry, thereby exposing them to immediate risk of arrest or deportation, and at reports that refugee status determination officers cancel or refuse to prolong asylum transit visas if not given a bribe;

(d) That the Immigration Act of 2002 provides for the holding of an "illegal foreigner" in custody for up to 120 days without a court hearing; at the prolonged detention, without a warrant and prior to their deportation, of asylum seekers whose applications have been rejected at the Lindela Repatriation Centre, in inadequate conditions that include overcrowding and a lack of hygiene and medical services; and at the proposal contained in a White Paper to create detention facilities at the country's borders that would house asylum seekers while their applications were processed and would limit their rights to work and movement;

(e) That xenophobic attacks against foreign nationals, refugees and asylum seekers, including violence and threats of violence, have continued, resulting in more than 60 deaths, destruction of property and displacement, and that no one has been convicted for past outbreaks of xenophobic violence;

(f) At allegations that refugees, asylum seekers, foreign nationals and undocumented migrants are often turned away from hospitals and clinics, thereby being denied health care, or are asked to pay up front, with different hospitals charging different fees (arts. 2, 3, 12–14 and 16).

37. **The State party should:**

(a) **Ensure that prospective asylum seekers are allowed to apply for asylum at any time they might express an intention to do so upon or following their arrival in the country, regardless of how long they have delayed doing so, and introduce legislative provisions that enable officials to consider the risk of procedural ill-treatment faced by an applicant who may qualify for refugee status;**

(b) **Put in place more efficient enforcement mechanisms to guarantee that the principle of non-refoulement is not violated, and ensure that judicial mechanisms for the review of decisions of expulsion, return and extradition are in place such that under no circumstances will a person be expelled, returned or extradited to a country where he or she would be in danger of being subjected to torture or ill-treatment;**

(c) **Eradicate corruption related to arbitrary cancellation and non-renewal of asylum transit visas and ensure that refugees and asylum seekers do not experience harassment and abuse by the authorities; facilitate the filing of asylum cases and, where necessary, the provision of legal representation; ensure the prompt, effective and fair processing of asylum applications with adequate consideration of the substance of the case while respecting the principle of non-refoulement;**

(d) Provide the Department of Home Affairs with adequate human and financial resources to conduct the process of refugee status determination and ensure the training of officials on the physical and psychological effects of torture that may affect victims participating in refugee status determination and refugee appeals board processes;

(e) Refrain from detaining asylum seekers and foreign nationals in prolonged detention without a warrant at the Lindela Repatriation Centre, promote alternatives to detention and revise policy in order to bring it into line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention;

(f) Ensure adequate living conditions, including by reducing overcrowding and providing hygiene, medical and other services, at the Lindela Repatriation Centre, all other immigration centres and police detention facilities;

(g) Ensure that refugees, asylum seekers and foreign nationals and migrants have full access to health care;

(h) Deliver child protection services to migrant, asylum-seeking and refugee children, and provide basic health and social services as well as specialized rehabilitation services to asylum seekers and refugees who have been tortured;

(i) Take vigorous measures to eradicate manifestations of racism and xenophobia and prevent xenophobic violence, ensure the prompt investigation, prosecution and punishment of the perpetrators and provide protection and redress to the victims, with adequate remedies;

(j) Speed up the adoption of the bill on preventing and combating hate crime and hate speech, which is currently under consideration in Parliament.

#### **Redress and rehabilitation**

38. While the Committee takes note of the information provided in the replies of the State party to the list of issues that the Prevention and Combating of Torture of Persons Act does not specifically mention compensation, it is concerned that victims of torture, both of torture that occurred in the apartheid era and torture that occurred in the period after the onset of constitutional democracy, may not receive adequate redress, including appropriate compensation and rehabilitation (arts. 2 and 14).

39. **The State party should amend the Prevention and Combating of Torture of Persons Act and other relevant legislation, such as the Criminal Procedure Act, in order to operationalize redress for victims of acts of torture that includes the five forms of reparation outlined in general comment No. 3.**

#### **Corporal punishment of children**

40. The Committee is concerned that corporal punishment in the home continues to be legal in the State party as “reasonable or moderate chastisement” by parents (arts. 2 and 16).

41. **The State party should enact the children’s third amendment bill as a matter of priority in order to explicitly and clearly prohibit the corporal punishment of children in all settings and should take effective measures to prevent such punishment. It should conduct campaigns to raise awareness among professionals and the general public about the harmful effects of corporal punishment and to promote positive, non-violent disciplinary methods in education and in bringing up and caring for children.**

#### **Follow-up procedure**

42. The Committee requests the State party to provide, by 17 May 2020, information on follow-up to the Committee’s recommendations on ensuring the prompt investigation and prosecution of all deaths in custody; speeding up the ratification of the Optional Protocol to the Convention; and ensuring that all allegations of torture by law enforcement officials are referred by the Independent Police Investigative Directorate to the National Prosecuting Authority (see paras. 23

(a), 25 (a) and 33 (a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

**Other issues**

43. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.

44. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

45. The Committee encourages the State party to submit its next periodic report, which will be its third, by 17 May 2023. To that end, and in view of the fact that the State party stated during the review that gave rise to the present concluding observations that it had agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting.

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