



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

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Committee against Torture

**Information received from South Africa on
follow-up to the concluding observations on its
second periodic report***

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* The present document is being issued without formal editing.



Introduction

1. The Committee Against Torture (CAT) after considering the country report and dialoguing with the country delegation, has requested that South Africa provide it with comprehensive information, by 17 May 2020, on their recommendations regarding: 23 (a) ensuring the prompt investigation and prosecution of all deaths in custody; 25 (a) speeding up the ratification of the Optional Protocol to the Convention; and 33 (a) ensuring that all allegations of torture by law enforcement officials are referred by the Independent Police Investigative Directorate (IPID) to the National Prosecuting Authority (NPA).

2. Hereunder are the specific recommendations and Government responses elicited from the various South African Government Departments and Oversight Bodies, whose mandates is relevant to the above mentioned concluding recommendation and observations, namely, the Department of Justice and Constitutional Development (DoJ&CD), Department of Correctional Services (DCS), National Prosecuting Authority (NPA), the Judicial Inspectorate of Prisons (JICS), the South African Police Service (SAPS) and the Independent Police Investigative Directorate (IPID).

Specific recommendations and government responses

Follow-up information relating to paragraph 23 (a) of the concluding observations (CAT/C/ZAF/CO/2)

3. All deaths in custody are reported to the Inspecting Judge under the auspices of the Judicial Inspectorate of Prisons (JICS) by the Department of Correctional Services (DCS). All deaths are enquired into by JICS' Independent Correctional Centre Visitors who obtain copies of the death certificate, BI 1663 and other relevant records. The ICCV also interviews the medical staff at the center and peruse the inmate's medical records by completing a pro forma form (Record of Consultation). All documents are forwarded to the JICS' head office, Mandatory reporting unit. All reports received are evaluated and if necessary, referred to the JICS investigative unit. All unnatural deaths due to violence, suicide, and drug overdose are referred directly to the JICS investigative unit who conducts an independent investigation. The outcome of the investigation is reported to the Minister and Parliament in the JICS quarterly and annual reports. JICS also follows such deaths up with the SAPS and the National Prosecution Authority (NPA). In addition to deaths, DCS is also legally obliged to report to JICS all incidents of the use of force, use of mechanical restraints and segregation. Inmates also have the right to appeal to the Inspecting Judge on use of mechanical restraints and segregation.

4. All inmates have the right to complain on any topic (including ill treatment, torture, assault etc. to JICS, either directly to the JICs offices or through the JICs Independent Correctional Centre Visitors who are stationed at the correctional centres. If such complaints cannot be resolved internally, the ICCV refers the complaint to the Inspecting Judge through JICS' Regional structures. Where appropriate JICS recommend that disciplinary steps be taken against DCS officials who transgress. DCS management must then conduct their own investigation and either take disciplinary steps against its officials or provide reasons why no disciplinary steps are taken. Furthermore, JICS liaise with SAPS regarding referral of cases to the NPA for further investigations and prosecutions, including inquests.

5. For the financial year under review, namely 2019–2020, and at the time of preparing this response to the specific recommendation, JICS was in the process of following up with NPA KZN on a death in Kokstad, as well as with NPA Western Cape on the death of an inmate at Brandvlei, amongst other matters.

Follow-up information relating to paragraph 25 (a) of the concluding observations

6. South Africa signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2000 and ratified it in 2008 and signed the Optional Protocol to the Convention against Torture (OPCAT) in September 2006 and ratified it on 20 June 2019. In accordance with Article 17 of the OPCAT, one of the obligations imposed on State Parties is to establish domestic mechanisms for the prevention of torture known as the National Preventive Mechanism (NPM). The South African Government decided to adopt a multi-body NPM with the South African Human Rights Commission (SAHRC) playing a coordinating role. The NPM consist of other oversight bodies such as the Judicial Inspectorate for Correctional Services (JICS), the Military Ombudsman, Health Ombudsman and the Independent Police Investigative Directorate (IPID). This model was thoroughly consulted within Government and with Chapter 9 institutions established to protect democratic governance, civil society organisations and was chosen as the best suited to particular South African needs. The South African NPM was launched on 19 July 2019, at the Castle of Good Hope in Cape Town.

7. The cost of the new proposed NPM model is financially viable as the model relies on existing structures within the SAHRC and other bodies. The new NPM is housed within the SAHRC which is playing a coordinating role among the various members of the NPM. The Department of Justice and Constitutional Development (DoJ&CD) has allocated a budget, with the approval of the National Treasury to meet all the ancillary costs of the NPM.

8. On 12 November 2019, the NPM unit at the SAHRC together with the DoJ&CD convened a workshop to engage with relevant stakeholders on possible legislative and policy review to strengthen the mandate of the NPM. As an outcome from the workshop, there was an agreement for the development of a discussion paper as a roadmap on opportunities and practical challenges related to the chosen model and propose the necessary legislative and policy changes. The SAHRC is leading the process of developing the discussion document to create legislation for the newly formed NPM so that it complies with the internationally recognised standards such as the Paris and Venice Principles and the Practical Guidelines on the establishment, configurations and functioning of the NPMs issued by the Office of the United Nations High Commissioner for Human Rights.

9. Since the launch of the NPM in July 2019, the SAHRC have been conducting a scoping exercise to assist in identifying ways of strengthening the NPM work over the next three (3) years. This will include training both policymakers on the NPM mandate and practitioners on preventing torture and ill-treatment through preventive monitoring and dialogue with the State. These visits are also designed for the NPM to fully appreciate the challenges in places of deprivation of liberty.

10. The first annual report of the NPM since its inception is attached as Annexure A. As indicated in the report, “this is the first report that maps progress on the OPCAT implementation process in South Africa since its ratification. The report documents the OPCAT journey in South Africa and post-NPM establishment and its observations during baseline visits to various places of deprivation of liberty. It also highlights particular challenges now and those envisaged in future. Not only does it identify potential challenges, but it also makes proposals to strengthen the mandate of the NPM through, inter alia, the promulgation of legislation to regulate the powers and functions of the NPM”.¹

Follow-up information relating to paragraph 33 (a) of the concluding observations

11. The mandate of the Independent Police Directorate (IPID) is to investigate all incidents of misconduct by members of the SAPS and Metro Police Services (MPS). In terms

¹ SAHRC The Report of the South African Human Rights Commission: The Implementation of the OPCAT in South Africa 2019/2020 (SAHRC) Online: <https://sahrc.org.za/npm/index.php/npm-resources/general-reports> 4.

of the IPID Act, Act 01 of 2011, Section 29(1) read with Regulation 2(1) of the IPID Regulations, obligates the SAPS to report specific cases to IPID for investigation in a specific format and manner.

12. Section 28 of the IPID Act provides the specific cases that IPID must investigate as follows:

- (a) The IPID is mandated to investigate any deaths in police custody;
- (b) Deaths as a result of police actions;
- (c) Complaints relating to the discharge of an official firearm by any police officer;
- (d) Rape by a police officer, whether the police officer is on or off duty;
- (e) Rape of any person in police custody;
- (f) Any complaint of torture or assault against a police officer in the execution of his or her duties;
- (g) Corruption matters within the police initiated by the Executive Director, or after a complaint from a member of the public or referred to the Directorate by the Minister, a MEC or the Secretary for the Police Service; and
- (h) Any other matter referred to the IPID as a result of a decision by the Executive Director or if so, requested by the Minister, an MEC or the Secretary for the Police Service as the case may be.

13. Torture is then entailed in the description of Section 28(1)(f) of the IPID Act as “any complaint of torture or assault against a police officer in the execution of his or her duties”. Complaints of alleged torture are determined and classified by IPID in consideration of the provisions of Section 3 of the Prevention of Combatting and Torture of Persons Act, Act 13 of 2013.

14. Members of the public are also further able to report such torture allegations to IPID directly in accordance with Regulation 2(4)(a) and (b) of the IPID Regulations. IPID will then realize the investigation into the allegations in accordance with the IPID Regulations, in particular Regulation 5(3) paragraphs (a), (b), (c), (d), (e)(i), (g), (h) and (i). The IPID approved Investigation Standard Operating Procedures (SOP’s) further provides guidelines on the investigation of criminal matters including Torture allegations.

15. After conclusion of the IPID investigation into the allegations of torture by a police official, and based on the available merits and evidence contained in the case docket, IPID then prepares relevant disciplinary recommendations to the SAPS Management in terms of Section 7(6) of the IPID Act read with the IPID Regulations, Regulation 12(2) in particular.

16. The disciplinary recommendations to the SAPS Management may be either Negative (to take appropriate disciplinary actions in accordance with the provisions of the SAPS Disciplinary Regulations, 2016) or Positive (no or insufficient evidence to take disciplinary actions) based on the evidence contained in the investigation. In accordance with Section 30 of the IPID Act, the SAPS are obligated to initiate the IPID disciplinary recommendations within 30 days, to provide quarterly progress reports on the disciplinary actions and, provide written outcome to the disciplinary recommendations at the conclusion of the SAPS disciplinary actions (provide evidence of the disciplinary actions taken and finding of the tribunal and or management). All the IPID provincial offices do receive the evidence of each negative discipline recommendation made to SAPS at the conclusion of the matter by SAPS.

17. In accordance with the provisions of Section 7(4) of the IPID Act, read with Regulation 5(3)(i) of the IPID Regulations, investigations that are complete (decision ready), incorporate all the original statements, technical reports and expert reports in the criminal case dockets investigated by IPID, are then referred to the NPA for consideration and decision on prosecution or not in terms of Section 179(2) of the Constitution of the Republic of South Africa. In this regard, criminal case dockets where the suspects (SAPS members) have been identified and interviewed for warning statements in accordance with provisions of the Criminal Procedure Act read with the Bill of Rights of an accused person, as provided in the Constitution, are referred to the NPA for such decision to be taken.

18. Once the NPA has decided on the criminal case docket, the case docket with the decision (in writing) is returned to IPID for further handling and attention. In these instances, the NPA may request further investigation or statements of further witnesses to clarify facts in the case docket. The NPA also provides decisions on whether the SAPS member should be prosecuted and arraigned in court on the relevant criminal charges. If the NPA is of the opinion that the evidence is such that there are no prospects for a successful prosecution, it may decline prosecution in the matter.

19. The SAPS comply with the recommendations made by the IPID. As indicated above, Section 30(a) of the IPID Act, (Act No.1 of 2011) states that disciplinary proceedings in terms of the recommendations made by IPID must be initiated within 30 days of the receipt. In terms of practice, Station Commanders or any member of the SAPS must immediately after becoming aware, notify the IPID of any matter referred to in Section 28 (1) (a to f). Within 24 hours the Station Commander must submit a written report to IPID. Section 29(2) of the IPID Act (Act No. 1/2011) says that members of SAPS must provide their full cooperation to IPID.

20. Criminal case dockets are completed as Undetected and processed for closure by IPID where, after the investigations were conducted by IPID and (i) the complainant is refusing to cooperate with the investigation process, (ii) no suspects could be positively identified by the complainant or witnesses, (iii) no crime or criminal offence could be established against the allegations levelled, and (iv) where the complainant has submitted a withdrawal statement (prior to suspects being identified or interviewed).

21. Below is the statistical data of cases registered by IPID for the financial years 2018/2019 and 2019/2020.

Table 1
Statistical data of cases registered by IPID for the financial years 2018/2019 and 2019/2020

	<i>Incidents Reported</i> [Section 28(1)(f)]	<i>Decision ready cases</i>	<i>Workload (includes from previous years)</i>	<i>Total Decision ready</i>	<i>Matters closed</i>	<i>Referred to the NPA</i>	<i>Court outcome</i>	<i>Referred to SAPS (and Municipal Police Service)</i>	<i>Outcome</i>
2018/19	270	81	556	129	41 #	23	Nil ##	6 (Nil)	1 ###
2019/20	216	62	657	116	68*	40	2**	34 (1)	Nil***

Declined 16; Dismissed 1; Referred 1; Undetected 16; Unsubstantiated 4.

No convictions or acquittals were reported.

1 conviction. No acquittals were reported. 2 Cases were on the court roll.

* Alternate Dispute Resolution 2; Declined 35; Referred 3; Undetected 26; Unsubstantiated 1;

Withdrawn 1.

** 2 acquittals were reported. 3 Cases are on the court roll.

*** No convictions or acquittals in disciplinary matters were reported.

Conclusion

22. The adoption of the OPCAT in 2002 marked a milestone in the universal struggle to protect human dignity. Ratification of the OPCAT and now the full operationalisation of the NPM underscore Government's commitment to prevent torture and bring to book those suspected of having tortured persons in detention in various settings. The DoJ&CD will work the SAHRC and other bodies in the NPM in developing appropriate legislation for the efficient and effective operationalisation of the NPM. This is in line with the National Development Plan to, amongst others, create safe communities through the fight against crime and corruption.

23. The Government of South Africa, reiterate its commitment pursuant to the decision taken by Cabinet in October 2002, to issue a standing invitation to all Thematic Procedures of the United Nations Commission on Human Rights, to invite the Special Rapporteur on

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to visit South Africa on a mutually convenient time in the near future.

24. Lastly, the Government is seized with the implementation of all the concluding observations and recommendations and will provide comprehensive response to the Committee on the implementation of all the observations and recommendations in its next periodic country report to be submitted in 2023.
