

South Africa

Civil Society Report on the Implementation of the ICCPR (For the adoption of the List of Issues)

Submitted for the Review in absence of the Initial Report
at the 113th session of the Human Rights Committee
(Geneva March 2015)

By the following organisations:

African Policing Civilian Oversight Forum

Association for the Prevention of Torture

Centre for Constitutional Rights

Centre for the Study of Violence and Reconciliation

Civil Society Prison Reform Initiative, University of the Western Cape

Freedom of Expression Institute

Gay and Lesbian Memory in Action

Gender, Health and Justice Research Unit, University of Cape Town

Human Rights Institute of South Africa

Wits Justice Project, University of the Witwatersrand.

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With the support of:



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Summary of suggested questions & recommendations

1. Constitutional and legal framework within which the Covenant is implemented (art. 2)

- What measures have been taken by the State Party to promote the Covenant with citizens, officials and members of the judiciary?

2. Non-discrimination, violence against women and children (art. 2, 3, 6, 7 24, 26, 27)

- What measures will be undertaken by the State Party to remedy the lack of meaningful inter- and intra-Departmental gender-responsive budgeting, resource allocation and expenditure?
- In respect of violence against children, what measures will be undertaken by the State Party to comply with the recent South African Constitutional Court judgements (referring to certain sections of the Sexual Offences Act); remedy the conflict of laws that currently exists; and prevent, reduce and respond to violence against children as well as violence to which children are exposed to in South Africa?
- What measures are in place to generate a solid evidence based on violence against women based on their (perceived) sexual orientation or gender identity? What protective measures are being taken to reduce the risk of such violence at the community level? What measures will be taken to reduce the secondary victimisation of people with non-conforming sexual orientation or gender identity when accessing State services?
- What measures are in place to generate a solid evidence base on violence against women with disabilities? What strategies are in place to address the complex vulnerability of women with specific disabilities? What measures are being put in place by the Departments of Health and Social Development to ensure that survivors of violence with disabilities receive adequate protection from further harm; and health and psychosocial services? What measures are being put in place by the National Prosecuting Authority and Department of Justice and Constitutional Development to address the needs of women with disabilities in the criminal justice process and ensure them full access to justice?
- What measures are in place to generate a solid evidence base on the vulnerability of sex workers to gender-based violence? What strategies are in place to address the complex vulnerability of women and girls who engage in sex work, including popular education, harm reduction, and economic interventions? What measures are being put in place by the South African Police Service to ensure that sex workers receive adequate services from the South African Police Service, including safe and respectful treatment during detention, but also prompt investigation of gender-based violence and the provision of services to survivors, irrespective of their work?
- What measure are in place to generate a solid evidence base on violence against asylum seeking, refugee and (im)migrant women? What measures are being put in place by the Departments of Home Affairs, Health and Social Development to ensure that asylum seeking, refugee and (im)migrant sexual offence survivors who are (un)documented receive adequate protection from further harm; and health and psychosocial services? What measures are being put in place to address the needs of (un)documented asylum seeking, refugee and (im)migrant women in the criminal justice process and ensure them full access to justice?
- Can the State party provide information on the number of (a) female child and juvenile remand prisoners; (b) adult female remand prisoners; (c) female child and juvenile sentenced prisoners; and (d) adult female sentenced prisoners as well as the specific institutional, health, mental health and rehabilitative needs of the South African female prison population and the measures that the State is taking to ensure that these needs are being met.
- Can the State party provide information on the efforts undertaken to ensure prevention of violence, particularly towards women, children, LGBTI persons and persons with disabilities? Can

the State party provide information on the integrated information management system for children in the justice system?

3. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, 3, 6, 7 24, 26, 27)

- What steps has the Department of Correctional Services (DCS) and the South African Police Services (SAPS) taken to comply with section 9 of the Prevention and Combatting of Torture of Persons Act (13 of 2013) to prevent the recurrence of torture and other ill-treatment? In addition to DCS and SAPS, which other departments are targeted for compliance with section 9 of the Prevention and Combatting of Torture of Persons Act (13 of 2013)? Has the Minister of Justice promulgated the regulations to the Act in terms of section 10 of the Prevention and Combatting of Torture of Persons Act (13 of 2013)? What measures have been taken to monitor compliance in SAPS with the amended Standing Orders following the promulgation of the Prevention and Combatting of Torture of Persons Act (13 of 2013)? What training and education has been done to ensure that police and prison officials comply with the legal requirements on the minimum use of force? What training and education has been provided to police and prison officials on the use of non-violent methods of conflict resolution? Do police and prisons officials working with children and young people in detention receive specialist training to work with this target group? Does this training include suicide prevention? After South Africa signed OPCAT in 2006, it is yet to ratify it. When will South Africa ratify OPCAT and what measures are being taken to enable ratification?
- What measures are being contemplated by government to strengthen JICS's independence and ensure adequate resourcing? What measures are being contemplated by government to see a more effective prosecution service, especially with regard to prosecuting state officials for rights violations? What steps have been taken to investigate, discipline and prosecute perpetrators of the Mangaung Correctional Centre abuses? What steps have been taken to prevent a recurrence at Mangaung and at other prisons in the country? Can the government clarify what has happened to the cases of persons suggested for investigation by the Truth & Reconciliation Commission and whether there are still any plans afoot to prosecute there alleged perpetrators? What measures are being taken to improve the quality and transparency of the investigations by IPID into human rights violations reportedly perpetrated by police officials?
- What measures have been taken and are planned to ensure that victims of torture are also covered by the South African Victims' Charter? Has government service delivery personnel dealing with victims of torture (e.g. social workers and nurses) received the necessary training to deal with victims of torture? Is there a referral system in place to ensure that agencies receiving complaints of torture (e.g. IPID and JICS) can effectively refer victims to appropriate services providers in and outside of government?

4. Freedom of expression, right to peaceful assembly, freedom of association and freedom of conscience and religious belief (arts. 2, 18, 19, 21, 22 and 26)

- What has been the cause for the lengthy delay for the proclamation of chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act?
- To what extent has government and parliament been giving effect to the recommendations made by the various Chapter 9 institutions, specifically the SAHRC?
- What are the reasons for delay of the hate crime bill and what are the plans for getting it approved? How does parliament intend gathering/incorporating civil society views on the draft bill?

Contact details of contributing organisations

African Policing Civilian Oversight Forum

Suite 103- 105A, Building 17, Waverley Business Park
Wycroft Road
Mowbray
Cape Town
7925
Tel: +27 21 447 1818
Fax: +27 21 447 0373
info@apcof.org.za

Association for the Prevention of Torture

Centre Jean-Jacques Gautier
10, route de Ferney
CP 137
CH-1211 Genève 19
Suisse
Tel. +41 22 919 21 70
Fax +41 22 919 21 80
apt@apt.ch

Centre for Civil and Political Rights

CP183-1211 Genève 10
Suisse
Tel +41223322551
info@ccprcentre.org

Centre for Constitutional Rights

Zeezicht Building, Tygerberg Park
163 Uys Krige Drive, Platteklouf
Cape Town, 7500, South Africa
Tel: +27 (0) 21 930 36 22
Fax: +27 (0) 21 930 38 98
info@cfc.org.za

Centre for the Study of Violence and Reconciliation

4th Floor, Braamfontein Centre, 23 Jorissen Street,
Braamfontein, Johannesburg, South Africa, 2017
Tel: +27 (11) 403-5650
Fax: +27 (11) 339-6785
info@csvr.org.za

Civil Society Prison Reform Initiative

Community Law Centre
University of the Western Cape

Robert Sobukwe Rd
Bellville, 7535
Tel. +27-21-9592950
Fax. +27-21-9592411
lmuntingh@uwc.ac.za

Freedom of Expression Institute

1st Floor, Richmond Forum Building
18 Cedar Avenue
Richmond, 2092
Johannesburg, South Africa
Tel.+27 (0)11 482 1913
Fax +27 (0)11 482 1906
fxi@fxi.org.za

Gay and Lesbian Memory in Action

7th Floor, University Corner (Wits Art Museum building)
Corner Jorissen & Bertha/Jan Smuts
University of the Witwatersrand, Braamfontein, South Africa
Tel. +27 11 717 4239
Fax +27 11 717 1783

Gender, Health and Justice Research Unit

University of Cape Town
Faculty of Health Sciences
Falmouth Building
Entrance 1, Level 1
Anzio Road
Observatory
7925, South Africa
Tel: +27-21- 406-6946
Fax: +27-21- 406-6020

Human Rights Institute of South Africa

4th floor, Office 421, Elephant House
107 Albertina Sisulu Street,
Johannesburg, 2001
Tel. +27-11 333 1730
Fax. +27-11 333 1725

Wits Justice Project

Dept of Journalism
University of the Witwatersrand
Johannesburg
Tel. +27-11 717 4028.

Methodology

The undersigned organisations were convened by the Civil Society Prison Reform Initiative and Centre for Civil and Political Rights for a one day workshop held in the premises of the University of Western Cape on 28 November 2014. The workshop followed the announcement that South Africa was to be reviewed in absence of its initial report to the Human Rights Committee, which was overdue since May 2000¹. The South African government submitted a report (CCPR/C/ZAF/1²) in haste after the Committee announced that South Africa was to be reviewed in absence of a report. The report was made available on the day of the workshop to participants.

Some parts of the present report are based on the elements provided by the South African government in its report to the Committee. The proposals for the list of issues contained in this submission note that South Africa's first report to the Committee does not provide a comprehensive and accurate overview of measures taken to fulfil its obligations under the Covenant. It is furthermore noted that to the knowledge of the contributing organisations the government did not consult civil society in the drafting of the state report. This submission focuses on four thematic areas being the constitutional and legal framework; non-discrimination and violence against women; the prohibition of torture, and freedom of expression.

Civil Society recommendations to List of Issues

1. Constitutional and legal framework within which the Covenant is implemented (art. 2)

The South African Constitution reads in section 39(1):

When interpreting the Bill of Rights, a court, tribunal or forum

- a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- b. must consider international law; and
- c. may consider foreign law.

In view of this progressive provision recognising the applicability of international law, we ask that the South African Government provide information on:

- **What measures have been taken by the government to disseminate the ICCPR?**
- **What measures have been taken to make the ICCPR accessible to the public (for example, translating it into official languages)?**
- **What steps have been taken to ensure that magistrates and judges are trained on the Covenant in order that they can comply with section 39(1)(b) of the Constitution?**

2. Non-discrimination, violence against women and children (art. 2, 3, 6, 7 24, 26, 27)

¹ <http://www.thoughtleader.co.za/lukasmuntingh/2014/10/27/sas-failures-in-the-international-human-rights-system/>

² http://www.cccprcentre.org/doc/2014/12/CCPR_C_ZAF_1_6321_E.doc

This section does not address all of the possible issues arising from “South Africa’s Initial Report under the International Covenant on Civil and Political Rights”, rather it raises select issues pertaining to vulnerable groups, access to justice and meaningful service delivery, specifying a list of questions we propose be asked to the South African Government.

The section is divided into five focal areas:

- 1) Deficient finalisation and implementation of laws, protocols and policies in respect of gender-based violence;
- 2) Gender-responsive budgeting, resource allocation and expenditure;
- 3) Children;
- 4) Gender norms and vulnerable groups; and
- 5) Additional concerns arising from the Report of the South African Government.

(a) Deficient Finalisation and Implementation of Laws, Protocols and Policies in Respect of Gender-Based Violence

The failure to finalise and/or implement various State department protocols, guidelines and national action plans, including the seemingly stagnant National Strategic Plan to Address Gender and Sexual Violence

The South African government has made significant commitments to protecting victims of violence through the ratification of international instruments and the development of national laws.³ However, this has not always translated into sector-specific and inter-sectoral policies, guidelines or regulations that give effect thereto. For example, whilst there are minimum, and (suitably) comprehensive, standards for the investigation of sexual offences by the South African Police Service, these are rarely followed as prescribed.⁴ South Africa also has detailed medico-legal protocols for the examination and treatment of survivors of sexual offences.⁵ While these are much more likely to be adhered to, similar treatment protocols do not exist for domestic violence.⁶ Domestic violence is also notably absent from the National Department of Health Strategic Plans of 2010/11 and 2012/13. Within the realm of the Department of Justice and Constitutional Development, the *National Directives on the Prosecution of Sexual Offence* cases is still not finalised.⁷

Deficient service provision, including providing psycho-social services, healthcare and effective legal remedies

Recent literature identifies the following key issues regarding service provision for survivors of gender-based violence:

³ See Appendix A for international treaties signed and/or ratified by South Africa.

⁴ South African Police Service (2008) National Instruction 3/2008 Sexual Offences.

⁵ Department of Justice and Constitutional Development (DoJCD) (2008) ‘Criminal Law (Sexual Offences and Related Matters) Amendment Act Regulations’. Department of Health (DoH) (2009) National Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases in Terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, Pretoria: Department of Health.

⁶ Aschman, G., Meer, T., & Artz, L. (2012). Behind the screens: Domestic violence and health care practices. *Agenda*, 26(2), pp 51-64.

⁷ Department of Justice and Constitutional Development (DoJCD) (No date) ‘National Guidelines for Prosecutors in Sexual Offences cases’.

Paranee, P (2014). *A guiding document to the Shukumisa Dossier: A resource on available documents pertaining to the formulation and implementation of legislation and related policies pertaining to Sexual Offences in South Africa: 2003 – 2014*. The Shukumisa Campaign.

- **A lack of health services and uneven quality of services:** ranging from insensitive or undertrained personnel, a lack of information given to survivors (regarding medication, procedures and referrals), incomplete or omitted 'J88' physical injury documentation forms, failure to send forensic evidence for analysis, a shortage of forensic nurses to rape survivors simply not being taken to a health facility for examination.⁸
- **Uneven South African Police Service performance:** Between 2001 and 2008, 1 121 complaints were made to the Independent Complaints Directorate against the police, with the most common being the failure to arrest the abuser (52,5% of all complaints).⁹ Research has also shown high levels of domestic violence case attrition – or withdrawal of cases by victims – at the reporting and investigation stages as a result of 'systemic issues' with the with police.¹⁰
- **A lack of accountability for poor performance by State Departments and officials:** A collation of findings on the implementation of the Sexual Offences Act (32 of 2007) found parliamentary oversight and invitations to non-governmental organisations to comment on and engage with such processes to be deficient, further raising concerns regarding whether the Department of Justice and Constitutional Development and the National Prosecuting Authority have the resources to roll out the proposed Specialised Sexual Offences Courts.¹¹
- **A lack of access to information:** Significantly, the South African Police Services and National Prosecuting Authority statistics are not disaggregated by the age and sex of the victim nor the type/nature of the offence(s) and cases are not tracked through the criminal justice system.

In view of the above we ask that the South African Government provide reasons for and specific plans of action for remedying the deficient implementation of laws and policy in respect of gender-based violence in two respects:

- **The failure to finalise and/or implement various State Department protocols, guidelines and national action plans, including the seemingly stagnant National Strategic Plan to Address Gender and Sexual Violence; and**
- **Deficient service provision, including providing psycho-social services, healthcare and legal remedies.**

(b) Gender-Responsive Budgeting, Resource Allocation and Expenditure

South Africa has high levels of gender-based violence, particularly of domestic violence and sexual offences - with over 60 000 sexual offences reported in 2012/13 alone.¹² While legislation seeks to address gender-based violence, it persists at great cost to those subjected thereto and to the State.¹³ The costs associated therewith have been the focus of several South African budget

⁸ Parenzee, P (2014). A guiding document to the Shukumisa Dossier: A resource on available documents pertaining to the formulation and implementation of legislation and related policies pertaining to Sexual Offences in South Africa: 2003 – 2014. The Shukumisa Campaign.

⁹ Vetten, L (2014) Domestic violence in South Africa, Policy Brief 71. The Institute for Security Studies: Pretoria.

¹⁰ Artz, L (2008). An Examination of the Attrition of Domestic Violence Cases in the Criminal Justice System on Post-Apartheid South Africa, pp 1-425. PhD Dissertation. Queen's University Belfast.

¹¹ Parenzee, P (2014). A guiding document to the Shukumisa Dossier: A resource on available documents pertaining to the formulation and implementation of legislation and related policies pertaining to Sexual Offences in South Africa: 2003 – 2014. The Shukumisa Campaign.

¹² Thorpe J, Financial Year Estimates for Spending on Gender-Based Violence By The South African Government (2014) at pp 4 -16.

¹³ Thorpe J, Financial Year Estimates for Spending on Gender-Based Violence By The South African Government (2014) at 4.

analyses¹⁴ which have brought to the fore the urgency of addressing the following key issues in order to ensure meaningful gender-responsive budgeting, resource allocation, expenditure and service delivery in respect of gender-based violence:

- **The lack of transparency regarding gender-responsive budgeting, resource allocation and expenditure:** There is little clarity regarding Government expenditure on the implementation of the Domestic violence Act 116 of 1998 or the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007.¹⁵ Spending on the implementation of these laws becomes indiscernible in the Estimates of National Expenditure and within Government Departments' own budget votes¹⁶ as well as reports.¹⁷ This renders difficult the evaluation of the service delivery, interventions and the budgetary allocations associated therewith.¹⁸

14 See for example: Bhana K, Vetten L, Makhunga L and Massawe D (2012). Shelters housing women who have experienced abused: policy, funding and practice. Johannesburg: Tshwaranang Centre; Bhana K, Lopes C and Massawe D. (2013) Shelters housing women who have experienced abuse: policy, funding and practice. Profiling three shelters in the Western Cape. Cape Town: Heinrich Böll Foundation and Tshwaranang Legal Centre; Budlender D. (2001). Doing something with nothing: The family centre pilots. Law, Race and Gender Research Unit. Cape Town: University of Cape Town; Budlender D & Francis D. (2014). Budgeting for social welfare in South Africa's nine provinces, 2010/11-2016/17. Unpublished manuscript; Goldman T & Budlender D. (2001) Making the Act Work: A Research Study into the Budget Allocations for the Implementation of the Domestic violence Act. Cape Town: Community Agency for Social Enquiry; Olckers I. (1997) "Safety and Security, Justice and Correctional Services" in D Budlender (ed) The Second Women's Budget. Cape Town: Institute for Democracy in South Africa: 121-166; Parenzee P. (2004). Investigating the Implications of Ten Years of Democracy for Women: The Role of the Department of Justice and Constitutional Development. Cape Town: Institute for Democracy in South Africa; Vetten L. (2014) "Budget votes revealing of state's agenda", Business Day, July 22 2014, downloaded.

<http://www.bdlive.co.za/opinion/2014/07/22/budget-votes-revealing-of-states-agenda>, 29 July 2014; Vetten L, Budlender D & Schneider V. (2005) Costing the implementation of the Domestic violence Act (no. 116 of 1998). CSVR Gender Programme Policy Brief No. 02. Johannesburg: Centre for the Study of Violence and Reconciliation; Vetten L, Le T, Leisegang A & Haken A. (2011) The Right & The Real: A Shadow Report Analysing Selected Government Departments' Implementation of the 1998 Domestic violence Act and 2007 Sexual Offences Act. Tshwaranang Centre: Johannesburg; Vetten L & Khan Z. (2002) "We're doing their work for them:" An Investigation into Government Support to Non-Profit Organisations Providing Services to Women Experiencing Gender Violence. Prepared for the Women's Budget Initiative. Johannesburg: Centre for the Study of Violence and Reconciliation; Wakefield, L., *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014). Waterhouse S & Mazwayi N. (2004) Investigating the Implications of Ten Years of Democracy for Women: The Role of the Department of Safety and Security. Cape Town: Institute for Democracy in South Africa; Watson J, Vetten L, Parenzee P, Madonko T and Bornman S. (2014) Eye on the Money: Women and Government Priorities in South Africa. Cape Town: Women's Legal Centre 2014.

¹⁵ Thorpe J (2014), Financial Year Estimates for Spending on Gender-Based Violence By The South African Government at 4. See also Wakefield L, *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014).

¹⁶ Thorpe J (2014), Financial Year Estimates for Spending on Gender-Based Violence By The South African Government at 4.

¹⁷ Watson J (2014), The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development at 4.

¹⁸ Watson J (2014), The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development at 4.

- **Inadequate budgeting linked to inaccurate needs assessments:** Research suggests that the amount spent on providing human and other resources to preventing, combating and providing justice and other services to gender-based violence survivors is not significant in the broader scheme of Government spending.¹⁹ Budgeting for gender-based violence has been found not to be informed by sound needs analyses nor costing exercises that accurately assess service delivery requirements and how best to allocate resources accordingly. This has resulted in under budgeting and wasting limited financial resources where negative disparities exist between amounts allocated and actual need.²⁰ Furthermore, the lack of evidence-based, disaggregated data regarding the scale and forms of gender-based violence, the costs of providing services and the wasted costs associated with deficient service provision frustrates accurate budget allocation and appropriate expenditure.²¹
- **The duplication of services, the disparate and under-funding of non-governmental service providers and the lack of recognition for these services:** is poignantly illustrated by an analysis of National Department of Social Development budgets and strategy between 2009/10 and 2013/14²² which revealed the extraordinary budget allocated to a gender-based violence call centre, much of whose service was being outsourced to a private company at for-profit rates and resulted in the Government expenditure in this instance being more than 10 times that allocated towards the well-established non-governmental organisation Lifeline's gender-based violence helpline. Disparities and discrepancies both within, as well as between, provinces have also been found.²³
- **The lack of inter-sectoral budgeting:** has resulted in the duplication of work (particularly in urban centres), uncoordinated service provision and the inefficient use of available resources. Gender budget analysts have recommended a move towards inter-departmental budgeting across the Departments of Social Development, Health, Justice and Constitutional Development, the Office of the Presidency and the South African Police Services.²⁴
- **The need to assess service delivery:** There is a need for the uniform, coordinated and ongoing monitoring and evaluation of the gender-based violence related services rendered by relevant Government Departments as well as non-governmental and community-based organisations. This would assist with standardising and improving the quality of services

¹⁹ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 6. See also Wakefield L, *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014).

²⁰ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 18-19. See also Wakefield L, *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014).

²¹ Thorpe J (2014), *Financial Year Estimates for Spending on Gender-Based Violence By The South African Government* at 4. See also Wakefield L, *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014).

²² See Vetten (2014), *A Review of the National Department of Social Development's Budgets Between 2009/10 and 2013/14* and Shukumisa Bulletin 1: *Under-funding Rape and Domestic violence Services: Neglecting Women's Well-being, Neglecting Women's Work?*

²³ See Vetten (2014), *A Review of the National Department of Social Development's Budgets Between 2009/10 and 2013/14* and Shukumisa Bulletin 1: *Under-funding Rape and Domestic violence Services: Neglecting Women's Well-being, Neglecting Women's Work?*

²⁴ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 18-19.

available, and exposing sub-standard service delivery as well as the needs and lacunae that require accommodation in budget planning.²⁵

- **The need for consultation with stakeholders:** Budget analysts highlight the lack of consultation and stress the need for budget development to be informed by public participation processes that provide opportunities for stakeholder input as well as equitable Government and other non-governmental service provider cooperation.²⁶
- **The focus of gender responsive budgeting:** Research points to a failure to identify victim empowerment as a genuine priority, and, accordingly, insufficient resources have been allocated towards the implementation of the Victims Charter.²⁷
- **Reporting on expenditure and service delivery:** It is recommended that Government Departments detail in their annual performance reports the budget, resource allocation and actual expenditure devoted to gender-based violence prevention and service delivery.²⁸

In view of the above, we ask that the South African Government provide reasons for and specific plans to remedy the:

- **Lack of meaningful inter-and intra-Departmental gender-responsive budgeting, resource allocation and expenditure; and**
- **Dramatic discrepancy in the remuneration of services rendered by State employees and other, generally, civil society-based organisations - whether those organisations complement, supplement or serve in place of services which should be provided by the State but for whatever reason either are not provided at all or are being provided inadequately.**

(c) Children

Conflicting legal spaces for children

Children and adolescents inhabit a conflicting legal space with regards to their sexuality. The current legal framework, comprised of healthcare, child-centered legislation and the Criminal Law Sexual Offences and Related Matters Act²⁹, contains a range of inconsistencies that create conflicts between legal provisions specifically in relation to consent to acts of a sexual nature and confidentiality. Furthermore, the Sexual Offences Act limits children's rights to confidentiality in that it mandates that **anyone** with knowledge that a sexual offence has taken place report this to the police. Whilst the legislature's intention was to protect teenagers from unwanted or ill-advised sexual activity, the implementation of these provisions have proven to be highly problematic and has not always resulted in upholding the 'best interest of the child'. This also jeopardises access to sexual and reproductive health care for adolescents, as it conflicts with other legislative provisions that ensure access to reproductive health services.³⁰ The Constitutional Court has declared these Sections in

²⁵ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 18-19.

²⁶ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 18-19.

²⁷ See for example Wakefield L, *SAPS and Planning for Gender-Based Violence: An Update*. Parliament of the Republic of South Africa (2014).

²⁸ Watson J (2014), *The Cost of Justice in South Africa: Tracking Expenditure on gender-Based Violence in the Department of Justice and Constitutional Development* at 18-19.

²⁹ 32 of 2007.

³⁰ These include the Children's Act (Act 38 of 2005), the Choice on Termination of Pregnancy Act (Act 92 of 1996), the National Health Act (Act 61 of 2003). For more information see http://www.ghjru.uct.ac.za/pdf/Condoms_Yes_Sex_No.pdf.

the Sexual Offences Act unconstitutional³¹ and referred the Act back to Parliament for amendment. Existing laws and policies need to be harmonised to allow adolescents to explore their sexuality age-appropriately and without being criminalised or exposed to the criminal justice system, while also providing a protective framework for children and adolescents at risk for sexual violence.

Violence against children and particular vulnerabilities of children, especially girls

Violence against Children (VAC) can include physical punishment, severe discipline, child abuse and neglect, school-based violence, bullying, child labour, gang violence child trafficking and commercial sexual exploitation; and other forms of physical, sexual, emotional or economic violence.³² Children are at risk for violence in the home, in their schools, and in their communities and neighbourhoods.³³ While South Africa has strong laws and policies in place to protect children from violence, such as the Constitution (Act 108 of 1996), the Children's Act (38 of 2005), the Domestic violence Act (116 of 1998), and the Criminal Law (The Sexual Offences and Related Matters) Amendment Act (32 of 2007), children's experiences of violence remain endemic. A recent study found that over 49,6% of high school students reported experience of crime to be a problem; while 68% had seen somebody intentionally hurt in their community.³⁴ Almost 25% of girl children are victims of violent crimes at school, compared to 19% of boys.³⁵ This discrepancy is largely due to female students being more likely to experience sexual violence and more vulnerable due to gendered power dynamics. While the Department of Basic Education has issued policy guidelines to prevent and manage sexual and other violence in school facilities, studies indicate that unsupervised classrooms, toilets and open grounds are high risk areas for school violence exposure.^{36 37}

Children remain vulnerable to violence in their homes more than anywhere else; where they are likely to witness and endure egregious violence, including sexual abuse.³⁸ While South African research has not properly quantified rates of emotional abuse and neglect, it is estimated that roughly 60% of parents continue to use corporal punishment.³⁹

³¹ Constitutional Court judgment CCT 12/13 [2013] ZACC 35, delivered on 3 October 2013. Available online at <http://www.saflii.org/za/cases/ZACC/2013/35.pdf>, a summary of the judgment is available at http://www.ghjru.uct.ac.za/pdf/TBCC_RAPCAN_CON_COURT_CASE.pdf.

³² Draft Policy Brief 1: Prevention Child Maltreatment. Safety and Violence Initiative, University of Cape Town.

³³ Burton, P. & Leoschut, L. (2013). School Violence in South Africa: Results of the 2012 National School Violence Study. Cape Town: Centre for Justice and Crime Prevention. Note: Primary schools were not surveyed in 2012.

³⁴ Burton, P. & Leoschut, L. (2013). School Violence in South Africa: Results of the 2012 National School Violence Study. Cape Town: Centre for Justice and Crime Prevention. Note: Primary schools were not surveyed in 2012.

³⁵ Burton, P. & Leoschut, L. (2013). School Violence in South Africa: Results of the 2012 National School Violence Study. Cape Town: Centre for Justice and Crime Prevention. Note: Primary schools were not surveyed in 2012.

³⁶ Guidelines for the Prevention and Management of Sexual Violence & Harassment in Public Schools (2008).

³⁷ Policy Guidelines for the Management of Child Abuse and Neglect in KZN Department of Education (DOE, KZN) (2010)

³⁸ Burton, P. & Leoschut, L. (2013). School Violence in South Africa: Results of the 2012 National School Violence Study. Cape Town: Centre for Justice and Crime Prevention. Note: Primary schools were not surveyed in 2012.

³⁹ Draft Policy Brief 1: Prevention Child Maltreatment. Safety and Violence Initiative, University of Cape Town

In summary, the implementation of protective laws need to be improved and monitored; and prevention efforts increased by national and provincial government, schools and all service providers who work with children.⁴⁰

In view of the above, we ask that the South African Government provide information specifying all efforts to:

- **comply with the recent South African Constitutional Court judgements;**
- **remedy the conflict of laws that currently exists; and**
- **prevent, reduce and respond to violence against children as well as violence to which children are exposed in South Africa.**

(d) Gender Norms and Vulnerable Groups

Lesbian and bisexual women and gender non-conforming people

Despite constitutional protection from discrimination based on sexual orientation, sex and/or gender (Section 9, 'Equality Clause')⁴¹ people who do not conform, or are perceived not to conform, to gender norms are at increased risk for violence, discrimination and social exclusion. Black lesbian women and transgender men experience disproportionately high levels of sexual violence^{42,43} and more than one third of all women who have sex with women are survivors of sexual violence.⁴⁴ People with non-conforming sexual orientation and gender identity also experience high levels of discrimination in State health facilities.⁴⁵ In the criminal justice system, sexual orientation-related hate crimes are often not recognised as such and sentencing in cases of homophobic sexual violence is often delayed by years⁴⁶ - with the result that justice delayed amounts to a sense of justice having been denied.

In view of the above, we ask that the South African Government provide information specifying:

- **What measures are in place to generate a solid evidence base on violence against women based on their (perceived) sexual orientation or gender identity?**
- **What protective measures are being taken to reduce the risk of such violence at the community level?**
- **What measures will be taken to reduce the secondary victimisation of people with non-conforming sexual orientation or gender identity when accessing State services?**

Women with disabilities

⁴⁰ Draft Policy Brief 2, Prevention Child Maltreatment. Safety and Violence Initiative, University of Cape Town

⁴¹ Section 9 of the Constitution of the Republic of South Africa (1996).

⁴² Mkhize, N., Bennett, J., Reddy, V., & Moletsane, R. (2010). *The country we want to live in - Hate crimes and homophobia in the lives of black lesbian South Africans*. Cape Town: HSRC Press.

⁴³ Nath, D. (2011). "We'll show you you're a woman" - Violence and Discrimination against Black Lesbians and Transgender Men in South Africa. New York.

⁴⁴ Sandfort, T. G. M., Baumann, L. R. M., Matebeni, Z., Reddy, V., & Southey-Swartz, I. (2013). Forced sexual experiences as risk factor for self-reported HIV infection among southern African lesbian and bisexual women. *PLoS One*, 8(1), e53552. doi:10.1371/journal.pone.0053552

⁴⁵ Matebeni, Z., Reddy, V., Sandfort, T., & Southey-Swartz, I. (2013). "I thought we are safe": Southern African lesbians' experiences of living with HIV. *Culture, Health & Sexuality*, 15 Suppl(May), pp 34-47. doi:10.1080/13691058.2013.764016; Stevens, M. (2012). *Transgender access to sexual health services in South Africa*: Cape Town.

⁴⁶ Lewin, T., Williams, K., & Thomas, K. (2013). *A progressive legislation meets lived reality: Sexuality and the Law in South Africa*. Brighton.

Research suggests that: (a) people with disabilities, particularly women, are more vulnerable to violence, especially sexual violence⁴⁷ and that (b) accurate and comprehensive data collection which evidences the nature and extent of the problem is nearly impossible to collate owing to systemic barriers thereto.⁴⁸ These barriers are profound particularly in developing world contexts, including South Africa, due to limited resources for the identification of people with disabilities and the lack of formal service providers to support them. The only available survey on the sexual abuse of people with disabilities in Africa, published by Handicap International in Ethiopia, reported that 46% of participants had experienced sexual violence.⁴⁹ Police crime statistics on rape, domestic violence and other offences relating to gender-based violence are not at present disaggregated to indicate whether the victim (or perpetrator) was a person with a disability and, with the exception of one small-scale exploratory study⁵⁰, little other information is available on the nature and extent of violence against women with disabilities in South Africa.

Due to barriers to reporting, victims with disabilities are likely to suffer multiple episodes or prolonged violence: The National Centre for Injury Prevention in the United States indicates that more than 75% of sexual violence against people with disabilities was iterative.⁵¹ Moreover, there is evidence to suggest that in cases of violence against women with disabilities there are limited, if any, specialised services, especially court preparation and shelter services, and limited skills and motivation on the part of the criminal justice system to pursue such cases.⁵²

In view of the above, we ask that the South African Government provide information specifying:

- **What measures are in place to generate a solid evidence base on violence against women with disabilities?**
- **What strategies are in place to address the complex vulnerability of women with specific disabilities within the South African context?**
- **What measures are being put in place by the Departments of Health and Social Development to ensure that survivors of violence with disabilities receive adequate protection from further harm; and health and psychosocial services?**

⁴⁷ Brownridge DA (2006) 'Partner violence against women with disabilities: prevalence, risk and explanations', in *Violence Against Women* 12, 9, pp 805–822.

⁴⁸ Rosen DB (2006) 'Violence and Exploitation against Women and Girls with Disability', in *Annals of the New York Academy of Science*, 1087, pp 170–177.

Hanass-Hancock J (2009) 'Interweaving Conceptualizations of Gender and Disability in the Context of Vulnerability to HIV/AIDS in KwaZulu-Natal, South Africa', in *Sexuality and Disability*, 27, 1, pp 35–47.

⁴⁹ Hanass-Hancock J (2009) 'Interweaving Conceptualizations of Gender and Disability in the Context of Vulnerability to HIV/AIDS in KwaZulu-Natal, South Africa', in *Sexuality and Disability*, 27, 1, pp 35–47.

⁵⁰ Naidu E, Haffejee S, Vetten L & Hargreaves S (2005) *On the Margins: Violence Against Women with Disabilities*, Research report written for the Centre for the Study of Violence and Reconciliation, available at: <http://www.csvr.org.za/index.php/publications/1595-on-the-margins-violence-against-women-with-disabilities.html>, site accessed 01 December 2014.

⁵¹ Rosen DB (2006) 'Violence and Exploitation against Women and Girls with Disability', in *Annals of the New York Academy of Science*, 1087, 170–177.

⁵² Dickman, B., Roux, A., Manson, S., Douglas, G., & Shabalala, N. (2006). 'How could she possibly manage in court?': An intervention programme assisting complainants with intellectual disability in sexual assault cases in the Western Cape. In B. Watermeyer, L. Swartz, T. Lorenzo, M. Schneider, & M. Priestley (Eds.), *Disability and social change: A South African agenda*, HSRC Press: Cape Town, 116–133.

Meer, T & Combrinck, H (in press) Invisible intersections: Understanding the complex stigmatisation of women with intellectual disabilities in their vulnerability to gender-based violence. In *Agenda*.

- **What measures are being put in place by the National Prosecuting Authority and Department of Justice and Constitutional Development to address the needs of women with disabilities in the criminal justice process and ensure them full access to justice?**

Sex work

While sex work is criminalised in South Africa, policy makers are in the process of reviewing the legislation in order to determine how it can be modified to best protect the rights of sex workers.⁵³ Whilst the State should endeavour to address the social inequalities which often lead women to sex work; it is frequently the most disadvantaged women in society who engage in prostitution owing to their restricted educational and employment opportunities and the pressure to provide for their families.⁵⁴

A number of South African studies point to the vulnerability of sex workers to high levels of emotional, physical and sexual violence.⁵⁵ Sex workers are particularly vulnerable to violence from clients. Perpetrators also include intimate partners, the general public, hotel managers, security guards, pimps and the police. In a study conducted with sex workers in Johannesburg, all participants reported having been harassed or abused by police. Sex workers are reluctant to report violence to the police for fear of further victimisation, including being forced to pay bribes and violence.⁵⁶

In view of the above, we ask that the South African Government provide information specifying:

- **What measures are in place to generate a solid evidence base on the vulnerability of sex workers to gender-based violence in South Africa?**
- **What strategies are in place to address the complex vulnerability of women and girls who engage in sex work, including popular education, harm reduction, and economic interventions?**
- **What measures are being put in place by the South African Police Service to ensure that sex workers receive adequate services from the South African Police Service, including safe and respectful treatment during detention, but also prompt investigation of gender-based violence and the provision of services to survivors, irrespective of their work?**

(Im)migrant and refugee women

(Im)migrant and refugee women are especially at risk for gender-based violence because they often lack support structures and protection. A woman's refugee/ (im)migrant status may place her at greater risk for gender-based violence. Such women are often more reluctant to report gender-based violence to the police, owing, *inter alia*, to the fear of arrest and/or community shunning and/or deportation – if they are illegally residing in the country. Many women residing in South Africa also exist in the grey area created by the long waiting periods, shifting rules and requirements and

⁵³ South African Law Reform Commission. (2009) *Sexual Offences: Adult Prostitution* [Internet]. Pretoria, South Africa: South African Law Reform Commission; Report No.: Discussion Paper 0001/2009. Available from: http://www.justice.gov.za/salrc/dpapers/dp0001-2009_prj107_2009.pdf

⁵⁴ Huysamen M. (2011) *Women's experience of harm in prostitution: a feminist inquiry* [Unpublished Honours Dissertation]. Psychology Department, University of Cape Town.

Wechsberg WM, Luseno WK, Lam WK. (2005) Violence against substance-abusing South African sex workers: intersection with culture and HIV risk. *AIDS Care*: 17(S1), pp 55–64.

⁵⁵ Huysamen M. (2011) *Women's experience of harm in prostitution: a feminist inquiry* [Unpublished Honours Dissertation]. Psychology Department, University of Cape Town.

Wechsberg WM, Luseno WK, Lam WK. (2005) Violence against substance-abusing South African sex workers: intersection with culture and HIV risk. *AIDS Care*: 17(S1), pp 55–64.

Wojcicki JM, Malala J. (2001) Condom use, power and HIV/AIDS risk: sex-workers bargain for survival in Hillbrow/ Joubert Park/ Berea, Johannesburg. *Soc Sci Med*, 53, pp 99–121.

⁵⁶ Wojcicki JM, Malala J. (2001) Condom use, power and HIV/AIDS risk: sex-workers bargain for survival in Hillbrow/ Joubert Park/ Berea, Johannesburg. *Soc Sci Med*; 53:99–121.

bureaucracy of the Department of Home Affairs, where a determination of status can take months, if not years, coupled with further time delays in the appeals process.⁵⁷ During this time women have limited access to services and are without the right to work, often making them especially economically dependent and vulnerable to violence. Further, according to PASSOP, an organisation that provides services to asylum-seekers, refugees and (im)migrants in South Africa, insurmountable systemic barriers exist for these women in accessing State-run gender-based violence related services.⁵⁸

In view of the above, we ask that the South African Government provide information specifying:

- **What measures are in place to generate a solid evidence base on violence against asylum seeking, refugee and (im)migrant women in South Africa?**
- **What strategies are in place to address the complex vulnerability of asylum seeking, refugee and (im)migrant women within the South African context?**
- **What measures are being put in place by the Departments of Home Affairs, Health and Social Development to ensure that asylum seeking, refugee and (im)migrant sexual offence survivors who are (un)documented receive adequate protection from further harm; and health and psychosocial services?**
- **What measures are being put in place to address the needs of (un)documented asylum seeking, refugee and (im)migrant women in the criminal justice process and ensure them full access to justice?**

Women in prison

Despite commitments set out in the Department of Correctional Services (DCS) White Paper⁵⁹ ⁶⁰ and the official policy framework for DCS operations – to create a national offender population profile system, prisoner demographics are still inadequately presented in the Department's key annual and strategic reports. Information on women in prison is particularly scarce. The collection and analysis of data on women in prison is vital towards the design and development of *appropriate* rehabilitation, health, mental health; as well as vocational programmes and interventions for women. Research⁶¹ has shown that women in prison are incredibly vulnerable and that their needs and experiences are often overlooked or assumed to be the same as the wider male prison population, notwithstanding that their experiences and pathways to prison are remarkably different than those of men. Yet, policy reform and prisoner advocacy initiatives – not to mention actual programmatic and security considerations within prisons – continue to be based almost entirely on research evidence and theories that have been developed to explain the experiences of men.

In view of the above, we ask that the South African Government provide information on:

- **The number of (a) female child and juvenile remand prisoners; (b) adult female remand prisoners; (c) female child and juvenile sentenced prisoners; and (d) adult female sentenced prisoners.**

⁵⁷ Craig Smith & Associates (2012) *An Asylum Seekers Long Walk To Freedom – From Asylum Seeker, Refugee To Resident Of South Africa*. Available at: <http://www.migrationlawyers.co.za/from-asylum-seeker-refugee-to-resident-of-south-africa> [Accessed 28 January 2015]

⁵⁸ PASSOP (2013) *Gender Rights*. Available at: <http://www.passop.co.za/programmes/gender-rights#sthash.5NwAkmJo.dpuf> [Accessed 28 January 2015]

⁵⁹ Department of Correctional Services, 2005 White Paper on Corrections in South Africa, Pretoria: Department of Correctional Services, pp 1-91.

⁶⁰ Department of Correctional Services, 2005 White Paper on Corrections in South Africa, Pretoria: Department of Correctional Services at page 6.

⁶¹ Artz, L., Hoffman-Wanderer, Y. and Moul, K. (2013). *Hard Time(s): Women's Pathways to Crime and Incarceration*. South Africa: UCT/European Union and the Office of the Presidency, 2013, pp 1-277.

- **The specific institutional, health, mental health and rehabilitative needs of the South African female prison population and the measures that the State is taking to ensure that these needs are being met.**

(e) Concerns Arising From the Report of the South African Government

Selective concerns, arising directly from the Report of the South African Government, are listed below:

5.1 Non-discrimination, equality between men and women (arts. 2, 3, 4, 26 and 27)

This section is generally outdated in the report tabled. Accordingly, we ask that the State, at a minimum, provide information regarding the challenges faced in the implementation of all laws relating to discrimination.

5.2 Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)

Although the State has taken measures to deal with violence against LGBTI persons by establishing the National Task Team in the Department of Justice, rates of violence against LGBTI persons are still extremely high, as referenced by the HSRC studies conducted on two-yearly intervals.

In view of the above, we ask that the South African Government provide information specifying all efforts to implement the National Intervention Strategy and what resources (from which Departmental Budgets) are being allocated towards the implementation of this Strategy.

The State has piece-meal policy positions on the prevention of violence against women, children, LGBTI persons and persons with disabilities. This includes, the 1998 White Paper on Safety and Security and the 2011 Integrated Social Crime Prevention Strategy of the Department of Social Development.

In view of the above, we ask that the South African Government provide information specifying all efforts, other than the implementation of the above policies, to ensure that primary prevention of violence is a priority area to be addressed, in order to have communities in which physical integrity and freedom and security of one's person is not violated.

5.2.3 The Child Justice Act of South Africa, in section 96(1)(e), mandates the State to establish an integrated information management system for children in the justice system. The report submitted by the State, in paragraph 99, mentions that this has still not been completed.

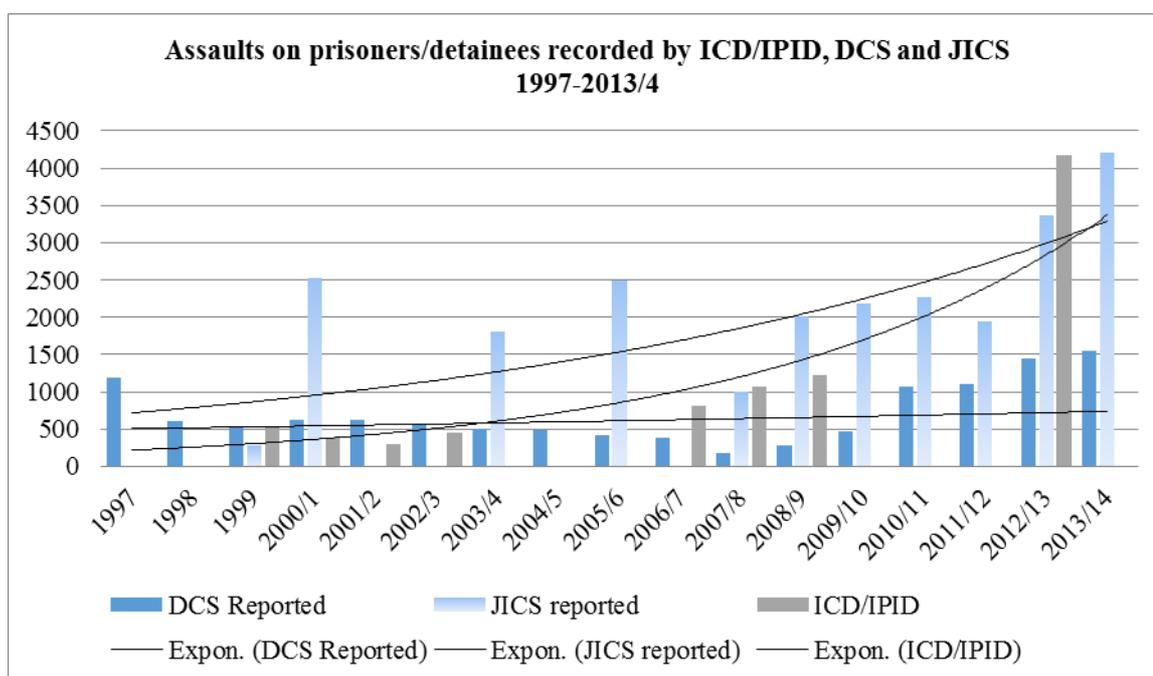
In view of the above, we ask that the South African Government provide information specifying the nature of the integrated information management system that the State plans to implement and the time frame for implementation.

3. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, 6, 7, 9, 10, 16, 19 and 21)

(a) McCallum matter

The State Report refers (para 86-87) the case of Bradley McCallum in which the HRC found that his right to be free from torture was violated.⁶² The case of McCallum is, regrettably, not an isolated incident and all available information on the incidence of torture perpetrated by police and prison officials indicate that, firstly, it occurs on a significant scale and, secondly, that it is on the increase as indicated in Figure 1 below.⁶³ Mass assaults, such as what occurred in the McCallum matter, have in recent times again reportedly occurred as well as the use of electroshock equipment and subjecting prisoners to psychotropic drugs.⁶⁴

Figure 1



Despite the reported increase in the incidence of torture (and assault), it remains a rare occasion that law enforcement officials are prosecuted for human rights violations, especially the assault and torture of individuals. The current situation can be described as a situation of *de facto* impunity. The enactment of the Prevention and Combatting of Torture of Persons Act (13 of 2013), which criminalised torture as required by UNCAT, does not appear to have had any notable impact on the current state of impunity and as at February 2015 there have been no person prosecuted for the

⁶² CCPR/C/100/D/1818/2008.

⁶³ All data collected are from relevant annuals reports of the Independent Police Investigative Directorate (IPID), Independent Complaints Directorate (ICD), Judicial Inspectorate for Correctional Services (JICS), and the Department of Correctional Services (DCS). Muntingh, L. and Dereymaeker, G. (2013) *Understanding impunity in the South African law enforcement agencies*, CSPRI Research Paper, Bellville: Community Law Centre.

⁶⁴ St Alban's <http://www.enca.com/south-africa/prison-assault-complaint-lodged> ; Mangaung <http://mg.co.za/article/2013-10-25-00-mangaung-prison-drugs-shock-and-torture-by-ninjas> ; Groenpunt <http://www.iol.co.za/news/crime-courts/assaulted-groenpunt-prisoner-dies-1.1454220#.VLUagsnexBw>

crime of torture yet.⁶⁵ In view of these developments the South African government should address the following questions.

- Did the state party submit its views to the HRC on the McCallum decision as required?⁶⁶
- What disciplinary steps have been taken against the DCS officials implicated in the McCallum matter?

(b) Prevention of torture and other ill treatment

In August 2013 the Prevention and Combatting of Torture of Persons Act (13 of 2013) came into force resulting in amongst others, the criminalisation of torture in domestic law. The Act also, in section 9, places a responsibility of the state to promote awareness on the prohibition of torture and train officials accordingly:

9. (1) The State has a duty to promote awareness of the prohibition against torture, aimed at the prevention and combating of torture.

(2) Without derogating from the general nature of the duty referred to subsection (1), one or more Cabinet members, designated by the President, must cause programmes to be developed in order to-

(a) conduct education and information campaigns of the prohibition against torture aimed at the prevention and combating of torture;

(b) ensure that all public officials who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, are educated and informed of the prohibition against torture;

(c) provide assistance and advice to any person who wants to lodge a complaint of torture; and

(d) train public officials on the prohibition, prevention and combating of torture

In view of the above, we ask that the South African Government provide information specifying:

- **What steps has the Department of Correctional Services (DCS) and the South African Police Services (SAPS) taken to comply with section 9 of the Prevention and Combatting of Torture of Persons Act (13 of 2013) to prevent the recurrence of torture and other ill-treatment?**
- **In addition to DCS and SAPS, which other departments are targeted for compliance with section 9 of the Prevention and Combatting of Torture of Persons Act (13 of 2013)? For example, Department of Health in respect of psychiatric hospitals, Department of Home Affairs in respect of the Lindela Repatriation Centre, and provincial departments of social development in respect of the Child and Youth Care Centres.**
- **Has the Minister of Justice promulgated the regulations to the Act in terms of section 10 of the Prevention and Combatting of Torture of Persons Act (13 of 2013)?⁶⁷**
- **What measures have been taken to monitor compliance in SAPS with the amended Standing Orders following the promulgation of the Prevention and Combatting of Torture of Persons Act (13 of 2013)?**

⁶⁵ Parliamentary question by Mr. J Selfe (DA) to the Minister of Justice and Correctional Services, 26 February 2015, NW32E.

⁶⁶ CCPR/C/100/D/1818/2008 para 9.

⁶⁷ 10. (1) The Cabinet member responsible for the administration of justice may make regulations regarding any matter referred to in section 9(2), which are reasonably necessary or expedient to regulate in order to achieve the objects of this Act. (2) Any regulation contemplated in subsection (1) must be tabled in Parliament before it is promulgated.

- What training and education has been done to ensure that police and prison officials comply with the legal requirements on the minimum use of force? *The government should provide quantitative information on the scope, scale and extent of initial and refresher training in this regard.*
- What training and education has been provided to police and prison officials on the use of non-violent methods of conflict resolution? *The government should provide quantitative information on the scope, scale and extent of initial and refresher training in this regard.*
- Do police and prisons officials working with children and young people in detention receive specialist training to work with this target group? Does this training include suicide prevention? *The government should provide quantitative information on the scope, scale and extent of initial and refresher training in this regard.*
- After South Africa signed OPCAT in 2006, it is yet to ratify it. When will South Africa ratify OPCAT and what measures are being taken to enable ratification?

(c) Addressing impunity

Recent research findings indicate that whilst oversight institutions receive large volumes of complaints implicating law enforcement officials (i.e. police and prison officials), very few are thoroughly investigated and even less result in criminal convictions and appropriate punishments.⁶⁸ While the legislation provides for holding state officials criminally responsible for human rights violations, this happens so rarely that the current situation can only be described as one of *de facto* impunity.

In view of the above, we ask that the South African Government provide *information specifying*:

- Given that the Judicial Inspectorate for Correctional Services (JICS), as prison system oversight mechanism, receives its budget from the Department of Correctional Services (DCS) and that it is at present understaffed in respect of investigative capacity, what measures are being contemplated by government to strengthen JICS's independence and ensure adequate resourcing?
- Noting that the Constitution establishes a single National Prosecuting Authority and that it must function without favour, fear or prejudice,⁶⁹ there is nonetheless reason for concern when observing the small percentage of prosecutions against law enforcement officials for human rights violations. What measures are being contemplated by government to see a more effective prosecution service, especially with regard to prosecuting state officials for rights violations?
- In 2014 it emerged that correctional officials and medical personnel at Mangaung Correctional Centre had forced psychotropic medication on prisoners, and had used abusive practices to enforce compliance. What steps have been taken to investigate, discipline and prosecute perpetrators of these actions? What steps have been taken to prevent a recurrence at Mangaung and at other prisons in the country?
- In 2003 the Truth and Reconciliation Commission (TRC) submitted a list of 300 names of people to be investigated and prosecuted for crimes committed during the apartheid era, but, with a few exceptions, this was not pursued by the NPA.⁷⁰ Can the government

⁶⁸ Muntingh, L. and Dereymaeker, G. (2013) *Understanding impunity in the South African law enforcement agencies*, CSPRI Research Paper, Bellville: Community Law Centre.

⁶⁹ S 179 Constitution (200 of 1996).

⁷⁰ Mallinder, L. (2009) *Indemnity, amnesty, pardon and prosecution guidelines in South Africa*, Working Paper No. 2, From beyond legalism: amnesties, transition and conflict transformation, Belfast: Institute of Criminology and Criminal Justice, Queen's University, p. 112.

clarify what has happened to these cases and whether there are still any plans afoot to prosecute these alleged perpetrators?

- **What measures are being taken to improve the quality and transparency of the investigations by IPID into human rights violations reportedly perpetrated by police officials?**

(d) Redress

Para 81 of the state report refers to the possibility that victims of torture have the right to institute civil claims against the state. However, civil litigation is not a broadly accessible option (especially to the poor), it is time consuming and ultimately limited to monetary compensation. General Comment 3 by CAT provides tangible guidance on compliance with article 14 of UNCAT in providing redress to victims of torture as it relates to "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention."⁷¹

In view of the above, we ask that the South African Government provide information specifying:

- **In view of the preceding, what measures have been taken and are planned to ensure that victims of torture are also covered by the South African Victims' Charter?**
- **Has government service delivery personnel dealing with victims of torture (e.g. social workers and nurses) received the necessary training to deal with victims of torture?**
- **Is there a referral system in place to ensure that agencies receiving complaints of torture (e.g. IPID and JICS) can effectively refer victims to appropriate service providers in and outside of government?**
- **What measures have been taken to ensure that victims of torture who are indigent can access legal aid for the purposes of seeking civil damages from the state?**

(e) Arbitrary arrest and detention

It is noted from SAPS Annual Reports (2012/3 and 2013/4) that the police executed 1.6 million and 1.4 million arrests respectively and that in 2012/3 that the majority of these arrests in 2012/3 were for non-priority crimes and in 2013/4 it fell to just below half of all arrests. However, the total of convictions as reported by the NPA (329 153 in 2013/14)⁷² is substantially below the number of arrests, less than 23%. This ratio raises concerns about arbitrary arrest and detention.

In view of the above, we ask that the South African Government provide information specifying:

- **What measures have been taken (or are contemplated) to ensure that suspects are arrested on reliable evidence and that arrest is indeed the only measure to ensure the suspect's appearance in court?**

4. Freedom of expression, right to peaceful assembly, freedom of association and freedom of conscience and religious belief (arts. 2, 18, 19, 21, 22 and 26)

⁷¹ CAT /C/GC/3 para 2.

⁷² NPA Annual Report 2013/4 p. 42.

Para 36 of the State Report makes reference to the Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000). The date of commencement of this act was 16 June 2003. However, chapter 5 of the Act, which deals with the Promotion of Equality under sections 24-29, has to date not been proclaimed.

In view of the above, we ask that the South African Government provide information on the causes for the lengthy delay for a date of proclamation. When will a proclamation date for chapter 5 be given?

Para 63 to 68 of the State Report make reference to the administrative and quasi-judicial remedies with specific reference to bodies such as the South African Human Rights Commission, the Public Protector and other institutions established to promote and support democracy.

In view of the above, we ask that the South African Government provide information specifying the extent to which the government and Parliament have been giving effect to the recommendations made by the various Chapter 9 institutions, specifically the SAHRC?

Para 149 make reference to the intended hate crimes legislation which was reported to come out in 2014.

In view of the above, we ask that the South African Government provide information on the causes for the delay of the hate crime bill and what are the plans for getting it approved? How does parliament intend gathering/ incorporating civil society views and comments on the draft bill?