



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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1 April 2019

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 13, 15 and 31 of the concluding observations on the report submitted by South Africa ([CCPR/C/ZAF/CO/1](#)), adopted by the Committee at its 116th session in March 2016.

On 12 May 2017, the Committee received the reply of the State party. At its 125th session (4 to 29 March 2019), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 2 (see [CCPR/C/125/3/Add.2](#)) to the Report on follow-up to concluding observations (see [CCPR/C/125/3](#)). I hereby include a copy of the Addendum 2 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The Committee requests the State party to provide this information in the context of its next periodic report due on 31 March 2020.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Marcia V.J. KRAN

A handwritten signature in black ink, appearing to read 'Marcia V.J. Kran'.

Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

Her Excellency Ms. Nozipho Joyce Mxakato-Diseko
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
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Human Rights Committee

Report on follow-up to the concluding observations of the Committee*

Addendum

Evaluation of the information on follow-up to the concluding observations on South Africa**

<i>Concluding observations (116th session):</i>	CCPR/C/ZAF/CO/1, 23 March 2016
<i>Follow-up paragraphs:</i>	13, 15 and 31
<i>Follow-up reply:</i>	CCPR/C/ZAF/CO/1/Add.1, 12 May 2017
<i>Committee's evaluation:</i>	Additional information required on paragraphs 13[B], 15[B][C] and 31[B]

Paragraph 13: Truth and Reconciliation Commission

The State party should increase its efforts to implement the recommendations of the Truth and Reconciliation Commission, investigate cases of serious human rights violations documented by the Commission, including those involving enforced disappearance, prosecute and punish perpetrators, and provide adequate reparation to all victims.

Summary of State party's reply

The State party provides information on the establishment and mandate of the Truth and Reconciliation Commission and on the approval by Parliament, on 26 June 2003, of four key recommendations: (a) to pay final reparations, entailing a once-off individual grant of R30,000 to identified victims; (b) to create symbols and monuments to exalt the freedom struggle; (c) to provide medical benefits and other forms of social assistance; and (d) to take community rehabilitation measures.

Of the 21,676 victims identified in the report of the Commission, 17,398 applicants for reparation had received the reparation grant; payments commenced on 21 November 2003. Of those applicants, 36 have not yet been paid the final reparation, for particular reasons. The process is finalized except for those identified victims who did not initially apply for final reparation grants; should they apply, their applications will be processed.

Information is provided on assistance for basic and higher education, housing and health care available to victims, their relatives and dependants who meet certain requirements.

Approximately 500 persons were reported as missing or having disappeared. Under the National Prosecuting Authority of South Africa, the Missing Persons Task Team established in 2004 conducts investigations into disappearances that occurred between 1960 and 1994. A total of 102 sets of remains of missing persons have been exhumed by the Task Team. Of those, 90 have been identified, handed over to families and reburied. A total of 76 families were paid reparations (R17,000) under the 2010 Regulations on Exhumation, Reburial or Symbolic Burial of Deceased Victims. Investigations by the Task Team continue to be conducted.

* Adopted by the Committee at its 125th session (4 to 29 March 2019).

** The assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.



Regarding prosecutions, as at 31 March 2016 one trial was still under way. The National Prosecuting Authority recommended reopening the inquests in two other matters. The Priority Crimes Litigation Unit managed and directed investigations in a number of other cases, facing numerous challenges. There were lengthy time lapses in prosecuting or finalizing cases due to, among other things, difficulties in securing witness testimony, and deaths of potential accused; there were also withdrawals of unduly prolonged cases due to difficulties in reconstructing court records.

Committee's evaluation

[B]: The Committee appreciates the information provided but requires additional information on measures taken since the adoption of the concluding observations to fully implement the recommendations of the Truth and Reconciliation Commission, including: (a) updated information on the number of identified victims who received reparation; (b) progress made in investigating the documented serious human rights violations and in prosecuting and punishing perpetrators, including information on: (i) the number and status of investigations conducted by the Missing Persons Task Team and by the Priority Crimes Litigation Unit; (ii) the outcome of the trial that was ongoing in March 2016; (iii) the response to the National Prosecuting Authority recommendation to reopen the two inquests mentioned above; and (iv) efforts to address the investigation challenges faced by the Priority Crimes Litigation Unit and to mitigate their adverse impact on securing justice for victims.

Paragraph 15: Racism and xenophobia

The State party should redouble its efforts to prevent and eradicate all manifestations of racism and xenophobia, protect all communities in South Africa against racist and xenophobic attacks, and improve policing responses to violence against non-nationals. Effective investigations into alleged racist and xenophobic attacks and other hate crimes should be conducted systematically, perpetrators should be prosecuted and, if convicted, punished with appropriate sanctions, and victims should be provided with adequate remedies. The State party should also pass appropriate legislation explicitly prohibiting hate crimes and hate speech as soon as possible.

Summary of State party's reply

The Constitution protects all individuals against racist or xenophobic attacks, including non-nationals. All crimes are registered and investigated. Attacks on foreign nationals experienced in the past and in 2015 were strongly condemned by the Government and measures were taken to contain the attacks.

Human rights training for law enforcement officers was developed to ensure that enforcement of immigration legislation complies with the State's international obligations.

The Prevention and Combating of Hate Crimes and Hate Speech Bill, published for public comment in October 2016, creates the offences of hate crime and hate speech, provides for measures to prevent and combat such offences, and proposes harsher sentences, for example imprisonment. It was set to be considered in Parliament in the first half of 2017.

Recourse to the Equality Court is available for those who consider themselves victims of discrimination, harassment or hate speech. Information is provided on the number of cases registered with the Equality Court between April 2014 and March 2015 (844 cases) and between April 2015 and March 2016 (558 cases).

Nine of the cases brought before the Equality Court were for racist utterances and hate speech; in four cases respondents were found guilty. Penalties included fines of R150,000, suspended fines, and community service. Five cases were pending. Unfair discrimination on the grounds of gender or race constitutes aggravating circumstances in sentencing.

Committee's evaluation

[B]: The Committee notes the work on a bill on prevention and combating hate crime and hate speech that would create the offences of hate crime and hate speech and would, *inter alia*, provide for harsher sentences, and welcomes the holding of public consultations on the draft legislation. It requires information on the status and content of the latest version of the bill, the timeline for adoption, and whether the bill complies fully with the Covenant.

[C]: While noting the information on the number of cases registered with the Equality Court and the limited information on cases for which it has handed down decisions, the Committee regrets the paucity of specific information on measures aimed at preventing and eradicating all manifestations of racism and xenophobia taken following the adoption of the concluding observations and on investigations into alleged racist and xenophobic attacks and other hate crimes, the prosecution and conviction of perpetrators, and remedies for victims. The Committee reiterates its recommendations in that respect.

Paragraph 31: Prison conditions

The State party should continue to strengthen its efforts to improve conditions of detention by taking practical measures to, *inter alia*:

(a) Reduce overcrowding, particularly by promoting alternatives to detention, the loosening of bail requirements, revising arrest quotas as indicators of police performance, and by ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period of time;

(b) Increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions of detention in all of the country's prisons, including those operated by private contractors, are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(c) Ensure that *de facto* solitary confinement measures, including segregation, are used only in the most exceptional circumstances and for strictly limited short periods of time.

Summary of State party's reply

A review of existing relevant legislative and policy framework commenced in 2016 to identify possible gaps in relation to the Nelson Mandela Rules. It focused on several thematic areas, including respect for prisoners' inherent dignity; medical and health services; disciplinary action and punishment, including solitary confinement; investigation of all deaths in custody and of any signs or allegations of torture or inhuman or degrading treatment or punishment; protection and special needs of vulnerable groups of prisoners; and complaints and independent inspection.

Reply relating to paragraph 31 (a) and (b)

The Department of Correctional Services continues to implement strategies to reduce the prison population. A bail protocol for referral of remand detainees to court for bail review was established.

The protocol on maximum incarceration periods allows for the referral of detainees to court for consideration of the length of their detention.

The police abolished arrest quotas as a performance indicator.

Measures to combat overcrowding include a facilities plan aimed at establishing new facilities and improving existing structures. The average prison population in facilities of the Department of Correctional Services was reduced by 0.3 per cent between February 2016 and February 2017.



Information is provided on the average population of remand detainees for certain months during the periods 2014/15 and 2016/17 (showing a downward trend from May to July and upward trend from November to January).

Alternatives to pretrial detention include release pursuant to the Criminal Procedure Act of 1977 (Act No. 51). Post-conviction measures include diversion, restorative justice, community service, suspended sentences, fines and alternatives that fully or partially replace prison sentences.

In a court order dated 5 December 2016, it was declared that the Government had failed to provide the inmates of Pollsmoor Remand Detention Facility with exercise, nutrition, accommodation, ablution facilities and health care of a standard required under the Correctional Services Act of 1998 (Act No. 111) and such failure was found to be inconsistent with the Constitution. The Government committed to reducing the population at that facility by 150 per cent within a period of six months and an action plan to that effect was implemented.

Reply relating to paragraph 31 (c)

Solitary confinement was earmarked for consideration and possible review.

Committee's evaluation

[B]: The Committee welcomes the review, initiated in 2016, of the existing legislative and policy framework to identify possible gaps in relation to the Nelson Mandela Rules, and requires further information on the outcome or preliminary results of the review and on any ensuing follow-up measures taken. It takes note of the information on measures taken to reduce overcrowding and improve conditions of detention and welcomes the abolishment of arrest quotas by police, but requires additional information on: (a) the implementation of the bail protocol in practice, whether bail requirements have been loosened and whether bail determinations are made promptly, and relevant data on the use of alternatives to pretrial detention and non-custodial sentences; (b) whether the target to reduce the prison population at Pollsmoor Remand Detention Facility by 150 per cent has been achieved; and (c) progress made in implementing the facilities plan since the adoption of the concluding observations, and further measures taken to improve conditions of detention in all remand facilities and prisons and their impact.

The Committee also requires clarification as to whether the use of solitary confinement has been reviewed and, if so, requires information on the outcome and on how the review contributed to ensuring that solitary confinement, including de facto solitary confinement measures such as segregation, is used only in the most exceptional circumstances and for strictly limited short periods of time.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be addressed in the State party's next periodic report.

Next periodic report: 31 March 2020.
