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

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Committee against Torture

Third periodic report submitted by South Africa under article 19 of the Convention, due in 2023*, **, ***

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* The present document is being issued without formal editing.

** The present document was submitted pursuant to the simplified reporting procedure. It contains the responses of the State party to the Committee's list of issues prior to reporting (CAT/C/ZAF/QPR/3).

*** The annexes to the present document may be accessed from the web page of the Committee.

Introduction

1. Pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") the Government of the Republic of South Africa ("Government") is pleased to submit its third periodic country report covering the period from January 2017 to March 2023.

2. South Africa submitted its second periodic report to the Committee on Torture ("the Committee") on 17 September 2017. The Committee considered the second periodic report of South Africa (CAT/C/ZAF/2) at its 1730th and 1733rd meetings, held on 30 April and 1 May 2019 respectively and adopted the concluding observations and recommendations at its 1750th meeting held on 14 May 2019.

3. The Committee's concluding observations (CAT/C/ZAF/CO/2, par 42) requested the State party to provide within one-year further information on the specific areas of concern identified in paragraphs 23 (a), 25 (a) and 33 (a) of the concluding observations and recommendations. South Africa submitted its response under the follow-up procedure on 20 April 2021. (Annexure A).

4. Government compiled this third periodic country report based on verified data or information drawn from various Government departments and comments received through an inter-institutional consultative process with national human rights institutions, commonly referred to as Chapter 9 institutions supporting constitutional democracy, namely, the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (the CRL Rights Commission) and the Commission on Gender Equality (CGE) and civil society organisations (CSOs). Government was particularly mindful in preparing this report, following the direction provided by the Committee in par 30 of the List of Issues Prior to Reporting to provide detailed information on relevant legislative, administrative, judicial or other measure taken since the consideration of the previous periodic report to implement the provisions of the Convention or the Committee's recommendations.

5. This report was prepared during an important milestone in South Africa – that of celebrating the 25th Anniversary of the Constitution of the Republic of South Africa, 1996. Chapter 2 of the 1996 Constitution is the Bill of Rights, which is a cornerstone of democracy in South Africa. The Bill of Rights enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. It indicates that the State must respect, protect, promote and fulfill the rights set out in the Constitution. Among the rights that must be respected and protected are the rights to life, to be free from all forms of violence from public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.

6. This report is arranged by Articles contained in the Convention. This report captures developments in South Africa on the realisation of the rights guaranteed by the Convention, including new developments which were not highlighted during the presentation of the last report. The report was finalised in consultation with the relevant Government departments, Chapter 9 institutions and CSOs. A consultative workshop with Government departments was held on 30 September 2022 and another with institutions supporting constitutional democracy and CSOs was held on 2 March 2023.

7. The latter was attended by over 60 individuals from different organisations. During the workshop, Mr Jean Fokwa: Human Rights Officer: Treaty Body Capacity Building Programme Office of the United Nations Office of the High Commissioner for Human Rights Pretoria-Regional Office made a presentation on the UN Treaty Body System, the reporting process and the role of Non-State Actors i.e. National Human Rights Institutions & Civil Society Organisations in the process of preparation and consideration of the national report and submission of their shadow reports. The SAHRC made a presentation on the mandate of the National Preventative Mechanism ("NPM") and provided comments and input on recommendations pertaining to the NPM on the list of issues prior to reporting issued by the Committee against Torture. Lastly, the Department of Justice and Constitutional Development (DoJ&CD) presented the national report and invited attendees to submit written comments.

8. The SAHRC as the lead organisation under South Africa's multiple-body NPM provided written input on the activities, achievements and challenges of the NPM in South Africa. Three CSOs, i.e. the Lawyers for Human Rights (LHR), the Equal Education Law Centre (EELC) and the African Policing Civilian Oversight Forum submitted written comments on South Africa's national report. Government is grateful for the opportunity to engage with Chapter 9 institutions and CSOs in consideration of its national report and for the invaluable input provided during the workshop and the written comments provided thereafter. To the extent possible, some of the inputs are incorporated in this 3rd periodic country report.

9. Government also encouraged attendees to submit shadow reports to the Committee to add different perspectives so that the Committee can have the benefit of plurality of voices in the review of South Africa as far as the implementation of the Convention, the concluding observations and recommendations is concerned. Government also committed to engage at a bilateral level with these organisations to address matters of concern raised in their submissions beyond this reporting process.

Replies to List of Issues
Issues identified for follow-up in the previous concluding observations

10. At the end of its 66th session held from 23 April to 17 May 2019, the Committee transmitted its concluding observations to South Africa. The Committee's concluding observations (CAT/C/ZAF/CO/2, par. 42) requested the State party to provide within one-year further information on the specific areas of concern identified in paragraphs 23 (a), 25 (a) and 33 (a) of the concluding observations. As stated above, South Africa submitted its responses.

11. The Rapporteur of the Committee against Torture in a letter dated 28 July 2021 (Annexure B) encouraged Government to provide additional information which would further contribute to the Committee's analysis of the progress made regarding the recommendations contained in pars 23(a) and 33(a) of the concluding observations.

12. In terms of par 23(a), the Judicial Inspectorate of Prisons ("JICS") is an oversight body mandated to uphold and protect the rights of all inmates who are incarcerated, to conduct and report on investigations into serious incidents such as unnatural deaths, use of force, torture, inhuman treatment, assault and allegations of corrupt or dishonest practices in correctional facilities. In its 2020/21 Annual Report, JICS reported that "*the Department of Correctional Services ("DCS") is legally obliged to report to JICS on the death of any inmate in correctional centres … as it is difficult for JICS to be fully aware of what is happening in correctional facilities across the country*". The Correctional Services Act, 1998 ("CSA") imposes an unequivocal mandatory reporting obligation – it requires the DCS to report any use of force, segregation and mechanical restraints to JICS.

13. The 2021/22 Annual Report highlights the number of unnatural deaths from 2017 to 2022 as reported by the DCS to JICS. Table 1 below contains the number of unnatural deaths from 2017 to 2022:

Table 1
Number of unnatural deaths from 2017 to 2022

Year	*2017/2018*	*2018/2019*	*2019/2020*	*2020/2021*	*2021/2022*
Unnatural Deaths	82	103	96	75	104

Source: JICS Annual Report 2021/2022.

14. The number of natural-cause deaths in correctional facilities during the corresponding reporting period, i.e. the 2017 to 2022 is provided in Table 2 below:

Table 2
Number of natural deaths from 2017 to 2022

Year	*2017/2018*	*2018/2019*	*2019/2020*	*2020/2021*	*2021/2022*
Natural Deaths	487	384	335	455	419

Source: JICS Annual Report 2021/2022.

15. The CSA states that minimum force can be used for private defense, for the defense of another person, to prevent an inmate from escaping and for the protection of property. The overall objective of the use of force must always be to achieve the safe custody of inmates and the emphasis must be on restraining the inmate(s) and stabilising the situation. Table 3 below provides the number of cases reported on the use of force from 2017 to 2022:

Table 3
Number of reported cases on the use of force from 2017 to 2022

Year	*2017/2018*	*2018/2019*	*2019/2020*	*2020/2021*	*2021/2022*
Reported cases on the use of force	994	232	358	694	471

Source: JICS Annual Report 2021/2022.

16. In terms of par 33(a), the Independent Police Investigative Directorate Act, 2011 ("IPID Act") established the IPID to give effect to section 206 (6) of the Constitution. IPID has a statutory duty to conduct independent, impartial and quality investigations of identified criminal offences allegedly committed by members of the South African Police Service ("SAPS") and Municipal Police Services ("MPS"). In addition to investigating such matters, IPID is obliged to make recommendations to the SAPS or refer matters to the National Prosecuting Authority ("NPA") for prosecution. The cases of allegations of torture referred by the IPID to the NPA are discussed under Article 12–13 in the Report.

Articles 1 and 4

Acts of Torture Punishable in line with Article 4 (2)

17. It is critical to note that the South African Constitutions of both 1993 (Interim Constitution) and 1996 (Final Constitution) made provision for the right to be free from torture and not to be treated or punished in a cruel, inhuman and degrading way. The Prevention and Combating of Torture of Persons Act, 2013 ("Torture Act") creates a specific crime of torture in South African law and establishes jurisdiction over certain acts of torture that occur outside of South Africa's borders, among other things. This was an important step in South Africa's domestication of the United Nations Convention against Torture ("UNCAT") and is indicative of a level of commitment on the part of the South African Government to preventing and eradicating torture and other ill treatment.

18. Section 4 of the Torture Act creates offences and penalties. It states that any person who (a) commits torture; (b) attempts to commit torture; or (c) incites, instigates, commands or procures any person to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

19. Furthermore, any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life. Life imprisonment is the most severe punishment in South Africa. It means that a prisoner will serve 25 years in prison before being eligible for consideration of parole.

20. Also, sections 13, 29 and 30 of the Torture Act, sufficiently cover sentences and redress.

21. The SAPS also issued a National Instruction 6 of 2014 on the Prevention and Combating of Torture of Persons to embed the principles of the Torture Act in the SAPS. It also sets rules relating to the interview of suspects.

The Status of the International Crimes Bill

22. The International Crimes Bill was introduced in Parliament in 2017 and was withdrawn in March 2023.

Article 2

New Measures on Fundamental Safeguards

23. New measures taken during the reporting period to ensure that all persons arrested or detained are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of their liberty include the National Instruction Number 12 of 2019 relating to arrest and detention of suspects issued by the SAPS National Commissioner in November 2019.

24. This new National Instruction serves to, amongst others, inform SAPS members to desist from non-compliance with legislation, case law, National Instructions and risk prevention guidelines when arrest and detention are being executed by the members of the service. It states that the detention of a person is a serious and humiliating infringement upon their freedom of movement and must be limited to the minimum period of time that may be necessitated by the interests of justice.

25. The National Instruction instructs members to refrain from arresting a person if, amongst others, the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1997 (“CPA”). It can be deduced that the essence of this instruction is to provide a safeguard against arbitrary arrest of persons by SAPS members.

26. The National Instruction emphasizes that arrested persons should be brought to court within 48 hours in keeping with section 35(1)(d) of the Constitution which provides that everyone who is arrested for allegedly committing an offence has the right to be brought before a court as soon as reasonably possible, but not later than (i) 48 hours after the arrest; or (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day. With this provision, the Constitution entrenches the protection and promotion of the rights of arrested, detained and accused persons which is a rule of customary international law and a peremptory norm of international law.

27. The National Instruction gives effect to Chapter 12 of the National Development Plan (“NDP”) which outlines a vision to build safer communities through demilitarizing and professionalizing the police service and adopting an integrated and holistic approach to safety and security in South Africa. This vision is given expression to Priority 5 (Social Cohesion and Safe Communities) of the Medium-Term Strategic Framework (“MTSF”), with which the work of the SAPS is aligned.

28. The SAPS derive its powers and functions from section 205 of the Constitution of the Republic of South Africa, 1996, and from the SAPS Act, 1995. This legislation provides that SAPS’ core functions are to prevent, investigate and combat crime; maintain public order; protect and secure the inhabitants of South Africa and their property and uphold and enforce the law. The vision of the SAPS is to create a safe and secure environment for all people in South Africa.

29. Part of the safeguards include the use of a Police Station monitoring tool by the SAHRC as part of its NPM functions to assess risks of torture and cruel and inhumane treatment or punishment in custodial environments under the management of SAPS. This tool, which was designed jointly with SAPS, equips monitors with the full suite of SAPS

regulatory instruments for custody management, and is largely focused on monitoring SAPS regulatory and procedural compliance. The questionnaire used during the visits clearly references the applicable SAPS National Instruction to determine compliance.

30. Furthermore, the passing of the Independent Police Investigative Directorate Amendment Act, 2019 (Act 27 of 2019), which was assented to in June 2020, provides for further safeguards in the form of parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director. This ensures that the IPID will be operationally and structurally independent as set out in a watershed Constitutional Court judgment.[1] The IPID Amendment Bill of 2022 proposes further measures to ensure the entrenchment of the institutional and operational independence of IPID, including a more transparent process for the appointment of the Executive Director and also a detailed and thorough process for integrity testing of IPID officials.

31. IPID also collaborated with the African Policing Civilian Oversight Forum ("APCOF") to develop a framework for case screening and prioritisation. During the period under review, a Memorandum of Understanding (MoU) was signed and the project commenced. The framework will standardise IPID's case prioritisation process and improve case investigation outcomes.

32. To expand IPID's footprint and improve access to its services, 11 new offices were established in collaboration with the DCS:

- Gauteng – four offices in Heidelberg, Hammanskraal, Westonaria and Mabopane.
- KwaZulu Natal – four offices in Port Shepstone, Port Durnford, Kwambonambi and Mkhuze.
- Northern Cape – three offices in Springbok, Upington and Kuruman.

Age of Criminal Capacity

33. In terms of the Child Justice Amendment Act, 2019 which commenced in August 2019, the minimum age of criminal incapacity is no longer 10 years but 12 years.

National Preventative Mechanism

34. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT") states that parties must designate, maintain or establish a NPM to strengthen the protection of persons who are or may be deprived of liberty. The South African National Preventive Mechanism ("NPM") was launched in June 2019. The NPM published its second annual report, attached hereto as Annexure C, which reflects on the progress made in the implementation of the OPCAT in South Africa since its ratification in June 2019. It follows the inaugural report which was produced for the 2019/20 fiscal year which ended on 31 March 2020. This report covers the period from 1 April 2020 to 31 March 2021. In tracking the progress since the OPCAT ratification, the report looks at the NPM institutional building processes, observations made in the previous fiscal year and what has been done to strengthen the protection of persons deprived of their liberty within the framework of the OPCAT in South Africa.

35. A separate detailed report providing information on the NPM's activities and achievements with respect to the prevention of torture and ill-treatment during the period under review is attached as Annexure D.

36. Government decided to adopt a multi-body NPM which envisages the SAHRC playing a coordinating role together with other oversight bodies. The NPM is constituted by the following institutions:

I. SAHRC;

II. JICS;

[1] McBride v Minister of Police and Another (CCT255/15) [2016] ZACC 30; 2016 (2) SACR 585 (CC); 2016 (11) BCLR 1398 (CC) (6 September 2016).

III. the Office of the Military Ombud (OMO);

IV. the Health Ombud (HO); and

V. the IPID.

37. In terms of funding, the NPM institutions each receive resources and budgets from the fiscus based on individual mandates, business and funding model and operational scope. For the NPM coordination start-up and operational costs, the SAHRC received a ring-fenced budget of R1.6 million, R2.4 million and R2.6 million for three fiscal years until the end of 2021/22 fiscal year (31 March 2022). The functional role of the SAHRC was subsidised by the SAHRC budget and is performed by the nine provincial offices of the SAHRC. A sub-unit within the office of the SAHRC chief executive officer has been established to mostly focus on the coordination and functional aspects. This sub-unit is led by a Head of Programme – on secondment – who acts as the NPM coordinator and is supported by two researchers and an administrative assistant (on secondment). A Commissioner of the SAHRC has oversight over the NPM.

38. JICS's expenditure for the fiscal year 2019/2020 was R67 158 313 from an allocated budget of R77 244 000. On 31 March 2021, there were 86 permanent approved and funded positions on the fixed establishment – 84 filled posts and two (2.33%) vacancies. There were 270 contracts for ICCV (Independent Correctional Centre Visitors) positions – 222 posts filled and 48 vacancies (17%).

39. For the 2019/20 fiscal year, the IPID had a budget of R 336 653 000. Its overall actual expenditure was R 336 610 000 which translates to 99.99% against the target of 100%.

40. In its comments on the national report, Lawyers for Human Rights ("LHR") welcomed South Africa's ratification of the OPCAT and welcomed the establishment of the NPM but sought further clarity on the operations of the NPM, specifically around its transparency and the effectiveness of its recommendations. The LHR called for the NPM to strengthen the mechanism to engage with civil society with specific reference to oversight and monitoring immigration detention in designated police holding cells.

41. In its response to the comments by the LHR, the NPM indicated that it was still relatively new and in the process of refining its operational model to ensure that it functions within the framework of the OPCAT. In the interim, the NPM has published three reports for each financial year since its establishment. The NPM has also made other recommendations directly to the authorities responsible for places where persons are or may be deprived of liberty. For instance, the NPM issued recommendations to Government relating to places of deprivation of liberty at the outset of the coronavirus disease.[2]

42. Importantly, constructive dialogue is on-going with the relevant authorities considering that the NPM was only designated towards the end of 2019. The effectiveness of the NPM cannot be measured immediately considering its focus on systemic issues and as such, change will be incremental and long-term. It is important to also underscore that the NPM does not deal with individual complaints, but these can be referred to appropriate institutions.

43. Given that some police stations are designated as immigration detention centres for purposes of the Immigration Act, these are covered by the ambit of the NPM. Still not all police stations have been visited yet.

44. The NPM notes the critical role that civil society, non-governmental organisations (NGOs) and experts across the world have played in lobbying for the establishment of NPMs, supporting their effectiveness through advocacy, awareness, and capacity development. In this regard, the NPM is considering lessons from other jurisdictions on how to formalise the mechanism to guide the role of civil society in its operations. This could include advisory capacity or ad hoc expert or technical services. Nonetheless, the NPM has had numerous engagements with civil society on its programmatic work driven by the recently developed strategic plan. In developing and finalising the strategic plan, civil society was consulted. Similarly, various civil society organisations and individuals participated in meeting prior to

[2] https://www.sahrc.org.za/npm/index.php.

the NPM strategic review that took place in December 2022. This meeting afforded civil society an opportunity to discuss their expectations of the NPM which included the finalisation of the discussion paper on the role of civil society in the work of the NPM as well as considering the publication of material and possibility of joint visits.

Violence against Women

45. The programme of addressing the scourge of gender-based violence and femicide ("GBVF") is receiving attention and concerted support at the highest echelons of Government and was spearheaded by the President of the Republic following the historic 2018 Presidential Summit on this subject. In order to bridge the gap between law and implementation in 2019 the President co-signed with the civil society organisations the Presidential Summit Declaration against GBVF which sets out a roadmap to an effective implementation of our laws and other programmatic interventions.

46. South African Cabinet adopted a National Strategic Plan ("NSP") on ending on GBVF in March 2020 as an implementation tool of the Presidential Summit Declaration which is being implemented through a stakeholder collective made up of Government, the private sector, civil society, donor partners, and so forth. The NSP aims to provide a multi-sectoral, coherent strategic policy and programming framework to strengthen a coordinated national response to the crisis of GBVF by the government of South Africa and the country as a whole. The NSP on GBVF comprises a monitoring and evaluation framework with clear targets, indicators and timelines for implementation as assigned to different stakeholders.

47. The strategy seeks to address the needs and challenges faced by all, especially women across age, sexual orientation, sexual and gender identities; and specific groups such as elderly women, women who live with disability, migrant women and trans women, affected and impacted by the GBVF scourge in South Africa. In ensuring its implementation Government facilitated mainstreaming of the plan into the annual performance plans of the various key departments and that it is resourced within existing baseline resources.

48. It must be noted that South Africa has progressive legislation addressing the scourge of GBVF with reference to the following legislation; the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; the Domestic Violence Act, 1998; the Protection from Harassment Act, 2011; the Criminal Procedure Act, 1977; the Criminal Law Amendment Act, 1997 (pertaining to minimum sentences); the Maintenance Act, 1998. In addition, in 2022 South Africa signed into law three new GBVF Amendment Acts to improve prevention, response and accountability in the management of GBVF-related matters, and these are:

49. The Domestic Violence Amendment Act, 14 of 2021, which introduces a wider definition of domestic violence to include inter alia, spiritual abuse, elder abuse, exposing a child to domestic violence, related person abuse, coercive behaviour and controlling behaviour. The extended definition seeks to address comprehensive abusive acts that could lead to violence in domestic relationships. It increases accessibility to justice by introducing electronic applications for protection orders and legal aid services to survivors of domestic violence. It further introduces the issuing of a Domestic Violence Safety Monitoring Notice to police to ensure constant contact with the survivor so as to curb the incidence of femicide where the survivor shares a joint residence with the respondent. This is intended to improve the efficacy of a protection order. The Amendment Act further imposes mandatory reporting of suspected or actual acts of domestic violence perpetrated against children, persons with disabilities and older persons. Failure to do so is a punishable crime. No legal action can be taken against the whistle-blower if the report was made without malice. This provision underpins the principle of 360-degree accountability, as espoused by the Presidential Summit Declaration.

50. In line with article 5 of the Presidential Summit Declaration, the DoJ&CD reviewed some of the key GBVF laws and this exercise resulted into the introduction of 3 GBV Amendment Acts: (i) Domestic Violence Amendment Act, 2021 (Act No 14 of 2021), (ii) Criminal and Related Matters Amendment Act, 2021 (Act No 12 of 2021, and the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021 (Act No 13 of 2021). These laws seek to address, inter alia, flaws in the implementation process,

enhance collective accountability, strengthen the establishment of a victim-centric justice system, improve responsiveness, while tightening up prevention. It is through these interventions that the country is currently addressing the systemic flaws and deficiencies that often make the criminal justice system inaccessible and ineffective.

51. Criminal and Related Matters Amendment Act, 12 of 2021 tightens bail and sentencing provisions. It permits virtual proceedings and recognises gesture-language as viva voce evidence. Intermediary services are also extended to civil proceedings and older persons.

52. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021 requires the particulars of all convicted sex offenders to be entered in the National Register for Sex Offenders ("NRSO") so as to prohibit the registered sex offenders from working in environments that will give them access to vulnerable persons, as defined by the Amendment Act. It extends the periods in which the particulars of the sex offenders must remain in the Register. It also gives public access to the Register by application to the Registrar. It further underscores the spirit of accountability carried by the Presidential Summit Declaration against GBVF by calling for mandatory reporting of sexual offences perpetrated against a vulnerable person. Failure to do so is a punishable offence.

53. A Femicide Watch is being developed to serve as a national repository of GBV-related femicide cases. The Department of Justice and Constitutional Development ("DoJ&CD") has taken a phased-in approach in its development to ensure all-inclusive data metrics. The Femicide Watch is intended to assist the country in determining the numerical data and profile of the femicides so as to provide the appropriate prevention, care and response. The Femicide Watch is now at Phase 5 of the planned 6 Phases of development. The plan is to publish it every 16 Days of Activism of No Violence against Women and Children Campaign.

54. The 3 GBVF Amendment Acts and Femicide Watch are the achievements of the GBVF NSP indicators. DoJ&CD hosted Webinars on different salient changes introduced by 3 GBV Amendment Acts, in collaboration with government and civil society organisations.

55. The National Prosecuting Authority ("NPA") developed comprehensive policies in relation to the management and prosecution of GBVF related offences as included the NPA Prosecution Policy Directives. These directives are annually reviewed to be updated with the latest developments in law.

56. All the aforementioned legislation and related directives are covered in the training curriculum for prosecutors and integrated stakeholders. Progress on the implementation and delivery of initiatives, specifically those in line with Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 are reported to Parliament by the Intersectoral Committee (as created by the Act) on an annual basis to ensure compliance and monitoring and evaluation.

57. The establishment of the National Council on Gender-Based violence and Femicide is underway. The Government of South Africa tabled the National Council on Gender-Based Violence and Femicide Bill in Parliament at the end of September 2022. The Bill seeks to establish the National Council on Gender Based Violence and Femicide which will be responsible for providing strategic leadership on the elimination of gender-based violence and femicide in South Africa.

Trafficking in Persons

58. To give effect to the implementation of the Prevention and Combating of Trafficking in Persons Act, 2013, the DoJ&CD launched a National Policy Framework ("NPF") in April 2019. The NPF seeks to ensure a uniform coordinated and cooperative approach by all government departments, organs of state and civil society organisations in dealing with Trafficking in Persons ("TIP") matters. In collaboration with the UNODC, a generic training manual on TIP was developed, as well as sector specific training manuals with the International Organisation for Migration (IOM). Training sessions were rolled out and will continue in the next financial years. The data tool has also been developed.

59. TIP convictions in the 2021/2022 financial year (12 months) are as follows:

- 9 accused were convicted for TIP in 8 cases (which involved 22 victims). All these accused received life imprisonment except 1 accused who received a sentence of 20 years imprisonment.
- In 3 other cases, 6 accused were acquitted on TIP offences but convicted on alternative charges (involving 15 victims).

Table 4
Total number of convictions from 1 April 2021 to 31 March 2022

Convictions	*Number of individuals involved*	*Number of Cases*
Total # individuals convicted under TIP laws	9	8

60. For the 2022/2023 financial year (12 months) convictions are as follows:

- 13 Accused were convicted for sex trafficking. In one case the accused were also convicted for the contravention of S.7 Act 7/2013 benefiting from the services of victims of trafficking. Sentences ranged from life imprisonment, 18 years imprisonment and 15 years imprisonment.

Table 5
Total number of convictions from 1 April 2022 to 31 March 2023

Convictions	*Number of individuals involved*	*Number of Cases*
Total # individuals convicted under TIP laws	22	12

61. The Sexual Offenses and Community Affairs (SOCA) unit of the NPA, together with National Operations Centre of DoJ&CD, developed a data collection tool for NICTIP (National Intersectoral Committee on Trafficking in Persons, attended by all stakeholder departments and Civil Society) which was implemented in 2019 to ensure accurate and reliable data collection from all stakeholder departments. Each province has a NPA Nodal Point (the Eastern Cape and Gauteng provinces have 2 Nodal Points each) responsible for collecting accurate and reliable data regarding the prosecution of TIP cases to be submitted to SOCA for collation before submitting to NICTIP. The implementation of the data collection tool also enabled the finalisation and implementation of the NPF.

62. Between June 2019 and September 2022, the Department of Home Affairs ("DHA") in collaboration with strategic partners trained Immigration Officers including the newly recruited Border Guards on the detection, and investigation of trafficking in persons, including victim identification and referral. As a result, a total number of 381 officials have been trained during the period under review.

63. In November 2022, the DoJ&CD hosted a National Inter-sectoral workshop, in order to review the NPF and finalised key policy issues pertaining to strengthening the partnerships with civil society, decriminalisation of sex work, outcomes of the national research concluded on the extent and scope of TIP in South Africa, and tools to enhance integrated data collection in South Africa.

64. In respect of victims of TIP and consistent with the Prevention and Combatting of Trafficking in Persons Act, 2013, the Republic of South Africa has established multi stakeholder coordination committees at national and provincial levels to prevent, investigate and prosecute traffickers, including the identification and provision of psychological support to victims.

Article 3

Domestic legislation on refugees and asylum seekers

65. The Refugees Act, 1998 was amended in 2017 and the Regulations giving effect to the Act were published in December 2019. In terms of Section 2 of the Act, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person if compelled to return to or remain in a country where he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country.

66. South Africa is a constitutional democracy where the Bill of Rights form the cornerstone of our democratic principles. As a result, the principle of administrative justice and fairness are embedded into the Refugees Act. In this regard, decisions that adversely affect the right of any person can be appealed against also subjected to judicial review. Consistent with the Refugee Act and its Regulations, the DHA has developed Standard Operating Procedures which guide Refugee Status Determination Officers in the status determination process. The Refugees Status Determination Officers (“RSDOs”) also attend an accredited Refugee Status Determination Course presented by the Department’s Learning Academy. The Learning Academy in partnership with the Chief Directorate Asylum Seekers Management, during the 202/21 financial year, trained a total number of 109 RSDOs on the amendments of the Refugees Act and its accompanying regulations.

67. Through the learning programme, the learners are expected to be developed with the following outcomes:

(a) Apply knowledge of South African legislation to issues relating to asylum seekers and refugees;

(b) Know and understand the general rights and obligations of asylum seekers and refugees;

(c) Demonstrate knowledge and understanding of the role of the personal interview in the asylum process;

(d) Prepare for an asylum interview;

(e) Apply the steps for opening the asylum interview;

(f) Demonstrate knowledge and understanding of the content of the asylum application;

(g) Compile interview questions that will facilitate information gathering;

(h) Apply interview techniques that can be used to ensure a successful asylum interview;

(i) Conduct a credibility assessment using the asylum seeker’s statements;

(j) Apply the administrative justice as prescribed by Section 33 of the South African Constitution;

(k) Take informed decisions based on the Promotion of Administrative Justice Act, 2000 (“PAJA”);

(l) To promote lawful, reasonable and procedurally fair decision-making processes;

(m) To promote an efficient administration and good governance; and

(n) To create a culture of accountability, openness and transparency.

68. In addition, DHA collaborated with the UNHCR and other relevant United Nations' agencies for provision of capacity building for the Refugee Status Determination Officers including the Refugee Appeal Authority.

69. Since the Covid-19 Lockdown in terms of the Disaster Management Act, the DHA introduced the Visa Online System for the extension of visas. The Online System was later extended to accommodate new applications. As at mid-2019, the DHA received on average approximately 5000 applications for asylum per quarter, and an average of 20 000 asylum applications per year. Adjudication of applications takes up to 5 days to finalise, however, some applications require more time due to their complexity. South Africa, as at mid-2019, had a total of 82 823 active refugees and a total of 184 976 active asylum seekers cases.

70. In an effort to prevent, investigate and prosecute corruption within the DHA, including the asylum and refugee determination process, the DHA has installed CCV Cameras in all the Refugee Reception Offices. As of October 2022, South Africa has a total number of 5 Refugee Reception Offices. Standard Operating Procedures are also in place to guide the adjudication process. In addition, the DHA monitors compliance with the Standard Operating Procedures by regularly visiting the Refugees Reception Offices and quality assuring adjudication. The DHA has also secured a new building for the Cape Town Refugee Reception Centre which was previously closed.

71. The DHA has a Branch to prevent, investigate and prosecute allegations of corruption within the Department including within the asylum and refugee determination process.

72. No person (unless so excluded from protection in terms of the Article 1 of the 1951 Convention) seeking protection may be refused entry into the Republic, expelled, extradited or returned to any other country or be subjected to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country.

73. In terms of the Refugees Act, all rejected asylum applications which are found to be manifestly unfounded are reviewed by the Refugee Standing Committee which is independent and not part of the Refugee Status Determination Officers. Appeals are also considered by the Refugee Appeals Authority at no cost to the asylum applicants and the decisions of the Appeal Authority can also be subjected to judicial review.

74. As a principle Government will not extradite any person to a country where such person will be endangered. Similarly, Section 2 of the Refugees Act is consistent with the 1951 United Nations Convention, as it does not permit any person to be returned to a country where he/she is likely to be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group or his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country. An asylum seeker or any person who is a subject of extradition will not be deported, extradited or returned pending an appeal process.

75. The Immigration Act, 2002 provides for the issuing of the section 23 permit which is a non-renewable Asylum Transit Permit to any person who presents himself/herself to the Immigration Officers at ports of entries as an asylum seeker. In addition, asylum seekers who enter South Africa at any place other than at a designated port of entry have a legal right to present themselves to the Refugee Reception Centers for application purpose.

76. Asylum seekers have access to interpretation services during asylum and appeal processes. Appeals against rejected applications are heard by the South African Refugee Appeal Authority at no cost to the asylum seeker.

77. There were 20 329 applications received from 1 June 2019 to 1 June 2022. A total number of 1 528 of applications were granted. South Africa does not disaggregate asylum and refugees data based on torture. Refugee status is granted to every asylum seeker whose fear of persecution has been proved.

78. South Africa did not expel asylum seekers during the period under review. South Africa does not interfere with national sovereignty of other States and therefore there are no mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation. However, what can be guaranteed is that the South African protection regime has one of the strongest mechanisms in the world to afford protection to persons of concern. All decisions to remove illegal immigrants and failed asylum seekers are considered, confirmed and authorised by courts before deportation. Therefore, removing or rejecting an asylum seeker outside these processes will be illegal in the Republic.

Articles 5–9

New Legislation or Measures on Article 5

79. In terms of implementation of Article 5, section 4 of the Torture Act states that any person who – (a) commits torture; (b) attempts to commit torture; or (c) incites, instigates, commands or procures any person to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life. Furthermore, any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

Extradition

80. A request for extradition is to be processed in terms of the Extradition Act, 1962, read with the Constitution. If the request is based on an extradition agreement between the South Africa and the Requesting State, the provisions of the agreement are also to be considered.

81. In terms of section 3(1) of the Extradition Act, South Africa can extradite a person to a Requesting State with which it has an extradition agreement. See Annexure E list of countries with who South Africa has an extradition agreement.

82. South Africa can also extradite a person to a Requesting State in the absence of an extradition agreement. Section 3(2) provides that such a request can be processed after the President gave consent. The manner in which the President's consent is to be obtained is set out below.

83. Section 3(3) of the Act further provides that South Africa can extradite a person to a Requesting State which has been designated. To date South Africa has designated the following States: Ireland; Namibia; the United Kingdom and Zimbabwe.

84. Extradition Treaties do not specify specific offences for which extradition may be granted. An extradition treaty normally makes provision for dual criminality and may be dependent on the other party to the treaty for execution of a request if the stated offences are also a crime in that country. In cases where South Africa has no extradition treaty in place with another country, the international principle of reciprocity normally ensures that an extradition request is executed.

85. In terms of section 6 (1) of the Torture Act, - *a court of the Republic has jurisdiction in* respect *of an act committed outside the Republic which would have constituted an offence under section 4(1) or (2) had it been committed in the Republic, regardless of whether or not the act constitutes an offence at the place of its commission, if the accused person* –

(a) is a citizen of the Republic;

(b) is ordinarily resident in the Republic;

(c) is, after the commission of the offence, present in the territory of the Republic, or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in the Republic and that person is not extradited pursuant to Article 8 of the Convention; or

(d) has committed the offence against a South African citizen or against a person who is ordinarily resident in the Republic.

86. (2) If an accused person is alleged to have committed an offence contemplated in section 4(1) or (2) outside the territory of the Republic, prosecution for the offence may only be instituted against such person on the written authority of the National Director of Public Prosecutions contemplated in section 179(1)(a) of the Constitution, who must also designate the court in which the prosecution must be conducted.

Article 10

Educational Programmes

87. DCS has developed a training programme and presentation to educate staff on the Convention Against Torture. The training programme covers the United Nations Standard Minimum Rules on the Treatment of Offenders ("the Nelson Mandela Rules"), Use of Force, Prevention of Torture and Human Rights, amongst others. The following officials were trained at a national level and training is further being decentralised to Correctional Centres.

- 11 476 officials have been trained over a five-year period (2015/16-2019/20).
- 6 172 officials trained in 2021/22.

88. In ensuring compliance, DCS continuously raises awareness and has annual training on prevention of torture. The DCS monitors incidents reported on a daily basis. Monitoring and measuring performance is included in the Annual Performance Plan and is closely assessed.

89. The SAHRC in collaboration with the Triangle Project and Gender Dynamix, hosted the DCS (Johannesburg Management Area) for a gender sensitisation and training workshop in implementing the *Jade September* judgment[3] to frontline employees of the Department. The workshop was attended by approximately 65 senior and junior officials from the management area. A similar sensitisation workshop was provided to the Malmesbury Correctional Centre officials by the SAHRC Western Cape provincial office. Further a more curated training material is being finalised. This material will respond to the needs of sexual minorities who may find themselves deprived of liberty through increased awareness of their heightened vulnerability.

90. In terms of SAPS, the Division: Human Resource Development conducts training to members of the SAPS in terms of section 49 of the Criminal Procedure Act, 51 of 1977 on the use of force. Training is provided on the following areas:

- protection of human rights of individuals;
- National Instruction 4 of 2014;
- Public order police: crowd management during public gatherings and demonstrations;
- National Instruction 1 of 2016: The use of force in effecting an arrest; and
- Use of Force Policy 2018.

91. There is also an on-going Human Rights in Policing Learning Programme for SAPS members implemented since 1998 and deals with the prohibition of torture amongst others. Training conducted by the SAPS Division: Human Resource Development focusses on the following aspects: Basic Police Development Learning Programme: Managing the detention of persons in custody; Human Rights in Policing Learning Programme Station Lecture: Detention Facilities for Illegal Foreign Nationals; Informed Rights; Standards of Detention; Detention of Children; The Body of Principles for the Protection of all Persons under any form of Detention; Minimum Standard Rules for the Treatment of Prisoners and the Deportation and Detention of Illegal Foreigners. The significance of the Bill of Rights, laws and policies that promote human rights and the protection of the rights of victims of crime are covered in the training manual.

[3] September v Subramoney NO and Others (EC10/2016) [2019] ZAEQC 4; [2019] 4 All SA 927 (WCC) (23 September 2019).

92. The training includes lessons on the total prohibition of torture, including the right of a police officer to refuse to obey an order to torture anyone. The rights of offenders, the execution of arrests and the use of force in compliance with human rights, the prevention of torture, the conduct of search and seizure in compliance with human rights, the impacts of human rights on the detention of a suspect, the management of crowds in compliance with the human rights and the labour rights of police officers. These are some of the key themes covered during the training on human rights-based approach and democratic policing. This demonstrates that there are great strides on promotion of human rights culture in SAPS.

93. Through a memorandum of understanding (MoU) with the SAPS, the SAHRC is working collaboratively with SAPS to review the South African Police Service Training Manual on Human Rights. Once completed, the training will be mandatory for all junior and senior police officers and officials of the SAPS.

Article 11

Interrogation Rules

94. The South African Policing system is guided by the Constitution. The Constitution supersedes every piece of legislation, interrogation rules, instructions, methods and practices or arrangements for custody. All Acts are derived and formulated from the Constitution as the guiding document. All policies such as the South African Police Act,1995, the National Crime Prevention Strategy of 1996, the White Paper on Safety and Security of 2016, the Reservists Policy, etc. are all based on the prescriptions of the Constitution of South Africa.

95. According to the South African Police Act, 1995, where force has to be used, this must be only "the minimum force which is reasonable in the circumstances". The most important national legal provision governing use of force during arrest (including, but not limited to, the police) is Section 49 of the Criminal Procedure Act, 1977.

96. Pursuant to the Torture Act, in 2014 the SAPS issued a national instruction (National Instruction 6 of 2014: The Prevention and Combating of Torture of Persons) to provide clear direction to its members regarding their obligations in terms of the Act which criminalises torture and other offences associated with the torture of persons. According to this instruction an order by a superior, or any other authority, that a person in custody be tortured, is unlawful and may not be obeyed. The member of SAPS to whom an order has been given to torture a person in custody must take all reasonable steps to put an end thereto and report the matter to the relevant office of the IPID provided that it does not exclude the person in custody to also submit a complaint regarding torture directly to the IPID.

97. In November 2018, the Minister of Police approved the Use of Force Policy and Guidelines for the South African Police Service, which seeks to inculcate a human rights compliant approach, which must inform police management, strategy and operations, in the fulfillment of the Constitutional mandate. The Policy makes it clear that *"[t]he authority to use force is grounded in the obligation that every police official has to comply with the laws of the Republic of South Africa. In situations where members of the SAPS are required to use force, they must comply with the legal and regulatory framework. Police in South Africa are trained to recognise their obligation as officials of the state to uphold the Constitution, and the centrality of the Bill of Rights, in particular, the right to life, and freedom and security of the person from all forms of violence. The manner in which the police uphold this obligation requires a careful balance between protecting rights on the one hand and fulfill their legally mandated functions"*.

98. The Policy makes recognition and cites international and regional standards and guidelines in policing and a number of human rights instruments including UNCAT that prohibit the use of force of unnecessary force in all settings. The goal of the policy is to improve performance of the SAPS by professionalizing the use of force. This policy exists in conjunction with a range of initiatives to strengthen and professionalise the police in South Africa. The need for police professionalism is articulated in the National Development Plan and White Paper in Policing (2016). By improving police professionalism in using force this policy aims to contribute to ensuring that policing in South Africa is carried out in a manner

that ensure police effectiveness in the prevention and combatting crime, whilst upholding human rights including the safety of the members of the police. The purpose of this policy is also to contribute to the development of an ethos of professionalism in policing in South Africa, both specifically with regard to the use of force and more generally. The Policy therefore aims to contribute to ensuring that policing in South Africa is carried out in a manner that supports improved police morale, enhanced community respect and cooperation, and greater respect for the law. The Policy makes it clear that force must not be used when questioning a person in South Africa.

99. In the DCS, Article 11 is brought to the attention of managers and staff during the training and awareness programmes. DCS has an approved Standing Operating Procedures (SOP) that spells out the combatting of incidents of torture.

100. JICS hosted an online international seminar on 27-28 May 2021 titled '*Excessive Use of Force in Correctional Centres: The Role of DCS, JICS and Civil Society'*. The seminar focused on the role of independent watchdogs in response to high levels of use of force. The seminar grappled with the following key questions:

- What can and should JICS (and other independent watchdogs) do in response to the use of force in correctional centres?
- What is the best constructive role JICS can play to limit the use of force in correctional centres?
- How can JICS learn from best practices abroad?
- How does JICS's status as part of the national preventative mechanism, as envisaged by the OPCAT, help to address the lack of mandatory reporting?

Measures to reduce Prison Overcrowding

101. In terms of its legal mandate, the primary responsibility of the DCS is to enforce sentences of the court through a warrant of detention or committal. Due to high levels of crime in South Africa, this leads to an unfortunate situation of overcrowding in DCS correctional facilities which remains a challenge that continues to stretch resources, hampering efforts of rehabilitation.

102. Overcrowding has been managed by the DCS and partners through the implementation of various strategies. The Department implemented an Eight-Pronged Strategy to manage overcrowding from 2006 to 2020. The implementation of this strategy has not rendered a permanent reduction of overcrowding. An analysis of the Eight-Pronged Strategy revealed limitations such as lack of critical details; these include the definition of overcrowding, the elements of overcrowding, bed space measurements and management as well as factors that contribute to overcrowding. On 11 March 2022, the DCS developed and approved the Overcrowding Reduction Strategy which replaced the Eight-Pronged Strategy.

103. Since 2019, DCS implemented the 2019 Special Remission of Sentence and the 2020 COVID-19 Special Parole Dispensation to reduce the overcrowding levels:

- 2019 Special Remission of Sentence granted to Sentenced Offenders, Probationers and Parolees;
- DCS was granted permission, in December 2019, to remit the sentence expiry dates of specific categories of sentenced offenders, probationers and parolees across all correctional facilities in the country;
- The decision taken by the President of the Republic, in line with Section 84 (2)(j) of the Constitution and international practice, is part of DCS' continuous efforts to promote national unity and reconciliation in a democratic South Africa;
- At the end of the 2018/2019 financial year the total inmate population was 162 875 (bed space 118 572), which translated into an overcrowding level of 37% at the end of the financial year;
- The 2019 Special Remission was implemented during the 2019/2020 financial year (from 16 December 2019 to 06 March 2020). At the end of the 2019/2020 financial

year the impact of the 2019 Special Remission resulted in a decrease of 8 426 sentenced offenders between the 2018/19 and 2019/20 financial years. This translated into a reduction of 5.46% within the inmate population between the two financial years, from 162 875 (bed space 118 572) to 154 449 (bed space 120 567). The implementation of the 2019 Special Remission as well as the increase in the available bed space further resulted in a reduction of 9% between the two financial years (from 37% to 28%). It is important to note that the reduction through implementation of Special Remission is only a temporal relief which cannot be sustained.

104. 2020 COVID-19 Special Parole Dispensation for Selected Categories of Sentenced Offenders.

105. To curb the spread of COVID-19 in overcrowded correctional facilities, the Department implemented the 2020 COVID-19 Special Parole Dispensation (SPD) for selected low risk offenders who had served their Minimum Detention Period (MDP) and those who were approaching their minimum detention period in the next five years.

106. Offenders who benefitted from the SPD were placed out as from 20 May 2020, in controllable groups as per identified category and sentence group.

107. On the commencement date of the implementation of the SPD, the inmate population was 155 069 against the accommodation capacity of 110 836, which translated to an occupancy level of 139.91%. At the end of the 2020/21 financial year, the implementation of the 2020 COVID-19 SPD resulted in a decrease in the overcrowding level to 27%.

108. The overcrowding in correctional facilities in excess of approved bed space capacity was reduced from 28% to 27% between the 2019/20 and 2020/21 financial years.

109. Although the overcrowding in correctional facilities has decreased to 27% in the 2020/21 reporting year, it is important to note that the implementation of COVID-19 SPD is not the final solution to overcrowding management, but rather a short-term relief.

110. Even though the reduction in the inmate population is being managed against external factors such as, crime tendencies, unemployment rate, slow economic growth rate, increasingly measures to combat and prosecute crime, counteracts measures are taken to down manage the inmate population.

111. In addition, the DCS continues to implement the strategies to minimize the remand detention population. The strategies implemented:

- Bail Protocol: This entails referral of remand detainees to court for review of bail in line with section 63A and 63(1) of the Criminal Procedure Act, 51 of 1977;
- Consideration of length of detention: Referral of remand detainees to court for consideration of their length of detention in line with section 49G of the CSA. The initial application is submitted at 21 months and subsequent applications are submitted annually.

112. The success entails reduction of bail, placement under correctional supervision, warning, withdrawal of cases and placement of children under secure care facilities. It must be noted that referring remand detainees to court for bail review under section 63A (Bail Protocol) of the Criminal Procedure Act, 1977, as a means of reducing remand detainees population has limitations, as those remand detainees charged with serious crimes, do not qualify.

Overcrowding Reduction Strategy

113. DCS continues to implement the Overcrowding Reduction Strategy which contains measures for dealing with overcrowding and consist of myriad of approaches i.e. direct and indirect measures.

114. Direct measures are those that may result in the reduction of the inmates whereas the indirect measures are enabling in nature and supports and aid the implementation of the direct measures through cooperation with relevant stakeholders. These direct measures include amongst others the following:

- Referral to court for bail review (with an option for tagging: Optional when available).
- Referral for consideration of period spent in detention (with an option for tagging: Optional when available).
- Referral to court of terminally ill or severely incapacitated remand detainees.
- Referral to court by DCS for conversion of a sentence of imprisonment to correctional supervision.
- Use of progressive discipline for breaching of non-custodial conditions with imprisonment considered as a last resort.
- Compassionate release – release on Medical Parole.
- Monitoring of the Sentence Expiry Dates (SEDs) and, ensure that no sentenced offender is kept beyond his / her SED unless there are reasonable circumstances that justify detention such as the state of disaster.
- Placement on Parole (Lifers).
- Placement on Parole (Determinate sentences).
- Transfer between correctional centres.
- Identification and renovation of the unused buildings that can be converted into detention facilities.
- Renovation and replacement of outdated Correctional Centres and building of new centres.
- Bed space Management.

115. DCS has a Facilities Component that continuously deals with infrastructure, maintenance and repairs. The Department of Public works and Infrastructure ("DPWI") assists the DCS with major projects.

116. In 2020, DCS approved a Strategic Framework for Self-Sufficiency and Sustainability. This framework is defined as the extent to which the department is providing in its own needs with regard to production workshops and agricultural produce. The objective of this framework is to reduce dependency from the state funding and utilise offender labour as part of addressing challenges and improvement of facilities.

117. Offenders are provided with skills and programmes accredited by the Department of Higher Education and Training ("DHET") for production workshops, agriculture, arts and crafts. This is done in order to prepare offender reintegration back into society.

118. According to Section (8) of the CSA, the DCS is mandated to provide adequate and balanced diet to promote good health to all inmates. Therefore, self-sufficiency also assist in increasing food availability at a cheaper price while transferring developmental skills.

119. In line with the United Nations Standard Minimum Rules on the Treatment of Offenders (Nelson Mandela Rules), the DCS prioritises the health of all inmates as a basic human right. DCs has health workers (including medical practitioners) at all correctional centres. In larger centres, the DCS has hospitals and clinics for Health Care purpose. Inmates are referred to external hospitals for services not provided in correctional facilities.

120. The current legislation does not allow DCS to keep the State and mental health patients and they are referred to psychiatric institutions in collaboration with the Department of Health ("DoH"). The DCS Health Care Services is aligned to the National Health policies, procedures and guidelines developed by the National Department of Health.

121. The DCS has 243 Correctional Centres and currently houses 144 522 inmates. The inmates are of different ages, sex and ethnic origin. As on 30 June 2022, out of the national total:

- There were 97 705 sentenced offenders and 46 692 Remand Detainees.
- Sentenced Foreign Nationals: 7 161 sentenced and 4 428 Remand Detainees.

- Approved bed space of 108 804 which calculated into an occupancy level of 132.83%. Overcrowding level equates to 32.83%.
- Remand Detainees population constituted approximately 32.39% whilst the sentenced offender population constituted approximately 67.61% of the total inmate population.
- Males made up approximately 97.38% whilst females made up approximately 2.62% of the total inmate population.
- There were 59 female juveniles and 2 888 male juveniles.
- There were 1 279 female youths and adults and 42 416 male youths and adults.

122. According to Section 16 (1) of the CSA, "the Department may provide correction, development and care programmes and services even when not required to do so by this Act". Section 41 of the Act, provides for the treatment, development and support services which includes a full range of programmes and activities, including needs-based programmes as is practical in order to meet the educational and training needs offenders.

Specific needs of vulnerable prisoners

123. DCS has a correctional programme which focuses specifically on the needs of female offenders. It is based on a survey conducted amongst female offenders to establish their specific and unique needs. The objective is to create awareness and empower female offenders on areas such as general life skills, relationships, addictive behaviour and career building.

124. The 2005 White Paper on Corrections provides for a needs-based rehabilitation approach which implies that the DCS must ensure the provision of appropriate facilities, services and processes for each one of the special categories identified including the LGBTQI+.DCS special categories identified:

- Children: (14 to 17 years of age);
- Youth: (18 to 25 years of age);
- Females;
- Offenders with disabilities;
- Elderly offenders (60 years of age and above);
- Offenders with mental illness;
- First time offenders;
- Offenders serving long sentences (25 years and above); &
- LGBTQI+.

Solitary confinement / Segregation of an inmate

125. The CSA makes provision for segregation of an inmate for a period of time. The segregation may be effected for the whole, or part of the day and may include detention in a single cell, other than normal accommodation in a single cell. The segregation of an inmate is permissible:

- upon the written request of an inmate,
- to give effect to a decision consequent to a disciplinary finding to restrict the amenities of the inmate,
- when segregation is prescribed by the correctional medical practitioner on medical grounds,
- or as a measure to prevent violence towards an inmate or the inmate displays violence,
- where reasonable suspicion exists that a recaptured escapee will again escape or attempt to do so,

- where SAPS requests so and the Head of Correctional Centre considers it in the interests of the administration of justice to comply with the SAPS request.

126. DCS practices solitary confinement strictly in line with internationally accepted standards and the Nelson Mandela Rules.

127. Section 30(6) of the CSA indicates that all instances of segregation or extended segregation must be reported immediately to the JICS. Table 6 below provides the total number of cases of segregations per region and general reasons of segregations.

Table 6
Total number of segregation cases

Region	*Total Segregations*	*General reasons for Segregations*
LMN	361	Medical reasons, own request, development purposes, further charges, own safety, pending investigation, juveniles, COVID-19, Sanction, Studies
WC	1 949	Medical reasons, Own request, Discipline, Juveniles, Quarantine, Gangsterism, Assault, Security reasons, Own Safety, Request by SAPS, Sanction, Suicidal, 48 Hours from Community Corrections
EC	135	Own Request, Medical, escape risk, ex-officials
KZN	396	Own safety, School purposes, Transgressed, Medical reasons, own request, written request (section 30(1) (a) of CSA, own safety (section 30(1) (d) of CSA), medical Reasons (section 30(1) (c) of CSA, LGBTI+ Status, Protection, Security reasons, Sanctions, Misbehaving,
GP	1 279	COVID 19 cases, safety, own request, educational programmes and misconducts, Further Charges, Sanctions, Fighting, Assaults
FS/NC	918	Own safety, Display violent behaviour, Medical condition, own safety, sanction, isolation during COVID-19, Own request, Study purposes, Medical Reasons
Total	**5 038**	

Source: DCS.

128. Section 31 (1–7) of the CSA, provides for the limitations on the usage of mechanical restraints. In addition, the department has policies and procedures to deal with restraint.

Table 7
Total number of mechanical restraints cases from 2016 to 2022

Financial year	*Total reported*
2016/2017	50
2017/2018	52
2018/2019	58
2019/2020	45
2020/2021	47
2021/2022	54

Source: DCS.

129. All cases are investigated by the independent institution as required by law. These are the SAPS and JICS. All unnatural deaths are immediately investigated. Alleged transgressors and incidents are reported to the SAPS for investigation. All approved recommendations are implemented and monitored accordingly. No compensations are provided. Victims or their dependants can obtain redress through civil action and remedies.

Visits to places of detention

130. Visits to the Correctional Centres are conducted by the JICS which is an independent institution reporting to the Minister and Parliament directly. All independent but approved monitors have access to correctional centres and consult with detainees within departmental policy, procedures and rules.

131. The sphere of activities of the DCS is not generally inaccessible to outsiders, while provision has been made for judges, magistrates and other authorised visitors to visit a correctional facility without prior notification. This is also applicable in respect of foreign visitors, interest or student groups, provided that permission is obtained beforehand for such visits. This is clearly spelt out in the Standard Operation Procedure on "Visits to Correctional Centres. The Judicial Inspectorate is established by section 85 (1) of the CSA.

132. The Judicial Inspectorate is established by section 85 (1) of the CSA. Section 85 (2) provides that "the object of the Judicial Inspectorate is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres. The following are the focus areas of inspection:

- Population and rate of overcrowding.
- Specialist staff.
- Structure and maintenance of facilities.
- Health Care.
- Unnatural deaths.
- Mentally ill inmates.
- Dishonest and corrupt practices.
- Mandatory Reporting.
- Serious/urgent Complaints by inmates.
- Enhancing the investigative skills of inspectors (specialist).
- Compliance with JICS investigations and recommendations.
- Specialist/expert cooperation with SAPS, NPA, Judiciary and IPID.
- Escalating identified criminal offences to relevant authorities.
- Systematic/Thematic reoccurring identified problems referred to relevant authorities (Health, Education and Department of Social Development).

133. JICS functions operationally in correctional centres through independent Correctional Centre Visitors (ICCVs) by taking offender complaints and ensure that they are timely handled by relevant stakeholders and those that require escalations are further escalated. The SAHRC also conducts oversight visits, report observations and make recommendations.

134. The International Organisation for Migration (IOM), Medicina Sans frontiers (MSF) and the International Committee of the Red Cross (ICRC) conduct unannounced visits to the Lindela Holding Facility for illegal immigrants who are awaiting deportation. They have unhindered access to the deportees, in the same way as the SAHRC. The recommendations in any report issued by an international organisation are implemented, and feedback in writing submitted to the body. This is then verified by the international organisation at its following oversight visit at the facility. Since 2019 -01 -25 to September 2022 a total number of visits to the Lindela Holding Facility is as tabled below:

Table 7
Total number of visits to the Lindela Holding Facility

Organisation	*Date*	*Organisation*	*Date*
International Committee of the Red Cross (ICRC)	2019.02.01	United High Commissioner for Refugees (UNHCR)	2019.11.20
	2019.12.18		2019.11.26
	2019.12.24		2019.12.14
	2020.02.04		2020.11.02
	2020.02.11		2020.12.08
	2020.02.20		2021.04.12
	2020.03.03		2021.05.08
	2020.03.05		2021.05.13
	2020.10.07		2021.05.18
	2020.11.02		2022.04.16
	2020.11.19		2022.05.16
	2020.12.04		
	2020.12.08	Medicina Sans Frontiers (MSF OCB)	2021.07.09
	2021.08.13		2021.08.23
	2021.06.23		
	2021.03.12		
	2021.02.24		
	2022.02.16		
	2022.03.15		
	2022.04.20		
	2022.05.19		
	2022.07.16		
South African Human Rights Commission (SAHRC)	2019.02.12		
	2019.02.18		
	2019.03.05		
	2019.06.07		
	2019.07.12		
	2019.11.04		
	2020.04.08		
	2020.09.09		
	2021.05.31		
	2021.09.28		

Detention of asylum seekers and migrants

135. All illegal immigrants in the country cannot be detained whether be it at a Police Station or Lindela Repatriation Centre without a Warrant of detention, notice of intention to deport, as well as Notice of Rights in terms of section 35 of the Constitution.

136. In respect of migrant detention, all arrested migrants are brought before Court within 48 hours of arrest, and their continued detention pending deportation only occurs once confirmed by the Court, consistent with section 35 of the Constitution. The National Commissioner of the SAPS issued National Instruction 12 of 2019: Arrest and Treatment of Illegal Foreigners in this regard. The DHA is responsible to repatriate or deport an illegal foreigner and a member of the SAPS may not on his or her own accord perform such repatriation or deportation. An immigration officer must issue a warrant [(Form 33) (DHA – 1710) (Warrant of Detention of Person suspected of being an Illegal foreigner)] ordering the SAPS to detain a person pending an investigation to verify his or her identity or status. Illegal foreigners must be detained in a manner and at the police stations (as promulgated in the Government Gazette and circulated by Division: Visible Policing) and DHA facilities determined by the Director-General of DHA whilst pending deportation. if a suspected illegal foreigner has been detained for 20 days (detained in terms of a warrant issued in terms of Regulation 33 of the Regulations) following the arrest of the suspected illegal foreigner, the station commander must notify the relevant immigration officer or local DHA office that the person will be released if the immigration officer does not provide a warrant issued by a court for the further detention of the person before the expiry of the 30 day period. If an illegal foreigner is detained in terms of a warrant issued by an immigration officer and such foreigner requests that his or her detention for the purpose of deportation be confirmed by a warrant of a court, the station commander or the community service centre commander must notify the relevant immigration officer or local DHA of such request. If a copy of such warrant is not provided to the community service centre commander within 48 hours of such request, the foreigner must be released.

137. South Africa does not detain asylum seekers, only failed asylum seekers are detained at the Lindela Facility once their applications for refugee status have been proven to be manifestly unfounded and are bound to be deported. Those who are detained, pending deportation, are held at Lindela where they have access to NGOs, lawyers, the SAHRC and Ambassadors from their respective countries of origin. It is worth noting, that the SAHRC and the International Red Cross have unlimited access and conducts visits at Lindela to monitor the conditions under which the detainees are held. Furthermore, Parliament's Portfolio Committee on Home Affairs frequently visits Lindela in fulfillment of its Parliamentary oversight role. In addition, Lindela has a dedicated human rights office which is used by the SAHRC, the Red Cross, Amnesty International, Doctors Without Borders, human rights groups and NGOs playing a monitoring and oversight role.

138. The smooth and prompt deportation is sometimes impeded by delays in the verification of identities and nationalities of deportees as well as acquisition of travel documents from the country of origin. If these delays should extend beyond requisite prescribed time frames, government is required to apply to a competent court for an extension and to obtain an appropriate court order in this regard. In furtherance of ensuring that everyone enjoys their fundamental human rights and freedoms, South Africa does not practice the encampment system as is done in many countries across the world.

139. The right to just administrative action is entrenched in terms of Section 33 of the Constitution. In terms of the Constitution, everyone (including asylum seekers and migrants) has the right to administrative action that is lawful, reasonable, procedurally fair, and everyone whose rights have been adversely affected by administrative action, has the right to be provided with written reasons. In addition, every arrested and detained person has the right to be provided with written reasons for his/her arrest and detention and to challenge such arrest and detention.

140. Furthermore, review or appeal in terms of section 8(4) or 8(6) of the Immigration Act, 2002 is provided to everyone facing immigration detention and deportation.

141. All migrants detained and awaiting deportation have access to health care services. This includes local clinics and hospitals were required. Medical treatment provided to

migrants awaiting deportation is the same as healthcare services rendered to South Africans as there is no discrimination. Migrants legally residing in South Africa have access to basic education, including adult basic education.

142. As general principle, South Africa does not detain migrant children. In this regard, unaccompanied children are kept at places of safety where they access basic services and their family can be traced through the Department of Social Development ("DSD"). Adult undocumented migrants are also provided an opportunity to depart the country at their own cost through a "notice to depart" provided for in terms of the Immigration Act.

Detention in psychiatric institutions

143. The number of mental health involuntary admissions in psychiatric institution in South Africa was 54035 in 2021. With regard to alternative forms of treatment, the South African government has a total number 254 Residential Care facility that are licensed by the provincial departments of health to provide mental health services.

Articles 12–13

Statistical data of torture cases registered by IPID

144. The mandate of the IPID is to investigate all incidents of misconduct by members of the SAPS and MPS. In terms of Section 29(1) the IPID Act, read with Regulation 2(1) of the IPID Regulations, the SAPS and MPS are obligated to report specific cases to IPID for investigation in a specified format and manner. A police official is legally obliged to notify the IPID of any matters that require an investigation by the Directorate as soon as he or she becomes aware of it.

145. A police official must furthermore report such information within 24 hours in writing to IPID. Failure to comply with this legal obligation constitutes an offence.

146. 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 must then undertake 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.

147. Table 5 contains statistical data of cases registered by IPID for the financial years from 2014 to 2022 followed by the narration below the table.

Table 8
Statistical data of cases registered by IPID for the financial years 2014 to 2022

Financial Year	*Incidents Reported [Section 28(1)(f)]*	*Total Decision ready*	*Referred to the NPA*	*NPA Decisions*	*Court outcome*	*Forwarded to SAPS (and Municipal Police Service)*	*Outcome*
2014/2015	103	102	40	30	6	52	11
2015/2016	153	138	77	62	10	78	12
2016/2017	149	105	66	55	3	61	6
2017/2018	203	90	47	37	1	52	10
2018/2019	271	135	75	52	2	81	6
2019/2020	217	108	63	48	2	67	8
2020/2021	256	137	36	18	0	37	3
2021/2022	192	139	61	28	0	48	4
Total	**1 544**	**954**	**465**	**330**	**24**	**476**	**83**

148. The table above shows that 1544 incidents were reported since 2014/2015 to 2019/2022 financial years. Of the total figure of incidents reported majority were reported in the financial 2018/2019 with 271 incidents, followed 256 in 2020/2021 and 203 in 2017/2018 financial year. Table 1 also depicts that there were lesser incidents reported in the financial year 2014/2015. However, there was an increase of 50 incidents in 2015/2016 financial year.

149. The total number of cases that were decision ready for the 2014/2015 to 2021/2022 was 954. Of the 954 cases majority of decision ready cases was in the financial 2021/2022 with 139 cases, followed by 2018/2019 with 138 and 137 in 2020/2021.

150. It was noted that 465 cases were referred to the National Prosecuting Authority (NPA). Of the 465, NPA declined to prosecute 326 cases that were referred.

151. There were 24 cases where NPA decided to prosecute. Of the 24 cases where outcomes were received, there were 10 acquittals, 6 guilty verdicts (sentences were ranging from fines to 5 years imprisonment), 5 withdrawals and 3 mediations. Currently there are 22 cases on the court roll.

152. A total number of recommendations forwarded to the SAPS and MPS was 476 from 2014–2021.

Incidence of torture committed by the South African National Defense Force ("SANDF")

153. The incident of alleged torture reported in FY 2017/18 (against *Matlaila & 4 Others*) is still not finalised, due to an application made by the accused to the High Court of South Africa. The High Court process is not finalised yet.

Measures or steps that have been taken to implement the Marikana Farlam Commission Recommendations

154. Following the release of the Marikana Judicial Commission of Enquiry Report, the IPID established an Investigation Task Team in compliance with the recommendations to investigate all the reported cases. Cases reported were investigated as the below case numbers.[4]

Incident of 13 August 2012: Marikana CAS 115,116 & 117/08/2012

155. These cases relate to the incidents that led to the death of two (2) police officers, death of three (3) miners, attempted murders of one (1) police officer and five (5) miners. There were police officers that were charged for these cases and the matters are undergoing trial at Mmabatho High Court.

Incident of 16 August 2012: Marikana CAS 82/08/2012

156. This case relates to the allegations against the police for non-compliance with Section 29 of the IPID Act no 1 of 2011, for failing to report the death of one of the deceased and defeating the ends of justice. The accused persons were arrested, and they appeared in Mmabatho High Court on several occasions and were ultimately acquitted of all the charges on the 29 March 2021.

Incident of 16 August 2012: Marikana CAS 137/08/2012 and 138/08/2012

157. The aforementioned Marikana cases as per CAS 137/08/2012 (Scene 1) and CAS 138/08/2012 (Scene 2) relates to the death of 34 mineworkers that were allegedly shot and killed by the police. The two (2) cases are still under investigation. The NPA has requested further investigation, including pointing outs at the crime scene by some witnesses. IPID is still in the process of locating the witnesses with the assistance of their legal representatives.

[4] Incident of the 13 August 2012: Marikana CAS 115/08/2012,116/08/2012 &117/08/2012, Incident of the 16 August 2012: Marikana CAS 137/08/2012 (Scene 1) and CAS 138/08/2012 (Scene 2) and Incident of 16 August 2012: Marikana CAS 82/08/2012 body in the police canter CCN 2016040111.

Sexual Exploitation and Abuse Cases against Peacekeepers

158. For the current reporting period (1999 to 2022) a total of thirty-six (36) Sexual Exploitation and Abuse (SEA) cases against members of the SANDF were reported of which eight (08) were successfully prosecuted in the Court of a (Senior) Military Judge. The offenders were given sentences ranging from discharge from the SANDF to fines of no less that R1 500.00. Twelve cases are under investigation. The rest of the cases were closed because the offenders were not positively identified.

159. In response to the high rate of reported Sexual Exploitation and Abuse cases against members of the SANDF, the following measures were implemented by Department of Defence ("DOD") to address the conduct and behaviour of SANDF members deployed in peace missions:

I. The Minister of Defence and Military Veterans ("MOD&MV") established a Ministerial Task Team ("MTT") to investigate SEA cases and advise on measures to curb cases of this nature.

II. The DOD also established the Paternity and Maintenance Team. The Team is required to work with the UN to facilitate the pursuit of paternity and child support claims involving children born as a result of SEA by SANDF members and is required to also render complainant support to the victim of SEA. The Team uses Deoxyribonucleic Acid (DNA) to determine paternity. Thus far eight (8) SANDF members were proven to have fathered children in the Democratic Republic of Congo. Five (5) tests came out negative and twelve of the said claims (12) are in process. Currently two (2) SANDF members were ordered to maintain their children born as a result of SEA. The Team is working around the clock to facilitate child support for the remaining claims.

III. Awareness Training Programmes for DOD members.

IV. Robust SEA Pre-deployment Training.

V. Deoxyribonucleic Acid (DNA) collection from all deploying SANDF members.

VI. The deployment of the National Investigation Officer (NIO) whose main purpose is to investigate SEA cases.

VII. On-site Military Courts in mission area to speedily prosecute offenders.

VIII. Risk Management Prevention i.e. deployed members are required to wear uniform most of the time, no alcohol in the mission area, reduction of allowances and enforcement of curfew.

IX. Criminalisation of SEA in the DOD.

X. Robust communication with the UN.

160. The DOD was commended by the UN Secretariat for the above measures as communicated in Note Verbale ALD/CDS/2021/0130 dated 17 May 2021 which noted:

> "The Secretariat wishes to express its deep gratitude to the Government of the Republic of South Africa for its commitment and applaud the Government for the positive impact its actions have had in this area".

Article 14

Measures taken to implement the TRC recommendations

161. As per the recommendations of the Truth and Reconciliation Commission (TRC), the Missing Persons Task Team (MTPP) was established in the NPA to trace and investigate the whereabouts of those who disappeared in political circumstances between 1960 and 1994 and to recover their remains where possible. To date the remains of one hundred and seventy-one (171) individuals have been recovered, identified, and returned to their families. These include cases of enforced disappearances, military skirmishes, internal political organizational conflicts, and capital punishment. The identified remains of a further four (4)

individuals are awaiting handover to the affected families, while the recovered remains of another three (3) individuals are awaiting identification. Twenty (20) cases of enforced disappearances and three other political disappearances where no amnesty was granted have been referred to the SAPS for further investigation, inquest, or possible prosecution.

162. Since September 2021, a dedicated prosecutor was assigned at a national level to specifically coordinate and monitor progress with TRC matters. The purpose thereof was to expedite the investigation of TRC matters and to identify and institute investigation of further recommendations of the TRC. Capacity building within the provincial divisions was prioritised to ensure that dedicated TRC investigators and prosecutors would be appointed to work exclusively on TRC matters. A total of sixteen (16) TRC dedicated prosecutors were appointed throughout the country. A total of thirty-three (33) dedicated investigators were appointed to investigate TRC matters. Interventions include all-encompassing guidance and training to the investigators and their commanders, prosecutors and their supervisors. Regular workshops on TRC matters are held. Progress is monitored monthly with accountability stressed on all matters. Important stakeholders have been engaged to ensure transparency and accountability.

163. All matters which were identified for re-opening have been allocated an investigator and a prosecutor, following a joint decision taken between the NPA and Directorate Priority Crimes Investigation Unit ("DPCI"). This includes matters where persons detained, particularly in contravention of specific security legislation at the time, died in detention. The prosecutors guide the investigators to obtain all the information, including the records of those who died in detention as a routine part of their investigation/s. The result of any investigation which concludes that a person has died under mysterious or suspicious circumstances, must be supported by evidence. It is this evidence that informs a decision for the holding of an inquest or to apply for the re-opening of an inquest.

164. As part of its victim centered approach, the National Director of Public Prosecutions, encouraged prosecutors to engage directly with families of those who died in detention. Her directions that all families and victims must be updated regularly on progress and challenges in their matter/s is complied with and regularly monitored.

165. Senior counsel has also been appointed; whose mandate it is to review measures adopted by the NPA in dealing with the TRC matters. He will assess whether the measures adopted are adequate, and if not make recommendations to strengthen them. Stemming from the guidelines laid down in *Roderigues v National Director of Public Prosecutions of South Africa and Others (76755/2018)[2019] ZAGPHC 59; [2019] 3 SA All 962 (GJ)* (3 June 2019), he will also, whilst reviewing the process, if he has reason to believe that there was any violation of Section 41(1) of the NPA Act, escalate the matter to the NDPP, who will if necessary, refer the matter for a criminal investigation to be instituted.

Article 15

Inadmissibility of evidence obtained through torture

166. South Africa has domestic and international obligation to exclude any evidence obtained through cruel, inhuman and degrading treatment. Section 39(1)(b) obliges South African courts to consider international law in interpreting the Bill of Rights. Courts have indeed referred to international law, both binding and non-binding on South Africa, in interpreting the Bill of Rights. Section 12(1)(d) of the Constitution provides that everyone has the right 'not to be tortured in any way'. Section 12(1)(e) provides that everyone has a right 'not to be treated or punished in a cruel, inhuman or degrading way'. The rights under sections 12(1)(d) and (e) are non-derogable under the Constitution. South African courts are alive to this obligation and have expressly held that any evidence obtained through torture is always inadmissible. This emerging jurisprudence on the inadmissibility of evidence obtained through torture gives effect to section 35(5) of the Constitution which provides as follows:

> 'Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.'

167. In other words, section 35(5) requires the court to exclude evidence obtained in a manner that violates any right in the Bill of Rights if either the admission of that evidence will render the trial unfair or otherwise be detrimental to the administration of justice. South African jurisprudence also makes it clear that information obtained in violation of section 35(5) of the Constitution, especially through torture is inadmissible. For example, in *Mthembu v State* in par 31, the court held that *"[t]he CAT prohibits torture in absolute terms and no derogation from it is permissible, even in the event of a public emergency. It is thus a peremptory norm of international law. Our Constitution follows suit and extends the non-derogation principle to include cruel, inhuman and degrading treatment…[t]he prohibition against torture is therefore one of our most fundamental constitutional values. Having regard to this country's inauspicious pre-constitutional history, when the treatment of criminal suspects and other detainees often involved the use of torture, this is hardly surprising – for it is one of the most egregious of human rights violations. And it is a crime that the CAT requires all member states to investigate thoroughly and to ensure that perpetrators are severely punished"*.[5]

168. In par 32 of the *Mthembu* judgment, in reference to article 15 of the CAT, the court held as follows:

> "In regard to the admissibility of evidence obtained as result of torture, article 15 of the CAT cannot be clearer. It requires that '[e]ach state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The absolute prohibition on the use of torture in both our law and in international law therefore demands that "any evidence" which is obtained as a result of torture must be excluded 'in any proceedings".[6]

169. In terms of the Supreme Court of Appeal (SCA) ruling in *Mthembu*, even a pointing out based on a statement which was obtained as a result of torture is inadmissible. In a similar vein, in *S v Tandwa & Others* the SCA held that:

> "the admission of derivative evidence obtained in circumstances involving some form of compulsion, or as a result of torture, however relevant and vital for ascertaining the truth, would be undeniably detrimental to the administration of justice"[7]

170. The SCA was even clearer in the case of *Matlou & Another v S*,[8] in terms of indicating that in the case of torture, the confession and the derivative evidence obtained as a result of torture would have to be inadmissible.

171. The Constitutional Court, which is an apex court in South Africa, also thrown its weight behind the SCA rulings discussed above when it ruled that:

> "Where, for example, derivative evidence is obtained as a result of torture there might be compelling reasons of public policy for holding such evidence to be inadmissible even if it can be proved independently of the accused. Otherwise, the ends might be allowed to justify the means. The admission of evidence in such circumstances could easily bring the administration of justice into disrepute and undermine the sanctity of the constitutional right which has been trampled upon".[9]

172. In one of the recent judgments that rejected evidence obtained in violation of section 35(5) of the Constitution, *Gumede v The State* the court held that *"public policy requires the police to* observe *and respect the law in the conduct of their investigation. Police officers are*

[5] Mthembu v The State (379/2007) [2008] ZASCA 51 (10 April 2008).
[6] Mthembu (n 2 above) para. 32.
[7] S v Tandwa & Others 2008 (1) SACR 613 (SCA).
[8] Matlou & Another v S [2010] 4 All SA 244 (SCA) para. 22.
[9] Ferreira v Levin NO & Others; Vryenhoek & Others v Powell NO & Others 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 para. 150.

not above the law and must conduct their investigations within the parameters of the law, which includes the Constitution".[10]

173. Other relevant case on this subject matter include *S v Mkhize* where it was held in para 33 that *"[i]t is a trite principle of our law that the onus is on the state to prove, beyond a reasonable doubt, that the confession was made freely and voluntarily, and without any undue influence, by the accused whilst in his sound and sober senses"*.[11]

Article 16

Prohibition of corporal punishment in the home

174. The Constitution provides a substantial Bill of Rights protecting the rights of all South Africans, including children, in Chapter 2. These are the right to equality (section 9), human dignity (section 10) and the right not to be subjected to cruel, degrading or inhumane treatment (section 12). In addition, section 28 of that chapter provides for additional rights to which children are entitled by virtue of their relatively greater vulnerability, including the right to protection from maltreatment, neglect, abuse or degradation, in section 28(1)(d). The Constitution emphasises that the best interests of the child are paramount in all matters affecting the child, in section 28(2).

175. The Children's Act, 2005, provides the legislative framework for a holistic prevention, early intervention and child protection strategy which includes provisions requiring adherence to the 'best interests' principle and protecting children from all forms of violence. In particular, section 144(1)(b) emphasises the need for parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline.

176. Generally, with regard to the corporal punishment of children, a settings approach is adopted, with 4 settings considered. These are:

- Corporal punishment in the justice system, as a sentence and as a punishment;
- Corporal punishment in the educational system;
- Corporal punishment within alternate care settings;
- Corporal punishment in the home.

177. Corporal punishment in South Africa has been prohibited in the first three of these settings for the longest time. The Abolition of Corporal Punishment Act, 1997, abolished its use within the justice system and the South African Schools Act, 1996, outlawed it in schools, while amendments to the Children's Act, 2005, in its Regulations and Norms and Standards prohibit the use of corporal punishment and other forms of humiliating and degrading punishment in alternative care settings, i.e. foster care, cluster foster care and child and youth centres; and care settings such as Drop-in centres and early childhood development programmes. However, corporal punishment in the home which refers to any kind of physical force inflicted on children by a parent or guardian as a means of discipline was still permitted until recently when the Constitutional Court outlawed the practice on 18 September 2019 in the case of *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others.*[12]

178. The Constitutional Court ruled that the common law defence of 'reasonable and moderate chastisement' was unconstitutional, effectively banning all corporal punishment of children. The Court found that:

> "The right to be free from all forms of violence or to be treated with dignity, coupled with what chastisement does in reality entail, as well as the availability of less restrictive means, speak quite forcefully against the preservation of the common law

[10] Gumede v The State (800/2015) [2016] ZASCA 148 (30 September 2016).

[11] S v Mkhize 2011 (1) SACR 554 (KZD).

[12] Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others [2019] ZACC 34.

> defence of reasonable and moderate parental chastisement. There is, on the material before us, therefore, no justification for its continued existence, for it does not only limit the rights in sections 10 and 12 of the Constitution, but it also violates them unjustifiably."

179. Government has welcomed the judgment and pledged to strengthen South Africa's policy efforts towards the promotion of positive parenting. This decision from the Constitutional Court outlaw corporal punishment in all settings. As there is no similar defence in legislation, criminal provisions against assault now apply equally to children. With this judgment, South Africa became the 57th state worldwide and eighth African state to prohibit all corporal punishment of children.

180. South Africa is obliged to prohibit all forms of corporal punishment, because of being a State party to both the United Nations Convention on the Rights of the Child ("UNCRC"), in 1996 and the African Charter on the Rights and Welfare of the Child ("ACRWC"), in 2000. Although there is not a specific article which deals with corporal punishment in either of these two Conventions, the Committees which monitor implementation of the Conventions have interpreted both Conventions to explicitly prohibit corporal punishment. The UN Committee on the Rights of the Child ("UNCROC") issued General Comment to assist states to interpret the relevant articles in the UNCRC and noted that physical punishment of children is not compatible with the Convention. In addition, when the Committee reviewed South Africa's Initial Country Report on the UNCRC, it recommended prohibition in all settings in its Concluding Observations.

181. In its written submission to the Government of South Africa on this report, the EELC focused its submission on the nature of violence occurring in schools and the continued application of corporal punishment by some teachers in South African schools despite this practiced being outlawed. The EELC referenced the recently released report by the Statistics South Africa, which is entitled *Child Series Volume 1: Children Exposed to Maltreatment*. The report indicates that despite the abolishment of corporal punishment in South African schools in 1996, it is still used as a form of discipline. The report further shows that the most common form of violence experienced by children was corporal punishment by teachers. Of the 1 million children who experienced violence at school, close to 84% experienced corporal punishment by teachers, followed by verbal abuse by teachers (13,7%) and physical violence by teachers (10,6%). About 6 in 10 children who experienced corporal punishment by teachers at school in 2019 lived in rural areas. However, 7 in 10 children who experienced physical violence by teachers in 2019 were residents of urban areas. From these findings what becomes evident is that despite corporal punishment being illegal, it is still a practice method of discipline in South African schools.

182. Maltreatment at school includes corporal punishment or physical violence by teachers, physical abuse by other learners or verbal abuse by either the teachers or other learners. In South Africa in 2009, close to 1 in 5 children (18,5%) aged 5–17 years experienced some sort of violence at school, which includes corporal punishment or verbal abuse. This reduced to 8,2% in 2019, with just over 1 million out of 13 million school-going children aged 5–17 years reporting that they had experienced some form of violence. KwaZulu-Natal had the highest percentage of children who experienced violence at school (35,1%), followed by Eastern Cape (18,1%), Gauteng (11,8%) and North West (10,2%).

183. The Department of Basic Education ("DBE") is implementing programmes to ensure that schools provide an environment conducive to the delivery of quality teaching and learning by, among other things, promoting the rights and safety of all learners, teachers and parents and in this regard, it has developed a National School Safety Framework to serve as a management tool for Provincial and District Officials responsible for school safety, principals, Senior Management Team Members, School Governing Body members, teachers and learners to identify and manage risk and threats of violence in and around schools. The Framework is critical in empowering all responsible officials in understanding their responsibilities regarding school safety. The National School Safety Framework acknowledged that corporal punishment still remains a major problem in schools as educators are increasingly reporting losing control of classes and learners, as they are often not aware of alternatives to corporal punishment or are not equipped to implement alternative disciplinary methods.

184. The National Education Policy Act, 1996 stipulates that no person shall administer corporal punishment or subject a student to psychological or physical abuse at any educational institution. Furthermore, corporal punishment was outlawed in schools in 1996 when the South African Schools Act, 1996 ("SASA") was passed. With this Act, Government signaled its intention that discipline must be fair, corrective and educative and not punishment orientated. In terms of section 16(3) of the SASA, the principal has a primary responsibility to ensure that learners are not subjected to crimen injuria, assault, harassment, maltreatment, degradation, humiliation or intimidation from educators or other learners. Educators "have a 'duty of care' and must protect learners from violence because of their in *loco parentis status*".

185. In April 2017, the DBE published a Protocol to Deal with Incidences of Corporal Punishments in Schools. The Protocol makes it clear that corporal punishment of children is a violation of human rights. It contravenes international instruments that prohibit the use of cruel, inhumane and degrading treatment (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the African Charter on Human and People's Rights and the African Charter on the Rights and Welfare of the Child. Wherever it occurs and whoever the perpetrator – breaches their fundamental rights to protection from all forms of violence and respect for their human dignity. Corporal punishment violates children's rights to education. The Protocol goes further to state that the DBE therefore condemns in the harshest possible terms any subverted, reckless and irresponsible attempts by principals, teachers and/or any support staff member to undermine the existing legislative framework prohibiting the use of corporal punishment in schools. Prohibiting corporal punishment is an obligation under international human rights law, and not a voluntary gesture based on good-will.

Attacks against Foreign Nationals

186. The South African government is aware that the country experiences both high levels of internal and external migration, leading, inter alia, to an influx in urban and more affluent areas and this leads to competition for scarce resources. Migration to South Africa is driven by the hope of a better life in search for better opportunities, mainly socio-economic opportunities. The tensions experienced in South Africa between some locals and foreign nationals are at times borne out of and exacerbated by increasing levels of unemployment and socio-economic inequalities as well as the increase in organised cross border crime. As stated above, the causes of many socioeconomic and political challenges in South Africa are complex and multifaceted.

187. The incidents of violence that appear to disproportionately target foreign nationals is mainly the manifestation of the socio-economic challenges identified above. Much of this discrimination and violence stems from frustrations within sections in South African communities that feel that they are competing with migrants for scarce resources, whilst they are already struggling socially and economically. The South African government does not condone these actions and where people have engaged in unlawful conduct, including acts of violence against foreign nationals, the government has sought to ensure that those responsible are held to account through the criminal justice system. The rise in anti-foreigner sentiment is a source of concern and strategies to deal with this needs to be cognisant of the historical context of issues pertaining to migration, poverty, inequality and exclusion. This response will discuss these contexts and also describe the legal and policy framework which guide how the rights of migrants and their families are managed by the Government of South Africa.

188. At the domestic level, and in the context of its international obligations, South Africa has promulgated various pieces of legislation frameworks that govern migration management aimed at ensuring that the rights of asylum seekers, refugees and migrants are protected, e.g., the Citizenship Act, 1995; Immigration Act, 2002; and the Refugees Act, 1998. In the recent past, the DHA amended the Immigration and Refugees Act and implemented regulations and strategies to address glaring gaps in legislation. South African courts have upheld rights enshrined in international refugee law and standards. The National Commissioner of the SAPS issued National Instruction 5 of 2014: Reporting the detention, death or complaint of a foreign national. This creates a channel for the Department of International Relations and Co-operation ("DIRCO") to ensure that relevant foreign missions are aware of what happens to their citizen while in South Africa.

189. These interventions are supported by policy frameworks and programmes that seek to promote social cohesion at all levels. These positive developments have been achieved through collaborating and working in partnership with various partners both within government and in the broader society, as well as other stakeholders, including international organisations. South Africa is not an island. Its destiny is tied to that of the region, the continent, and the world. It operates in a region, continent and world fraught with many challenges, including those related to unemployment, poverty and inequality. It is for this reason that, from South Africa's point of view, the problems of irregular migration and its consequences in the region (and indeed in the world) require the cooperation of all countries, including countries from which migrants originate. Proposed solutions need to focus on the pull and push factors of migration. This includes the consequences of migration (e.g., economic exploitation of migrants in the countries of destination or transit) and the roots causes of forced and irregular migration such as economic mismanagement, corruption, failure of governance, political instability, and conflict in countries of origin.

190. In line with the Durban Declaration and Programme of Action ("DDPA") which was adopted following the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance ("WCAR") hosted by South Africa in Durban, in 2001, Cabinet approved the National Action Plan to combat racism, racial discrimination, xenophobia and related intolerance (NAP) in 2019. The NAP has been developed through a comprehensive consultation process involving government, the Chapter Nine institutions and civil society, and is informed by general principles of universality, interdependence and indivisibility of human rights, participation and inclusion, progressive realisation, accountability, equality and non-discrimination.

191. The development and establishment of the NAP constitutes the technical framework for the State's policies, programmes, strategies and measures to combat racism, racial discrimination, xenophobia and related intolerance, and constitutes compliance with the state's obligation to protect all individuals and groups from racism, racial discrimination, xenophobia and related intolerance. The NAP is intended to specifically address racism in South Africa. In addition to existing measures, the NAP is also intended to combat xenophobia and related intolerance and to promote human dignity through the promotion and protection of human rights; raise awareness of anti-racism, equality and anti-discrimination issues among public officials, civil society and the general public, mobilising support from a wide range of people and addressing the need to prevent, combat and address racism; and encourage the collection of data regarding racism, racial discrimination, xenophobia and related intolerance and allow for a more comprehensive assessment of the needs to effectively combat it, amongst others. To this end, the Republic of South Africa through the DoJ&CD is implementing the NAP in collaboration with strategic partners which include the United Nations' agencies and civil society.

192. Government, through collaborative partnerships between the DOJCD, DSD, SAPS and various other key role-players, continues to conduct a number of anti-xenophobia campaigns and related activities in collaboration with key stakeholders to address the root causes of sporadic attacks against foreign nationals. A National Anti-Xenophobia Task Team (NTT) was established in 2017 to focus on developing a programme that will facilitate ending attacks on foreign nationals. Furthermore, Government is a member of the United Nations Protection Working Group (UNPWG). The UNPWG's focus is on ensuring the promotion of social cohesion in our communities whilst ensuring that communities are safe for all inhabitants, both citizens and foreign nationals including refugees and asylum seekers alike. The UNPWG drafted Standard Operating Procedures (SOPs) in response to violence against foreign nationals in South Africa.

193. The DoJ&CD as the focal agency for the NAP, continues to conduct anti-xenophobia campaigns in collaboration with other departments and role-players as part of its deliverables in terms of the NAP five-year Programme of Action that is aligned to the commitments in the Medium-Term Strategic Framework - Priority 6: Social Cohesion Programme.

194. The DoJ&CD furthermore co-chairs the UN Protection Working Group (UNPWG) with the United Nations High Commission for Refugees (UNHCR). The UNPWG comprises of various government departments, civil society organisations, Chapter 9 institutions and UN Agencies. This platform provides an opportunity to exchange information on issues

pertaining to the protection of foreign nationals including refugees and asylum seekers and agree on actions that may be required in order to address the problems faced by foreign nationals. It also distributes early warnings of xenophobia incidents to members to prepare their responses and escalate to relevant security agencies.

195. The DoJ&CD continues to forge strategic collaborations with key stakeholders to promote and raise awareness of anti-discrimination issues, including the protection of the rights of foreign nationals. An example of such a collaboration is the DoJ&CD being represented on the Project Steering Committee (PSC) of the African Policing Civilian Oversight Forum's (APCOF) 3-year European Union funded project to develop the capacity of the South African Police Service (SAPS) to prevent, detect and resolve xenophobic violence and related hate crimes, for the duration of the project. The DoJ&CD's participation on the Project Steering Committee has assisted to support the effective implementation of the NAP.

196. The APCOF and SAHRC have also been engaged in a joint project to improve the prevention and detection of xenophobia. Detailed deficit studies were undertaken, and reports published. See the links to the relevant reports below.[13] The reports focus on the government's response to attacks against foreign nationals residing in South Africa, particularly on policing services experienced by migrants, refugees, and asylum seekers and makes recommendations to government on how to improve policing services.

197. As a result of this, a training manual was developed and in total, 364 Community Policing Forum (CPF) members and SAPS districts coordinators and provincial departments of community safety and liaison across all policing districts in South Africa were trained in all nine provinces over 2 days in 2022. The training exposed participants to the immigration legislation, regional and international law related to the treatment of non-nationals, refugees and asylum seekers; understanding different types of non-nationals (refugees, asylum seekers, economic migrants and illegal foreigners); understanding xenophobia, discrimination and impact of 'othering'; Government National Action Plan to Combat Racism, Racial Discrimination, Xenophobic violence and related intolerances; how CPFs can further the activities and outcomes of National Action Plan to Combat Racism, Racial Discrimination, Xenophobic Violence and Related Intolerances and practical tools for preventing and responding to xenophobic violence. Further, the training exposed recipients to a variety of useful tools such as safety auditing and planning, community mapping, developing safety programmes, developing an Early Warning System and working with SAPS to combat xenophobic violence before it happens.

198. Also, the Department of Sports, Arts and Culture ("DSAC") and its partners such as the Social Cohesion Advocates (SCAs) Programme, Moral Regeneration Movement (MRM) Programme and Community Conversations programme, conduct on-going anti xenophobia and anti-racism campaigns.

199. DSAC has also partnered with other development agencies such as the UNDP, IOM and UNHRC to develop an Early Warning System to be complimented by a Rapid Response Mechanism to detect any possible conflict and violence related to racism and xenophobia in communities.

200. The DoJ&CD continues to implement its deliverables in accordance with the first five-year cycle of the NAP Programme of Action for the period 2019–2024. This includes conducting sustained and visible anti-xenophobia campaigns in collaboration with other departments and role-players.

201. The DoJ&CD also continues to collaborate with various key partners such as the UN Migration Multi-Party Trust Fund (MPTF) to implement the NAP, inter alia, through the provision of technical assistance for the further development and operationalization of the

[13] https://apcof.org/wp-content/uploads/policing-and-non-nationals-external-police-oversight-accountability-and-xenophobic-violence-in-south-africa-.pdf.
https://apcof.org/wp-content/uploads/policing-and-non-nationals-community-police-forums-and-xenophobic-violence-in-south-africa.pdf.
https://apcof.org/wp-content/uploads/policing-and-non-nationals-report.pdf.

Rapid Response Mechanism to respond to incidents of racist and xenophobic offences/hate crimes.

202. The Ministerial/apex level structure of the NAP Governance Structure was launched in March 2022, and its function, chaired by the Minister of Justice and Correctional Services, is to provide oversight and strategic guidance on the implementation of the NAP.

203. Work towards the establishment of the Programme Implementation Committee of the NAP Governance Structure, which will assist to strengthen coordination and implementation of the NAP by various role-players, is at an advanced stage.

204. The development of a Framework for the virtual repository on disaggregated statistical data for the measurements of racism, racial discrimination, xenophobia and related intolerance is underway.

205. It is important to indicate that the 2018 Prevention and Combating of Hate Crimes and Hate Speech Bill is before Parliament for consideration. The Bill was recently approved by the National Assembly of Parliament and will now go to Parliament's National Council of Provinces for concurrence The Bill currently states that a hate crime is an offence recognised under any law, the commission of which is motivated on the basis of that person's prejudice, bias or intolerance towards the victim of the hate crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member: race; gender; sex, which includes intersex; ethnic or social origin; colour; sexual orientation; religion; belief; culture; language; birth; disability; HIV status; nationality; gender identity; albinism; or occupation or trade.

206. Promulgation of this specific legislation on hate crimes will have several advantages. It will assist in creating a shared definition of hate crime amongst all those involved in the criminal justice system; will send a clear public message that hate crimes will not be tolerated in South Africa; will provide additional tools to investigators and prosecutors to hold hate crime perpetrators accountable; will provide a means to monitor efforts and trends in addressing hate crimes; and will allow for effective coordination between government service providers to reduce the impact of secondary victimisation on hate crimes victims. Laws against hate speech serve a dual purpose. They protect the rights of the victim and the target group and ensure that society is informed that hate speech is neither tolerated, nor sanctioned.

207. The Prevention and Combating of Hate Crimes and Hate Speech Bill, will, among others, contribute towards the prosecution of persons who commit hate crimes and hate speech and it will impose punitive punishment for those found guilty of hate crime and hate speech.

208. South Africa recognises that a comprehensive approach to international migration is needed to optimise the overall benefits of migration, while addressing the risks and challenges for individuals and communities in countries of origin, transit and destination. In this regard, international and regional cooperation remains crucial. South Africa believes that the genuine factors that lead to (irregular) migration should be addressed with vigour and steadfastness. The adverse drivers and structural factors that compel people to leave their countries must be addressed, including poverty, inequality, underdevelopment, unemployment, food insecurity and conflict.

209. South Africa believes that reducing adverse drivers of migration would allow for migration through regular, predictable, and safe pathways. Management of international migration forms a core element of the overall demographic dividend and governance in South Africa. Due to the complexity of international migration in South Africa, migration management in the country and the region calls for increased international cooperation and addressing the critical root causes of forced migration towards safe, orderly and regular migration.

210. The South African courts are also taking a firm stance against perpetrators of attacks against foreign nations. For example, on 19 January 2023, the Western Cape High Court turned down the appeal of a man who murdered a Congolese citizen and attempted to also kill his brother. The man was sentenced to 20 years for killing a foreign national and for an attempted murder in South Africa in 2017. In turning down the appeal against the sentence, the court held that the "senseless and mostly unsolicited xenophobic incidents are difficult to

reconcile with a post-apartheid reality".[14] This case and others point to an emerging jurisprudence in which xenophobic motivation of the crime is being recognised by the courts as an exacerbating factor in sentencing the perpetrators of attacks against foreign nationals.[15]

Other Issues

Covid 19 Measures

211. The Novel Coronavirus (COVID-19) has had a profound impact on daily life globally. It has forced countries to institute restrictions upon personal movement and personal freedoms for authorities to better combat the pandemic as well as attempt to curb its continuous spread amongst the population. Similarly in South Africa, on 23 March 2020, the President of the Republic of South Africa, announced measures to combat the spread of the Covid-19 coronavirus – a three-week nationwide lockdown with severe restrictions on travel and movement, supported by the SANDF and other law enforcement officers – initially from midnight on Thursday, 26 March 2020, to midnight on Thursday, 16 April 2020. On 9 April 2020, the President announced that the lockdown period would be extended until the end of April 2020. On 23 April 2020, the President addressed the nation regarding the approach to be followed after the initial lockdown and announced that beyond Thursday 30 April 2020, a gradual and phased recovery of economic activity would begin. A risk adjusted strategy would be implemented to ease the lockdown restrictions. The risk adjusted strategy translated to various levels with decreasing levels of restrictions beginning with Alert Level 4 on 29 April 2020.

212. During the height of the Covid-19 pandemic, certain rights were restricted in the country, just as was done in many other countries across the world, as measures were put in place to curb its spread. In this regard, South Africa declared a National State of Disaster and subsequently a lockdown which had necessarily required that certain human rights be limited within the parameters of the Constitution, in order to preserve the fundamental right to life. From the onset, government adopted an approach to the management of the crisis which took cognisance of the importance of the continued protection of human rights. The decision to declare a State of National Disaster was taken based on legal advice which considered the constitutional implications of such a decision and its impact on the human rights of both South African citizens and foreign nationals. The decision was taken lawfully, based on existing legislation and within the framework of the Constitution and the law's provision for the limitation of rights where this is permissible based on a law of general application.

213. Some of the measures involved the deployment of Police and Soldiers in what was known as Operation Notlela, in communities to support the enforcement of the lockdown regulations. The National Regulations provided for the police to enforce the provisions of the lockdown. This required the SAPS, the SANDF and the Metro Police to ensure that the movement of people and goods were restricted, and that people were confined to their homes; public transport was prohibited with the exception of emergency and health workers. Businesses that were not essential services were closed and public places such as taxi ranks remained closed. This position pertained to the lockdown in its strictest form, and over a period of time was relaxed in line with weighing infection rates and health capacity, based on evidence and expert advice.

214. Unfortunately, reports emerged of the alleged abuse of ordinary people by law enforcement officers. One major negative incident was the death of Collins Khosa, in Alexandra, allegedly at the hands of members of the SANDF and South African law enforcement members. Government recognised that the conduct of some of the law enforcement officers appeared to be at odds with the President of the Republic's message to law enforcement bodies to desist from using excessive force regardless of the level of provocation they may encounter in deployed communities. The President empathetically stated that compassion is and should be the central pillar of the lockdown mission.

[14] Gila v S (A93/2022) [2023] ZAWCHC 8 (19 January 2023).

[15] Also see the S v Msimango 2018 (1) SACR 276 (SCA) and South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others 2017 (1) SA 549 (CC).

215. The Government complied with the High Court Judgment in *the Khosa and Others v Minister of Defence and Military Defence and Military Veterans and Others*[16] by widely publishing a code of conduct and operational procedures regulating the conduct of members of the SANDF, SAPS and MPDs in enforcing the lockdown regulations under the declaration of the State of Disaster (see Annexure F). The Department of Defence issued the Directive titled *Mission Specific Code of Conduct for Members of the SANDF specific to the State of National Disaster in terms of Section 19 of the Defence Act 42 of 2002: Operation Notlela* dated 21 May 2020 and the SAPS issued the *Directive titled Use of Force and Torture: Guidelines on the Implementation and Enforcement of Regulations* issued in terms of Section 27 of the Disaster Management Act 57 of 2002: Containment and Management of Covid 19 dated 19 May 2020. In essence, the codes of conduct issued by relevant authorities following the above judgement are aimed at ensuring that there is no unnecessary use of force from law enforcement officers. Allegations of abuse may be referred for investigation to the bodies established to investigate all acts of torture and inhuman treatment of civilians by law enforcement officers in South Africa, i.e. the Military Ombudsman (for the Army) and IPID (for the Police Services and Metropolitan Police).

216. The Disaster Management Act classified mental health service as an essential service. As a result, there was no disruption due to COVID-19 on providing mental services. Mental health legislation with all the prescribed safeguards of mental health care users remained in force. Government developed Guidelines on Mental health intervention during the COVID-19 disaster, to provide information to promote and protect the mental-well-being of the population and to raise awareness about mental disorders and mental health problems that may arise due to COVID-19 outbreak. The guidelines were targeting all levels of health care including the Non-Governmental Organization which house mental health care users. In addition, the South African Government provided free personal protective equipment to NGOs during the COVID-19 pandemic.

General information on other measures and developments relating to the implementation of the Convention in the State Party

217. On 4 December 2020, the Constitutional Court handed down a path-breaking judgment affirming JICS's important role in our constitutional democracy and buttressed JICS's independence (structural, operational financial and perceived).

- A draft JICS Bill is being processed, which will give practical effect to JICS's independence, enhance reporting obligations and embed cooperation with the DCS.
- The Inter-Departmental Assessment Committee (IAC) recommended that JICS be established as a national government component.

Ratification of international human rights instruments

218. Parliament approved two international Human Rights instruments in terms of section 231(2) of the Constitution of the Republic of South Africa,1996 for ratification, i.e. International Convention on the Suppression and Punishment of the Crime of Apartheid (ISCPCA) and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Cooperation with the UN Human Rights Mechanisms

219. South Africa attaches immense importance to the work of the various UN Human Rights Mechanisms, thematic special procedures, treaty monitoring bodies and mandate holders as institutions that provide unique and important multilateral forum where the

[16] Khosa and Others v Minister of Defence and Military Defence and Military Veterans and Others (21512/2020) ZAGPPHC 147.

international community can work together in a constructive and meaningful way to develop norms and standards in the field of human rights that will foster the promotion, protection and practical realisation and enjoyment of all human rights by all people across the world.

220. In this regard, the government of South Africa hosted the Subcommittee on Prevention of torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerances from 26 February to 9 March 2023. During this mission, the SPT visited public and private penitentiaries, police stations, military detention barracks, youth care centres, psychiatric hospitals, drug rehabilitation institutions, and a migrant detention camp, where they conducted confidential interviews with staff members and people held in these institutions. The high-level SPT delegation which composed of Mr Abdallah Ounnir, Head of the delegation (Morocco), Vasiliki Artinopoulou (Greece), Shujune Muhammad (Maldives), and Elīna Šteinerte (Latvia) met with government officials of the executive branch, representatives of civil society, and held independent discussions with the South African Human Rights Commission and related bodies. Following this successful visit to South Africa, the SPT will submit a confidential report to the government of South Africa with observations and recommendations to prevent torture and ill-treatment of people deprived of their liberty. The government of South Africa appreciate the SPT visit and the dignified manner in which the visit was conducted and the constructive preliminary recommendations and observations provided to South Africa to strengthen the mechanism to prevent torture in all its forms and manifestations, especially the issue of expediting the strengthening of legislative measures of the NPM. The government and the SAHRC are working on legislative reform to make the NPM and associated oversight bodies to be fully independent monitoring bodies empowered to visit all places of detention, which is key to prevent torture and ill-treatment in the country. The government of South Africa is also actively preparing to host the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment in the near future.

Conclusion

221. As stated above, South Africa is a constitutional democracy whose values are founded, inter alia, on respect for human dignity, non-discrimination, equality, advancement of human rights and freedoms, non-racialism and non-sexism, supremacy of the constitution and the rule of law. South Africa has acceded to and ratified various international legal instruments as part of its commitment to ensuring protection, promotion, fulfillment and progressive realisation of all human rights without discrimination. As far as South Africa is concerned, all human rights should be enjoyed by everyone, everywhere and without discrimination.

222. South Africa is committed to continue the efforts to entrench the rule of law at home and abiding by its international legal obligations including the UNCAT. The need for South Africa to abide by its international legal obligations is an established principle of our nascent jurisprudence as iterated by the courts, including the Constitutional Court, in a myriad of cases since 1994. However, South Africa has not achieved every aspiration and goal contained in various pieces of legislation that govern both private and public life in South Africa. For example, unemployment, poverty and inequality are still some of the most pressing and stubborn challenges facing South Africa despite the promulgation of laws such as the Employment Equity Act, 1998 and Broad-based Black Economic Empowerment Act, 2003, which laws are aimed at addressing decades of discrimination and exclusion under apartheid. The fact that these challenges of underdevelopment still exist in South Africa cannot be translated to mean that Government is unconcerned about the challenges that face the people of South Africa and those who live within its borders, particularly the most vulnerable.

223. South African, like many developing countries, has not been able, for various and complex reasons, to fully meet or completely fulfill all its obligations under both domestic and international law, including the realisation of all guaranteed rights under the Constitution and protection of the rights of all (particularly the most vulnerable groups) living within the borders of the Republic.

224. However, consistent with its obligations under both domestic and international law, South Africa will endeavor to tirelessly advance human rights and fundamental freedoms, including the human rights and fundamental freedoms of all who lives within its borders – including migrants, refugees and asylum seekers.