



CSVR The Centre for the Study of
Violence and Reconciliation

Reg. No.: 1998/000544/08 Section 21 Reg. No.: Welfare 007-428 NPO

JOHANNESBURG OFFICE:
33 Hoofd Street, Braampark Forum 5, 3rd Floor
Johannesburg, 2001, South Africa
Tel: +27 (11) 403-5650 Fax: +27 (11) 339-6785

CAPE TOWN OFFICE:
501 Premier Centre,
451 Main Road, Observatory, 7925
Tel: +27 (21) 447 2470

SOUTH AFRICA

Submission to the United Nations Committee Against Torture for the 66 Session (State Parties Reports from 22 April – 17 May 2019)

**Submitted by CSVR – Centre for The Study of Violence and
Reconciliation and IRCT – International Rehabilitation Council for
Torture Victims**

June 2018

I. REPORTING ORGANISATIONS



CSVR
The Centre for the Study of
Violence and Reconciliation

1. CSVR – Is an independent, non-governmental, organisation established in South Africa in 1989. We are a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. We do this through collaborating with, and learning from, the lived and diverse experiences of communities affected by violence and conflict. Through our research, interventions and advocacy we seek to enhance state accountability, promote gender equality, and build social cohesion, integration and active citizenship. While primarily based in South Africa, we work across the African continent through collaborations with community, civil society, state and international partners.



2. IRCT – The world's largest membership-based civil society organization working in the field of torture rehabilitation and prevention, with a network of 161 torture rehabilitation centres across 74 countries. Its key distinctive feature lies in its holistic health-based approach to torture rehabilitation. In addition, the organisation defines itself as private, non-partisan, and not-for-profit, as well as governed by democratic structures.

CSVR is a multi-disciplinary institute involved in research, policy formation, community interventions, service delivery, education and training, as well as providing consultancy services. The primary goal of CSVR is to use its expertise in building reconciliation, democracy and a human rights culture and in preventing violence in South Africa and in other countries in Africa.

Board: Archbishop Emeritus Desmond Mpilo Tutu (Patron), Tefo Raditapole (Chairperson), Nomfundo Mogapi (Executive Director) Nontsikelelo Sisulu-Singapi, Judge Fayeza Kathree-Setiloane, Nokukhanya Ntuli, Prudence Malefu Madlokazi

II. BRIEF OVERVIEW OF THE CURRENT STATE OF TORTURE IN SOUTH AFRICA

Torture continues to be perpetrated in South Africa by public officials in police stations, and detention facilities including correctional services facilities, psychiatric institutions and immigration detention facilities. The impacts of torture are complex with long-term negative consequences that include physical, psychological and social dimensions. Although torture is generally associated with apartheid in South Africa, the reality is that torture continues to be committed in post-apartheid South Africa and its victims comprise of a diverse group of society, including apartheid era victims, refugees and asylum seekers and current torture victims who are mostly young black South African men suspected of crime, sex workers and sometimes innocent bystanders at the wrong place at the wrong time. South Africa ratified the United Convention against Torture (UNCAT) in 1998 and domesticated UNCAT through the Prevention and Combating of Torture of Persons Act 13 of 2013 (Anti-Torture Act). The Anti-Torture Act criminalises torture in South Africa and provides amendments to other legislation such as the Criminal Procedure Act (to reflect a crime of torture in the schedule of offences). However, the Anti-Torture Act does not provide for full redress for victims which includes the five (5) forms of reparation namely; restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition as articulated in the General Comment No. 3 of the Committee Against Torture on Article 14 of UNCAT. Currently, victims of torture in South Africa are only able to pursue their reparation through common law civil claim of damages, a court process which is costly, long and highly sophisticated, often leading to victims' re-traumatisation. Although South Africa signed the Optional Protocol to the Convention against Torture (OPCAT) in 2006, it is still yet to ratify it.

During its 2nd UPR cycle, South Africa received and accepted recommendations to ratify OPCAT and to enact Anti-Torture legislation in accordance with international standards. To this end, the Prevention and Combating of Torture of Persons Act 13 of 2013 (the Anti-Torture Act) came into force in 2013. Although the Anti-Torture Act has been in force for five years, no torture cases have been brought before the South African courts on the basis of the Anti-Torture Act. Furthermore, there is a need to urgently promulgate regulations to operationalise the Anti-Torture Act and ensure full redress for victims. These regulations will give guidance on procedures and processes that prioritize the needs of victims and survivors of torture in seeking redress.

In South Africa's 3rd UPR cycle in May 2017, CSVR recommended that South Africa ratify OPCAT and further promulgate regulations to operationalise the Anti-Torture legislation, which recommendations have been made by the Human Rights Council and accepted by South Africa in 2017. We hope South Africa will take steps to implement them in the next four years.

III. SUGGESTED QUESTIONS

Article 2.

32. The Prevention and Combating of Torture of Persons Act enacted in 2013 does not apply with retrospective effect. What measures are in place/will South Africa take to cater for apartheid era victims whose torture is only emerging now, for example the [Ahmed Timol](#)¹ and the [Nokuthula Simelane](#)² cases³?

The Prevention and Combating of Torture of Persons Act 13 of 2013 follows the UNCAT definition of torture, which excludes torture committed by non-state actors. What measures are in place to deal with acts of criminality that amount to torture committed by organised gangs in communities where even South African police are afraid to intervene such as in The Cape Flats and Mannenberg?

72. Civil society organisations providing both legal and psychosocial support to victims of torture who are refugees, asylum seekers and undocumented migrants in South Africa report that migrants are often turned away from hospitals and clinics and are often denied access to healthcare. Kindly share the 2006 memorandum issued by the National Department of Health? What measures are being taken to monitor and enforce the memorandum on refugees and asylum seekers' access to healthcare in provincial and local hospitals and clinics? What recourse is available to migrants in instances where they are denied access to healthcare?

84-87. Currently the Department of Social Development's Victim Empowerment Programme (VEP) does not include victims of torture as recipients of support from South African government's coordinated services ranging from psychosocial and medical services. What steps have been taken to incorporate victims of torture as a class of victims entitled to support under VEP?

Article 3.

109-115. Genuine refugees and asylum seekers (who fled their countries of origin for fear of torture) are often victims of corruption at Refugee Reception Offices in South Africa, wherein their refugee status (section 24 permits in terms of the Refugees Act 130 of 1998) or asylum seeker permits (section 22 permits in terms of the Refugees Act 130 of 1998) lapse or are not renewed. This renders them undocumented and puts them at risk of deportation, in violation of the *non-refoulement* principle. What measures are in place to protect the rights of genuine and recognised refugees and asylum seekers from being returned to countries where they are likely to face torture or be killed?

Article 4.

123-131. Although the Prevention and Combating of Torture of Persons Act 13 of 2013 criminalises torture in South Africa, very few torture cases have been reported to the Independent Police Investigative Directorate as police misconduct, and no crime of torture has been recorded or captured as such in South African police stations. Please provide statistics if any of the number of torture cases reported in South African police stations, where public officials are arrested and sentenced for the crime of torture.

Article 10.

¹ See: <https://www.news24.com/SouthAfrica/News/timol-judgment-brings-closure-to-family-20171012> and <http://www.thedailyvox.co.za/ahmed-timol-inquest-reveals-torture-murder-cover-ups-apartheid-police>

² See: <https://www.iol.co.za/news/south-africa/gauteng/nokuthula-simelane-murder-saps-ordered-to-pay-ex-cops-legal-costs-15324964>

The training and education on prohibition of torture has so far only targeted public officials. What measures, steps and budget are in place to extend this education and training on prohibition of torture to South African community members and the general public, to raise their awareness about torture?

Article 13.

202. Please provide statistics on the number of torture victims who have received support and services under the Victim Empowerment Programme during this reporting period.

206. Please provide further information on the steps and measures (both judicial and non-judicial) that South Africa will take to ensure compensation and rehabilitation for victims of torture in South Africa

Article 14.

218. Common law and statutory law awards of damages for victims of torture require a long-winded court process, an expensive civil law procedure which often re-traumatises victims. Please provide measures and steps taken by South Africa to provide reparation to torture victims (in the form of restitution, satisfaction, rehabilitation, compensation and guarantees of non-repetition of torture) without going through civil court process.

222. What efforts is the South African state making towards realising the right to rehabilitation for victims of torture?

Please provide information on any measures taken to monitor and evaluate the State's efforts in implementing torture victims' right to rehabilitation.

Please share government budgets spent on rehabilitation (across public health, social care, education and other relevant departments with responsibilities under the right to rehabilitation for victims of torture)?

To what extent do legislative and other measures compliment the Prevention and Combating of Torture of Persons Act, 2013 (the Anti-Torture Act) in realising the right to rehabilitation?

Please provide the number of victims accessing services (disaggregated by age, gender, ethnicity, country background, language, geographical location, ability/disability, type of torture, whether in detention/not, identified needs) at each stage of contact with the service from:

- Identification and initial assessment
- Full holistic assessment
- Rehabilitation interventions/activities/care

Concluding Remarks

Please provide information on South Africa's current status and processes for ratification of OPCAT.