A REVIEW OF MEASURES IN PLACE TO EFFECT THE PREVENTION AND COMBATING OF TORTURE WITH SPECIFIC REFERENCE TO PLACES OF DETENTION IN SOUTH AFRICA

I INTRODUCTION

South Africa’s ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1998 did not bring an end to the torture and ill-treatment of people deprived of their liberty. South Africa has furthermore not criminalised the act of torture, as is required of states parties under art 4 of CAT. This is a serious shortcoming, as has been commented on by the Committee against Torture in its concluding remarks on the state party’s Initial Report. Criminalising torture is, however, only one important strategic component of preventing and combating torture and cruel, inhuman and degrading treatment or punishment.

Articles 10, 11, 12 and 13 of CAT oblige states parties to put in place measures to prevent and combat torture, cruel, inhuman and degrading treatment or punishment. The drafters of CAT wisely realised that criminalisation is not enough and that the overall objective is to prevent torture, and all cruel, inhuman and degrading treatment or punishment from occurring. Articles 10, 11, 12, and 13 are therefore critical to ‘operationalising’ CAT in places where people are deprived of their liberty.

Using arts 10 to 13 of CAT as structure, this note provides an overview of the current measures in place, or not, to prevent and combat torture and cruel, inhuman and degrading treatment or punishment, as well as the identifiable shortcomings in the legislative and policy frameworks governing institutions where people are involuntarily deprived of their liberty. These places are: police detention cells, prisons, the foreign national repatriation centre, psychiatric hospitals, substance abuse treatment centres, schools of industry, places of safety, secure facilities for children, military detention barracks, and places where private security personnel are deployed. It is acknowledged that each of the sectors reviewed here is in itself a field of study in respect of the requirements of CAT. This note does not claim to have exhausted the topic and more research, especially of an empirical nature, will benefit the discourse on the


2 Article 4:
1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

prevention of torture and cruel, inhuman and degrading treatment or punishment in South Africa.

Article 16 of CAT obliges state parties also to put in place measures to prevent 'other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in art 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'. The scope of this review is therefore not restricted to torture, as defined in art 1 of CAT, but also incorporates acts and conditions as described in art 16.

While South Africa does not have legislation criminalising torture, the Constitution of the Republic of South Africa, 1996 provides guidance in this regard. Section 10 affords every person human dignity, s 12 deals with the freedom and security of the person, and s 35 deals with the rights of arrested, detained and accused persons. Sections 12(1)(d) and (e) make specific reference to torture and inhuman and degrading treatment, and s 12(2) further guarantees bodily and psychological integrity. Section 35(5) specifically describes the inadmissibility of evidence obtained in a manner that violates any right in the Bill of Rights. Section 12 is important to this discussion as it places torture (and inhuman and degrading treatment or punishment) within a particular context, namely the deprivation of liberty, and emphasises the protection from violence and expands this protection to the public and private spheres.

Despite the intentions of the Constitution, the notion of ‘torture, cruel, inhuman and degrading treatment or punishment’ has not (with one exception) entered the policy, legislative and regulatory frameworks of places where people are deprived of their liberty. It is argued in this note that efforts at this level need to be intensified in order to give clear and unambiguous expression to the objectives of CAT in the daily operation of such facilities. Making the language of CAT part of legislation, policies and regulations is part of raising awareness of, and communicating the absolute prohibition of, torture. More importantly, it will assist in holding

4 Article 1:
1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

5 Section 12: Freedom and security of the person
1. Everyone has the right to freedom and security of the person, which includes the right
   a. not to be deprived of freedom arbitrarily or without just cause;
   b. not to be detained without trial;
   c. to be free from all forms of violence from either public or private sources;
   d. not to be tortured in any way; and
   e. not to be treated or punished in a cruel, inhuman or degrading way.
perpetrators accountable by communicating explicitly the absolute prohibition of torture.

II ARTICLE 10

Article 10 of CAT reads:

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

The prevention of torture remains, after all, the most important objective of CAT, and the Committee against Torture has on numerous occasions reminded states parties that this starts with ensuring that persons working in the detention system are made aware of the absolute prohibition of torture. From the wording of art 10, one can assume that the relevant government departments should, at minimum, have a policy in respect of the treatment of detained persons, and that this should further be expressed in regulations and operating procedures. Such policies, regulations and operating procedures should form the basis for the training of staff, ensuring that every official is familiar with the required standards and what is considered as prohibited, and a violation of CAT.

(a) Police

To date the South African Police Services (SAPS) is the only government department which has developed (in 1998) a policy on the prevention of torture that acknowledges the risks involved and is therefore categorical in its prohibition:

No member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. No exception, such as a state of war or a threat of war, emerging internal political instability or any other public emergency, will serve as justification for torture — there can simply be no justification, ever, for torture.

The SAPS Disciplinary Regulations, however, do not pay specific attention to the manner in which the police should treat suspects, and how a transgression will be dealt with. It is assumed that this matter is covered by a general obligation to comply with ‘the Act, regulations or legal obligations’ as well as common and statutory law.

8 Department of Safety and Security SAPS Discipline Regulations Regulation Gazette No 8203 vol 482 31 August 2005 No 27988 Regulation 20(a) and 20(z).
(b) Prisons

The Correctional Services Act 111 of 1998 states that, amongst others, the purpose of the correctional system is to detain ‘all prisoners in safe custody whilst ensuring their human dignity’. The Act (Chapter 2) and its accompanying Regulations describe the general requirements pertaining to prison conditions and the treatment of prisoners. These are augmented by Chapter 2 of the Regulations. The more recent White Paper on Corrections in South Africa emphasises the rights of prisoners and their detention under conditions of human dignity which are in line with international human rights standards. The White Paper, as a policy document, does not go into any further detail in this regard. The B-Orders of the Department of Correctional Services (DCS) are, on the other hand, replete with detailed descriptions and requirements for the detention of prisoners, but the B-Orders are regarded as out of date by the DCS and are therefore being overhauled. The phrasing ‘torture, cruel, inhuman and degrading treatment or punishment’ has, however, not entered the policy jargon of the DCS and there is also no policy similar to that of SAPS in respect of the prevention of torture and cruel, inhuman and degrading treatment or punishment. Given the challenges that the DCS faces (for example overcrowding), this is a sore omission.

(c) Repatriation centre

Lindela, outside Krugersdorp, is South Africa’s only detention facility for foreign nationals who are deemed to be in the country illegally and who are to be deported. Detaining illegal or undocumented foreign nationals in facilities that are separate from those for criminal offenders is in line with good practice guidelines, such as those developed by the European Committee for the Prevention of Torture (ECPT). Foreign nationals are detained here in terms of s 34 of the Immigration Act 13 of 2002, as amended by the Immigration Amendment Act 19 of 2004. Furthermore, such detention must be in compliance with the ‘minimum prescribed standards protecting his or her dignity and relevant human rights’. The 2005 regulations to the Immigration Act set the minimum standards of detention described in the Correctional Services Act. It should furthermore be noted that the operation of the Lindela Repatriation

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9 Section 2(b).
10 Department of Correctional Services Regulations GN R914 in GG 26626 30 July 2004.
13 Immigration Regulations, GN R616 in GG 27725 of 27 June 2005 Annexure B: Minimum Standards of Detention. (In President of the Republic of South Africa v Eisenberg & Associates (Minister of Home Affairs intervening) 2005 (1) SA 247 (C), the Regulations published under General Notice 352 in GG 24952 8 March 2004 were declared ultra vires and were set aside.)
Centre has been subcontracted by the Department of Home Affairs to a private company.\(^{16}\) It is not known whether the contract between the Department of Home Affairs and the private operator covers the conditions of detention and the prevention of torture and cruel, inhuman and degrading treatment or punishment.\(^ {17}\)

**\(\text{(d) Psychiatric hospitals}\)**

The involuntary placement of citizens in psychiatric establishments is provided for in the Mental Health Care Act 17 of 2002, and further supported by the General Regulations made in terms of the Act.\(^ {18}\) Of particular concern in psychiatric hospitals are: the use of patients as auxiliary staff to provide services to other patients; ensuring the safety of all patients; the use of psychopharmacological medication; the use of electroconvulsive therapy; the means of restraint used; and the use of seclusion.\(^ {19}\) The standards of treatment and required conditions in facilities are set out in ss 9, 10 and 11 of the Mental Health Care Act. Section 9 deals with consent to care, treatment and rehabilitation services, and the admission of users of the health care system to such facilities.\(^ {20}\) Section 10 protects users of the health care system against unfair discrimination. Section 11(1) deals specifically with exploitation and abuse by any person, body or organisation providing services under the Act, and places a guarantee of protection and care on all users of the system.\(^ {21}\) Section 11(2) further places an obligation on any person who witnesses the abuse of a mental health care system user to report this in the prescribed manner.\(^ {22}\) It appears that while the Mental Health Care Act has the intention of protecting the rights of system users, the mechanisms for achieving this are not well developed. It must also be inferred that the absolute prohibition of torture has not been communicated to staff, as there is no reference to it in the regulatory or legislative frameworks.

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17 Efforts by Lawyers for Human Rights (LHR) to obtain a copy of the service level agreement have been unsuccessful to date. (Telephone interview with LHR Representative, Johannesburg, 30 April 2007.)
18 General Regulations GN R1467 in *GG* 27117 15 December 2004.
19 The ECPT Standards (note 13 above) 51–60.
20 Consent for admission to a mental health care facility can be given by the health care user him- or herself. Admission may also be authorised by a court or a Review Board, or due to mental illness, a person may be admitted to a facility if any delay in treatment may result in the severe consequences as set out in s 9(c)(i)–(iii) of the Act.
21 Every person, body, organisation or health establishment providing care, treatment and rehabilitation services to a mental health care user must take steps to ensure that—
   (a) users are protected from exploitation, abuse and any degrading treatment;
   (b) users are not subjected to forced labour; and
   (c) care, treatment and rehabilitation services are not used as punishment or for the convenience of other people.
22 A person witnessing any form of abuse set out in sub-s (1) against a mental health care user must report this fact in the prescribed manner.
(e) Substance abuse treatment centres

Treatment centres which focus on rehabilitation from substance abuse and addiction are established in terms of the Prevention and Treatment of Drug Dependency Act 20 of 1992. The Act does not prescribe any standards in respect of protection against torture and cruel, inhuman and degrading treatment or punishment. The regulations to the Act\(^\text{23}\) provide clarity on some of the operational matters, but generally are weak in protecting the rights of patients and ensuring the implementation of a proactive human rights regime.

An interesting development in furthering the rights of detained persons in substance abuse treatment centres is the Minimum Norms and Standards for In-patient Treatment Centres published by the Department of Social Development in 2005.\(^\text{24}\) Chapter 8 of the Minimum Norms and Standards deals with the matter of abuse, exploitation and safety of patients. Abuse is defined in standard 8.5 as ‘any activity or procedure that is negligent, demeaning, exploitative or abusive and/or threatens their physical, sexual, and emotional safety or their recovery process’. The definition of abuse is further enhanced by standard 8.7, which places a prohibition on activities which may be engaged in under the guise of behaviour management. Standard 8.11 deals with the use of seclusion and restraint and describes the procedure and requirements in detail. The Minimum Norms and Standards substantially clarify a range of matters by defining what is appropriate and inappropriate, and by detailing the duty of care and protection placed on centre managers.

While the standards do not use the terminology of torture and cruel, inhuman and degrading treatment or punishment, standard 8.7 lists activities that have been associated with the abuse of patients in treatment centres. The conceptualisation of torture therefore needs to be seen within the framework in which ill-treatment may take place, supposedly for behaviour change or curative purposes. The level of detailed standards developed for treatment centres is regarded as positive and would facilitate the prevention of torture and cruel, inhuman and degrading treatment or punishment and the enforcement of legislation criminalising torture. The training of staff at government treatment centres on the Minimum Norms and Standards commenced in 2007. The expectation is that the staff from these facilities will, in turn, train the staff of privately-operated facilities.\(^\text{25}\)


\(^{24}\) National Department of Social Development Minimum Norms and Standards for In-patient Treatment Centres (2005).

\(^{25}\) Telephone interview with representative from the Dept of Social Development 24 April 2007.
Places of safety, secure-care facilities and schools of industry are established in terms of s 28 of the Child Care Act 74 of 1983, which mandates the Minister to ‘establish and maintain places of safety for the reception, custody, observation, examination and treatment of children under this Act, and the detention of children awaiting trial or sentence.’ Section 28A makes special mention of secure-care facilities and empowers the Minister to ‘establish and maintain secure care facilities for the reception and secure care of children awaiting trial and/or sentence’. A school of industry is defined by the same Act as ‘a school maintained for the reception, care, education and training of children sent or transferred thereto under this Act’.

The regulations provide very specific guidance on the rights of children (see reg 31) and the duties of care of facility managers. In fact, reg 32(3) lists the particular activities and management practices which are expressly forbidden. Although the regulations are clear on what activities and practices are

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26 At the time of writing, the Children’s Amendment Act 41 of 2007, which deals with child and youth care centres, was not yet in force and the Child Care Act 74 of 1983 was the applicable legislation.
27 The Minister refers to the minister or ministers as proclaimed under s 61 of the Act.
28 As amended by the Child Care Amendment Act 86 of 1991.
29 Section 1(xxiv).
31 The following prohibited behaviour management practices shall not be used by any person in a children’s home, place of safety, school of industry, shelter or by a foster parent:
   (a) Group punishment for individual behaviour;
   (b) Threats of removal, or removal from the programme;
   (c) Humiliation or ridicule;
   (d) Physical punishment;
   (e) Deprivation of basic rights and needs such as food, clothing, shelter, bedding;
   (f) Deprivation of access to parents and family;
   (g) Denial, outside of the child’s specific development programme, of visits, telephone calls or correspondence with family or significant others;
   (h) Isolation from service providers and other children admitted to the children’s home, place of safety, school of industry, shelter or in the custody of a foster parent; other than for the immediate safety of such children or such service providers in the children’s home, place of safety, schools of industry, shelter or in the custody of a foster parent, as the case may be, only after all other possibilities have been exhausted, and then under strict adherence to policy, procedure, monitoring and documentation;
   (i) Restraint, other than for the immediate safety of the children or service providers in the children’s home, place of safety, schools of industry or shelter, as the case may be, and only as an extreme measure: Provided that such a measure is governed by specific policy and procedure, can only be undertaken by service providers trained in this measure, and must be thoroughly documented and monitored;
   (j) Assignment of inappropriate or excessive exercise or work;
   (k) Undue influence by service providers regarding their religious or personal beliefs including sexual orientation;
   (l) Measures which demonstrate discrimination on the basis of cultural or linguistic heritage, gender, race, or sexual orientation;
   (m) Verbal, emotional or physical harm;
   (n) Punishment by another child; and
   (o) Behaviour modification such as punishment, reward systems, or privilege systems, other than as a treatment or development technique within a documented individual treatment or development programme which is developed by a team which the child is part of and monitored by an appropriately trained multi-disciplinary team.
prohibited, the types of punishment for transgressions relate to the licence of the institutions and not the individual who committed the acts, or gave the instructions and/or allowed the harmful practice to continue.

The training of child care workers was only recently formalised in terms of unit standards for both auxiliary (in April 2005) and professional child care workers (in April 2007). The unit standards deal with the regulations and legislation, and therefore deal with the protective measures in the Act and regulations. They do not, however, deal with the prohibition of torture or CAT. 32

(g) Military detention

The Military Discipline Supplementary Measures Act 16 of 1999 provides for a separate system of courts, investigative procedures, prosecuting authority and court procedure. In support of the Military Discipline Supplementary Measures Act, there is the Military Discipline Code (MDC), 33 collectively ‘aimed at the maintenance of discipline essential for a fighting force that is necessary in peacetime as it is in wartime’. 34 The types of punishment that military courts can impose differ in some respects from those which can be imposed by the civilian criminal courts. Section 12 of the Military Discipline Supplementary Measures Act, read together with ss 32, 92 and 93 of the MDC, sets out the different punishment options. Some of the punishments listed (for example field punishment and corrective punishment) may in fact, upon closer scrutiny, be found to be in contravention of the Constitution and CAT, as they entail the forced performance of physical exercise. 35 Confinement to barracks imposes additional duties and orders on the person and prohibits him or her from other extra-mural and leisure activities. In s 120, the MDC provides for the establishment of detention barracks 36 and the formulation of regulations to manage such facilities. 37 From the extant literature, it is evident that the detention barracks are not subject to independent oversight and that there is only an internal complaints mechanism. In overview, there does not appear to be anything in the existing legislation and regulations governing the detention

32 Telephone interview with representative from the National Association of Child Care Workers, 25 April 2007.
33 As the First Schedule to the Defence Act 44 of 1957, which was not repealed by Act 42 of 2002.
35 Defence Act 44 of 1957 Military Discipline Code Schedule 1: Field punishment may be imposed only outside the Republic of South Africa and entails ‘the performance in custody in the field of such labour and extra drills and duties as may be prescribed’. Military Discipline Supplementary Measures Act 16 of 1999, s 1(viii): Corrective punishment means ‘additional supervised training, work or drill for two hours per working day, done or carried out within unit lines’.
36 At the time of writing it was understood from the Department of Defence (DoD) that regulations pertaining to detention barracks were in the process of being redrafted and had not yet been submitted for promulgation. It therefore is not possible at this stage to assess the regimens and management practices which apply to the detention barracks. (Telephone interview with representative from the Office of the Chief: Legal Services, DoD 1 October 2008.)
37 There are two such facilities, one in Wynberg (Cape Town) and one in Bloemfontein, which are part of the Military Police.
of persons in military facilities which could be regarded as reflecting in any sense the objectives of CAT. In view of this, it is unlikely that the staff working in such facilities have received training on the provisions of CAT and the absolute prohibition of torture.

The above has shown that different sectors are slightly more advanced than others in developing rules and procedures for the treatment of detained persons, even if the prohibition of torture has not been made explicit, as is required by art 10. Creating a general sense of minimum standards for the treatment of detained persons does not meet the requirement of art 10, but it does bring it closer to establishing a regulatory framework which is at least aimed at preventing human rights abuses in the broad sense of the expression. The disparity between sectors is unfortunate, given the universal prohibition of torture and the need to ensure the same protection against torture in all facilities where people are deprived of their liberty. Without legislation criminalising torture, it will remain difficult to develop coherent and consistent rules and procedures across different departments.

III Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

State parties are required regularly and systematically to supervise (visit) places of detention, and in the opinion of the Committee against Torture, visits to places of detention should be conducted unannounced. Article 11 places a further obligation on state parties to review, on a systematic basis, the rules, instructions, methods and practices regarding detained persons. ‘Systematic’ would in the first instance mean that such a review is methodical, thorough and comprehensive, not only in scope, but also in depth. It would therefore cover all areas where people are deprived of their liberty and all newly-identified concerns, emanating from, for example, case law. There is no requirement as to how regular such a review should be done but ‘keep under systematic review’ implies that it should be done regularly, and that such rules, instructions, methods and practices should not be left to gather proverbial dust. The question on the regularity of a systematic review, as required by art 11, should therefore take its cue from art 19(1), 39 not necessarily implying that this should be done every four years, but that there should at minimum be a plan for systematic review coinciding with the four-year cycle of reporting.

38  Ingelse (note 6 above) 272.
39  Article 19(1): The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
(a) Visits to places of detention

As far as visits to places of detention are concerned, the International Committee of the Red Cross, the National Council of Correctional Services, the Judicial Inspectorate of Prisons (and Independent Prison Visitors), judges, magistrates and certain Members of Parliament have unrestricted access to prisons. Of these structures, it is only the Judicial Inspectorate which conducts visits to prisons on a proactive, regular and systematic basis. Proactive visits to police cells by the Independent Complaints Directorate (ICD) do not appear to take place on any significant scale as the investigative process is complaint driven, and therefore reactive. There are, however, plans afoot to conduct such visits intentionally, and this has already started in parts of Gauteng province. Visits to other places of detention discussed in this note, such as psychiatric hospitals or secure care facilities for children, do not appear to take place systematically, nor does it appear to be the explicit responsibility of any oversight structure.

(b) Review of legislation, rules, practices and procedures

Following the release of the South African Police Services Policy on the Prevention of Torture in 1998, the rules and procedures governing the treatment and interrogation were reviewed and released as new Standing Orders. These were included in a training programme in 1999 for Station Commanders, and are now also included in the training programme of new recruits.

The 1998 Correctional Services Act, finally promulgated in full by October 2004, created new minimum standards for the detention of persons in prison. Subsequent to the promulgation of the Act and the new regulations, the Department of Correctional Services released the White Paper on Corrections in South Africa, further bolstering a human-rights-based approach to imprisonment. In the wake of the White Paper, the Department of Correctional Services embarked on a process of policy development, reviewing all existing policies and also identifying policy gaps. It is only the B-Orders, which set out in minute detail the duties and responsibilities of officials, which still need to be revised. Nonetheless, it appears that the Department of Correctional

40 South Africa’s Initial Report to the Committee against Torture CAT/C/152/Add.3 (25 August 2005) para 169.
41 Sections 99 and 84.
43 For a more detailed description of and commentary on the policy, see D Bruce & T Albert ‘From the Total Onslaught to the War Against Crime: the Continuing Use of Torture by Police in South Africa’ unpublished report, Centre for the Study of Violence and Reconciliation (2005).
44 The main standing orders affected are: Standing Order (G) 341 dealing with the treatment of an arrested person until handed over to the community service centre commander; Standing Order (G) 349: Medical Treatment and the Hospitalisation of a Person in Custody; Standing Order (G) 350: Use of Restraining Measures; Standing Order (G) 361: Treatment of Persons in the Custody of the Service from the Arrival at the Police Station; Standing Order (G) 362: Custody Register.
45 Note 40 above para 134.
46 See in particular chapter 2 of the Act.
Services is in a process of what can be termed ‘a systematic review of rules, instructions, methods and practices’. What emerges from this process will in itself need to be assessed against the requirements of CAT, and more specifically, whether the revised policies and procedures communicate the absolute prohibition of torture.

The review of legislation governing children started in the 1990s, and in 2002 the South African Law Reform Commission released its report proposing integrated and comprehensive legislation governing children’s issues. In June 2005 the President assented to the Children’s Act 38 of 2005. This part of the Act deals with the national competencies and issues under the Act delegated to provincial competencies have, after debate in the provincial legislatures, been placed before the National Council of Provinces. The Children’s Act is of significance to this discussion, as it deals in chapter 9 with the placement of children in facilities which may deprive them of their liberty. Of further importance are the powers vested with the Minister to issue regulations with specific reference to the treatment of children placed in child and youth care centres. The development of regulations, as envisaged in the Children’s Act, has already begun and should be completed by the end of 2008. It remains to be seen whether the new regulations will indeed reflect on state party obligations under CAT.

The Minimum Norms and Standards for In-patient Treatment Centres may be regarded as a review of the rules, instructions, methods and practices at these institutions. Similarly, the Mental Health Care Act of 2002 and its accompanying Regulations (issued in 2003) may also be regarded as a review process to bring the legislative and regulatory framework into line with the Constitution.

It appears, therefore, that in a number of areas between 2000 and 2005 (namely police, prisons, children, psychiatric care and substance abuse treatment centres), legislation, policies and procedures regulating the deprivation of liberty have been either fully or partly reviewed. On the other hand, in three areas discussed here, the review was very limited indeed. In respect of

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48 As is required by s 76 of the Constitution.
49 Section 306(1):
   (1) The Minister may make regulations regarding—
   (a) any matter referred to in sections 160 and 253;
   (b) any matter that may be prescribed by the Minister in terms of this Act, after consultation with the Minister for Justice and Constitutional Development where courts, court orders and the review of decisions by the courts are regulated;
   (c) codes of ethical practice for persons operating and assisting in the operation of child and youth care centres, partial care facilities, shelters and drop-in centres;
   (d) procedures for the interview of persons to be employed or engaged in child and youth care centres, partial care facilities, shelters and drop-in centres;
   (e) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
50 The drafting of the regulations was subcontracted by the Dept of Social Development to a consortium of child law experts. By October 2008, the regulations had not been finalised.
51 Note 24 above.
the detention of illegal immigrants, the Immigration Regulations (2005) deal with detention conditions in a very cursory manner. In respect of detention under the military justice system, there does not appear to have been any review completed, and the only noted legislative changes were to the Military Discipline Supplementary Measures Act 6 of 1999, and amendments to the Defence Act of 1957. This resulted in some changes to the Military Discipline Code (MDC). However, new regulations governing military prisons and detention barracks have not been issued, despite the Minister having this power under s 120(3) of the MDC. If a review process of military prisons and detention barracks is indeed in progress, this has remained obscured from the public’s view. The private security industry does not appear to have dealt with the issue of torture and cruel, inhuman and degrading treatment at all, nor has any broader review taken place.

The democratisation of South Africa compelled the review of policies, legislation and regulations on a wide scale. Whether this review was systematic as envisaged under art 11 of CAT is debatable for a number of reasons. Firstly, the review of legislation started in 1994, four years before South Africa ratified CAT, and the review is in several areas an ongoing endeavour. Secondly, the language and terminology of CAT, as well as numerous commentaries from the UN Committee against Torture in respect of other jurisdictions, are absent (with SAPS being the exception) from the new policies, legislation and regulations, even though the Constitution refers specifically to torture in s 12. Thirdly, CAT has not gained any significant profile with government or the general public, an issue lamented by the UN Committee against Torture. It can therefore not be concluded that a review has not taken place, or is at least not in progress, but rather, that the reviews undertaken to date have not reflected explicitly on CAT and the absolute prohibition of torture. A systematic review, as envisaged in art 11, therefore needs to assess the existing legislative and regulatory frameworks, as well as practices, through the eyes of CAT. Article 11 obligates states parties to review systematically, and to continue reviewing, how torture, cruel, inhuman or degrading treatment or punishment can be prevented — this is the essence of the domestication of CAT.

IV  ARTICLE 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

52 As the First Schedule to the Defence Act 44 of 1957, which was not repealed by Act 42 of 2002.
53 Indicative of the lack of progress is the fact that the Code still refers to the Prisons Act of 1959.
54 Note 4 above.
Article 12 obliges states parties to investigate cases of alleged torture in a prompt and impartial manner, and this duty is not qualified by the discretion of the authorities. The art does not require a formal complaint to have been lodged but ‘wherever there is reasonable ground to believe that an act of torture has been committed’. There are no international guidelines as to what ‘prompt’ means. Perhaps the most concrete meaning was given by the European Court of Human Rights in its decision in Assenov vs Bulgaria, suggesting that ‘prompt’ means ‘in the immediate aftermath of the incident, when memories are fresh’. The Committee against Torture has, however, found individual breaches of art 12 owing to the excessive delay before the commencement of an investigation; in one case this was 15 months. A high premium is furthermore placed on the impartiality of the investigation, as this is central to its credibility remaining intact. The term ‘impartiality’ means free from undue bias and is conceptually different from ‘independence’, which suggests that the investigation is not in the hands of bodies or persons who have close personal or professional links with the alleged perpetrators. The two notions are, however, closely interlinked, as a lack of independence is commonly seen as an indicator of partiality. The European Court of Human Rights has stated that ‘independence’ means not only a lack of hierarchical or institutional connection, but also practical independence. The Court has also stressed the need for the investigation to be open to public scrutiny to ensure its legitimacy and to secure accountability in practice as well as in theory, to maintain public confidence in the adherence to the rule of law by the authorities, and to prevent any appearance of collusion in or tolerance of unlawful acts.

International case law is vague on precisely what should give rise to an investigation. There is also no uniformity on this issue in the Standard Minimum Rules for the Treatment of Prisoners, on the one hand, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment on the other. The former obliges the State to deal

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55 The European Committee for the Prevention of Torture’s (ECPT) view is that even if there has been no formal complaint but that ‘credible information’ has come to light regarding the ill-treatment of people deprived of their liberty ‘such authorities should be under legal obligation to undertake an investigation’. The ECPT Standards (note 13 above, 75).


59 Redress Trust (note 57 above) 17.

60 Finucane vs United Kingdom (2003) 22 EHRR 29 para 68.

61 Assenov and Others vs Bulgaria (note 57) para 140.


with any complaint ‘unless it is evidently frivolous or groundless’ whereas the latter does not qualify this obligation, providing simply that ‘every request shall be promptly dealt with and replied to without delay’. Research by the Redress Trust suggests that a state will have violated a victim’s rights by failing to investigate despite the existence of an ‘arguable claim’, the merits of which are determined on a case-by-case-basis. An allegation is ‘arguable’, it seems, when it is supported ‘by at least some other evidence, be this witness testimonies or medical evidence or through the demonstrated persistence of the complainant’. European courts have also come up with the notion that an investigation should be triggered by a ‘reasonable suspicion’.

South Africa has introduced piecemeal measures to criminalise the harassment and intimidation of victims and witnesses. The witness protection programme has no doubt helped to increase conviction rates in criminal trials which could possibly have come to nothing for want of a credible witness. But the thrust of the witness protection programme is directed principally against interference with victims and witnesses in criminal proceedings related to organised crime and sexual offences. The programme is therefore not tailored to deal with the personal safety problems of persons who allege that they have been tortured or subjected to inhumane or degrading treatment by the police.

That a large number of complaints possibly involving torture is received by designated oversight structures such as the ICD and the Judicial Inspectorate is evidenced by statistics in their annual reports. According to the 2004/05 Annual Report of the ICD, 5 790 complaints were lodged against SAPS, of which 652 pertained to deaths; the ICD is compelled to investigate these. Similarly, the Judicial Inspectorate of Prisons reports that for the same period, 3 722 complaints regarding assault by warders on prisoners were lodged with Independent Prison Visitors during 2004/05. A further 6 056 complaints of ‘inhumane treatment’ were lodged. Unfortunately, the annual reports of both these institutions do not report on the outcome of these investigations, nor whether any prosecutions were instituted against officials.

The ICD is the only specialised agency tasked to investigate, in the proper sense of the word, complaints of torture and ill-treatment and regards these as Class 3 complaints unless the incident resulted in the death of the victim. Owing to capacity constraints, it has chosen to focus its efforts on deaths in police custody. The Office of the Inspecting Judge of Prisons can investigate

64 Rule 36(4).
65 Principle 33(4).
66 Redress Trust (note 56 above) 13.
67 Ibid 13 especially n 50.
68 Ibid.
69 Established under the Witness Protection Act 112 of 1998.
70 Redress Trust op cit. (note 56 above) 36.
73 A selection of cases reported in the ICD Annual Report illustrates trends and lists case examples.
matters following a complaint from a prisoner, among others.\textsuperscript{75} It may also sit as a commission of inquiry,\textsuperscript{76} although this has not been done to date.\textsuperscript{77} Its powers are, however, limited to making recommendations to the Minister of Correctional Services.\textsuperscript{78} It cannot make decisions which are binding on the Department of Correctional Services.\textsuperscript{79} It furthermore has no mandate to monitor investigations conducted by SAPS, where the latter is investigating a complaint laid by a prisoner. Independent Prison Visitors, as appointed by the Office of the Inspecting Judge, are tasked to inspect prisons, hear complaints from prisoners, and discuss these with the Head of Prison with a view to resolution.\textsuperscript{80} Their task is therefore not to investigate. It was in view of this that the Jali Commission expressed a number of concerns regarding the independence, impartiality and the intended ‘watchdog function’ of the Judicial Inspectorate of Prisons.\textsuperscript{81}

Except for the ICD, all other investigations alleging torture and ill-treatment require the victim to lay a charge with SAPS. In the absence of legislation criminalising torture, such allegations will be defined according to common-law crimes, such as assault or attempted murder.\textsuperscript{82} Police officials are not specifically trained to investigate allegations of torture and there is every reason to believe that such cases will be investigated as any other matter. The independence and impartiality of the police conducting such investigations in the case of prisoners were seriously called into question by the Jali Commission.\textsuperscript{83}

Seen against the requirements of art 12, the current investigative regime exhibits a number of significant weaknesses preventing allegations of torture and ill-treatment to be investigated thoroughly. The absence of legislation criminalising torture presents the first hurdle to effective investigations. In the absence of a clear definition, derived from art 1 of CAT, little guidance is given on what to investigate. Moreover, the fact that the police are required to investigate all such cases without having received specialised training further diminishes the chances of effective investigations. The investigation of allegations of torture is a specialised field of forensic medicine and it is therefore with

\textsuperscript{75} Complaints can also be submitted to the Inspecting Judge by the National Council, the Minister, the Commissioner, a Visitors’ Committee or an Independent Prison Visitor (IPV). Correctional Services Act 111 of 1998 s 90(2).

\textsuperscript{76} Correctional Services Act 111 of 1998 s 90(5) & 90(6).

\textsuperscript{77} Commission of Inquiry to Investigate and Report on Corruption, Maladministration, Violence and Intimidation in the Department of Correctional Services (hereafter ‘the Jali Commission’) 578.

\textsuperscript{78} Correctional Services Act s 90(3).

\textsuperscript{79} Jali Commission (note 77 above) 578.

\textsuperscript{80} Correctional Services Act s 93.

\textsuperscript{81} The Commission concluded on this issue as follows: ‘Considering sections 85(2) and 90(1), one has to come to the conclusion that the Office of the Inspecting Judge is merely a reporting body vis-à-vis a disciplinary body. Internationally, however, it is accepted that an oversight body has much greater legitimacy if it also has decision-making powers.’ Ibid 578.

\textsuperscript{82} The weakness of this has already been alluded to by the Committee against Torture in its concluding remarks on South Africa’s Initial Report (note 40 above) 3.

\textsuperscript{83} Jali Commission Executive Summary (note 77 above) 3 31–32. See also Muntingh & Fernandez (note 2 above) 12–13.
good reason that the UN High Commissioner for Human Rights developed the Istanbul Protocol to guide investigators. There is therefore a substantive competency concern here. There is furthermore no reason to believe that such cases will be prioritised by the police, and it is doubtful whether a prompt investigation is possible. Perhaps the biggest concern is the independence and impartiality of investigators, as alluded to by the Jali Commission in respect of the Judicial Inspectorate. Investigating charges laid by persons deprived of their liberty, especially if they are in custody as a result of a criminal justice sanction, mental health, or substance addiction, or are illegal immigrants, are perhaps not priorities among the many other cases the police are required to investigate. There is also no monitoring mechanism in place to ensure that the police actively investigate allegations of torture and ill-treatment, and that they are held accountable when cases do not show progress. Even if cases do progress as far as a court-ready docket, the prosecutor has the discretion not to prosecute, and he or she does not have to explain the reasons for this decision to an external party. In the final instance, the National Director of Public Prosecutions has the final say over prosecutions and can be held to account only by Parliament. The lack of oversight over prosecutions is cause for concern as cases brought by prisoners against warders alleging assault, for example, very seldom find their way into court.

V Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 13 of CAT gives everyone who claims to have been tortured the right to complain and to have the case examined promptly and impartially by the competent authorities. Supported by art 12, these are the essential requirements of a complaints and investigative regime envisaged by CAT. Any complaints mechanism should thus be accessible to victims and furthermore, protect victims from secondary victimisation. It should further be pointed out that the investigation of a complaint of torture is not subject to the lodging of a complaint, and an investigation should commence if there are reasonable grounds to believe that torture has taken place. A further duty imposed by art 13 is that such a complaints mechanism must be accessible in any territory

86 Muntingh & Fernandez (note 2 above).
87 Ingelse (note 6 above) 336.
and in all facilities under its jurisdiction. There are therefore no territories or facilities which are excluded.

The findings of a study conducted by the Redress Trust\(^8\) across many countries highlight a number of problems in connection with the lodging of complaints.\(^9\) From the research, it is evident that even when survivors of torture know about the existence of complaints procedures, they seldom know how to go about lodging their complaints. Those survivors who do know how to go about lodging a complaint tend to refrain from doing so because of the number of hurdles, both physical and otherwise, that they are likely to encounter.\(^10\) Once victims lodge their complaints, they are often forced to endure deliberately manufactured situations, the combined purpose of which is to undermine, if not to sabotage, a complaint. Perpetrators often pressurise the victim to withdraw the complaint, even to the point of offering them bribes.\(^11\) Very often, victims do not pursue their complaints out of fear of suffering physical harm or threats to their lives, as well as those of their families, witnesses and human rights lawyers.\(^12\)

In many countries which lack legislation dealing specifically with torture, the laws of prescription apply. This means that after a period of time a complaint prescribes or expires, which disregards the fact that, as with rape, one of the traumatic effects of torture is that victims do not rush to lodge the complaint immediately after they have been tortured. In countries without clear-cut rules governing the reporting and recording of complaints, the authorities who are entitled to receive complaints tend to enjoy wide discretionary power in dealing with complaints. In such countries, complaints may be dismissed at the reporting stage simply because the complainant, for want of evidence, is unable to name the alleged torturer.\(^13\) Such complaints are then considered incomplete. It also is not unusual in the case of an unregulated procedure for

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88 Redress Trust (note 56 above).
89 Ibid.
90 These impediments are known to be the following:
- the geographic remoteness of the complaints office, which is a thoroughly bedevilling hurdle for people in rural areas;
- fears of personal safety on the part of the survivors, especially where a complaints-receiving office is located in the very same office where the torture took place;
- reluctance to bring a complaint because of a sense of shame resulting from what the victim endured (for example sexual assault); a real or perceived lack of openness and approachability in the people staffing the complaints office;
- officials having a rude and dismissive attitude;
- the need to appear in person, coupled with the intimidating formalities of making sworn written statements or affidavits accompanied by a raft of other documents to establish probable cause (ibid 17).
91 A UN Working Group on Pre-trial Detention reported in 2005 that in South Africa accused persons in police custody were vulnerable to being pressurised into renouncing their rights. See UN Working Group Police Accountability — Promoting Civilian Oversight <http://www.policeaccountability.co.za/Currentinfo/ci-detail.asp?art-ID=400>.
92 Redress Trust (note 56 above) 36.
93 Ibid 34.
94 Ibid 37.
the complaints officer to take down the complaint, only to deny afterwards that it was ever lodged. And because the complainant is not given a copy of the complaint, the matter simply peters out.\(^95\) But even where complaints procedures exist, officials in some countries are known not only to refuse to receive complaints, but also to suppress or destroy whatever evidence there is which implicates alleged perpetrators.\(^96\)

None of the complaints mechanisms in the sectors reviewed in this note can be regarded as fully compliant with art 13. Even when complaints mechanisms are accessible, such as the Independent Prison Visitors (IPVs), they lack investigative powers and the authority to protect witnesses and victims. The impartiality of the police when investigating allegations of torture made by prisoners has also been called into question, and IPVs have reported that these cases often ‘disappear’.\(^97\)

In the case of the police, SAPS Standing Order 101 provides procedures for a formal complaints mechanism, including the use of a telephone hotline. Essentially, a complaint, including one alleging torture, can be lodged at a police station or administrative level (regional, provincial or national) or via the telephone hotline.\(^98\) Whether the victims of torture will regard this as a legitimate and impartial complaints mechanism is unlikely. Bruce, Newham and Masuku report numerous problems with regard to the internal complaints mechanisms insofar as they relate to the overall management of and reporting on complaints, but also on the actual utilisation and manipulation of the complaints mechanisms by line commanders.\(^99\)

The accessibility of the ICD has also been called into question and the need for ‘a simple and accessible’ complaints mechanism remains.\(^100\) Since the ICD offices are located in the major metropolitan areas, this institution remains inaccessible to ‘the rural people, who are the silent majority’.\(^101\) Co-operation between the ICD and SAPS in investigating complaints also appears to be less than satisfactory, especially when the ICD refers complaints to SAPS for investigation.\(^102\) Apart from its accessibility, it has such an enormous case load that only Class 1 complaints can be investigated, and even these take extremely long to be attended to and are therefore not dealt with in a ‘prompt manner’. This is evidenced by the fact that the length of investigations was one of the major reasons that 68.5 per cent of a sample of ICD complainants

\(^{95}\) Ibid.
\(^{96}\) Ibid 37–38.
\(^{97}\) Muntingh & Fernandez (note 2 above).
\(^{98}\) Note 40 above 39 para 134 147–148.
\(^{100}\) Ibid 82.
\(^{102}\) Bruce, Newham & Masuku (note 99 above) 200.
surveyed expressed their dissatisfaction with the services rendered by the ICD.103

For the other sectors (excluding police and prisons), complaints mechanisms appear to be weak and operating without oversight. In the case of psychiatric hospitals, s 11(2) of the Mental Health Care Act places an obligation on any person who witnesses the abuse of a mental health care system user to report this in the prescribed manner.104 This procedure is dealt with in the regulations, which state that such alleged abuse must be reported to the Review Board105 or to SAPS.106 If alleged abuse is reported to the Review Board, it must investigate the claim and lay a charge with SAPS if necessary. Despite this provision, it is not entirely clear how SAPS and the Review Board should co-ordinate investigations and what the Review Board’s duties are in the event of a criminal conviction. It is also not apparent from the legislation and regulations how mental health care system users would lodge complaints themselves, apart from reporting matters to the police.

In places where children are detained, there does not appear to be any formal complaints mechanism, especially one with involvement of external parties. The current regulations provide that children can report a rights violation to any nurse, social worker, youth care worker, or any other authorised person when these persons are inspecting a place where children are kept.107 Any dentist, medical practitioner, nurse, social worker, teacher, child and youth care worker, or person employed by or managing a facility where children are kept, is obliged to report to the Director General ‘the suspicion that [that] child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease.’108 The Director General may then issue a warrant to have the child removed from that place, but the legislation does not place any further duties in respect of investigation on the Director General.109 The legislation does not make provision for a formal complaints mechanism which is always accessible to children, and rather relies on the staff and other professionals to report suspicions of abuse and ill-treatment. According to the National Association of Child Care Workers (NACCW), informal complaints mechanisms do exist in child and youth care centres, and the Developmental Quality Assurance process has confirmed their existence, as well as children’s knowledge thereof.110 The Children’s Amendment Act 41 of 2007 does make

103 Ibid.
104 A person witnessing any form of abuse set out in subsection (1) against a mental health care user must report this fact in the prescribed manner.
105 The Review Board is an oversight structure established by the Member of the Executive Council in a province in terms of section 18 of the Mental Health Care Act 17 of 2002, and can be established for one mental care facility, a cluster of such facilities, or all such facilities in a province. Section 19 of the Act sets out the powers and functions of the Review Board.
107 Section 31(1) of the Child Care Act 74 of 1983; see also reg 31A(w)(i).
108 Section 41(1) of the Child Care Act; see also reg 31A(w)(ii).
109 Section 41(2) of the Child Care Act.
extensive provision for the development of regulations which could provide for a standardised complaints procedure, although it is not explicitly named as such.\textsuperscript{111}

The 2005 Minimum Norms and Standards for In-patient Treatment Centres state that in respect of substance abuse treatment centres, there must be a complaints mechanism that is accessible and confidential, and able to support complainants.\textsuperscript{112} The same document further recommends that a national, independent body should be established to monitor and investigate such complaints. The Prevention of and Treatment of Substance Abuse Bill\textsuperscript{113} also refers to the development of and compliance with minimum norms and standards, and mandates the Minister to develop such norms and standards.\textsuperscript{114} It further requires all facilities providing substance abuse rehabilitation service to comply with the norms and standards. At the time of writing, the Bill was silent on complaints mechanisms and the establishment of such a structure on a national level.

Military prisons, military detention barracks, the Lindela Repatriation Centre\textsuperscript{115} and the private security industry appear to be without a formal complaints mechanism, save that victims of torture can lay a charge with the South African Police.

VI Conclusions

The above overview of measures in place, or not in place, to prevent and combat torture and cruel, inhuman and degrading treatment or punishment in places of detention, demonstrates that there are fundamental shortcomings at policy, legislative and regulatory levels. Historically, it must be acknowledged that the wide-scale law reform process after 1994 was so intent on dismantling the racist apartheid legislative and regulatory regime that it may have lost sight of obligations under international law, such as CAT. Pursuing this line of reasoning, it may further be argued that the law reform process was focused on bringing the statutes in line with the Constitution. This is, however, less than convincing, as s 12 of the Constitution found explicit expression only in SAPS policy on the prevention of torture. Whatever the reasons may be, the result is that the obligations under CAT did not have a material impact on post-1998 law reform in South Africa.

It is therefore not altogether surprising that the current legislative and regulatory frameworks are devoid of the language and key concepts associated with CAT and its commentaries. All is, however, not lost. Law reform will

\textsuperscript{111} Section 212.
\textsuperscript{112} Note 24 above s 8.9.
\textsuperscript{113} At the time of writing the Bill had been released by the Dept of Social Development for comment from stakeholders.
\textsuperscript{114} Section 4.
\textsuperscript{115} Upon enquiry, Lawyers for Human Rights confirmed that there is no complaints mechanism in place at Lindela Repatriation Centre (Telephone interview with LHR Representative (Johannesburg) 30 April 2007).
continue, and a number of key law reform processes are currently in process\textsuperscript{116} which may still benefit from reflecting on CAT and critically examining the legislative and regulatory frameworks being created.

This review has highlighted significant shortcomings, and these need to be addressed as a first step to protect people deprived of their liberty from torture, cruel, inhuman and degrading treatment or punishment. First, policies, legislation and regulations need to clearly communicate the absolute prohibition of torture and must therefore be incorporated into the training of officials working in institutions where people are deprived of their liberty. Second, oversight mechanisms need to be established and/or strengthened to ensure that visits aimed at preventing torture by independent and external parties are undertaken on a regular and systematic basis.\textsuperscript{117} Third, rules and procedures need to be reviewed to give expression to the substantive provisions of CAT. It is indeed at the detailed level of regulations, minimum standards and standing orders that the foundation for the prevention of torture is laid. Fourth, complaints and investigative mechanisms are in dire need of an overhaul to ensure that they are independent, impartial, accessible, protective and effective.

That torture is taking place in South African place of detention is common cause. However, to ignore the deficiencies in the legislation and regulatory frameworks will enable perpetrators to continue with impunity.

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\textsuperscript{116} For example the Child Justice Bill, Children’s Act and its regulations as well as the Children’s Amendment Bill and its regulations, and the Prevention of and Treatment of Substance Abuse Bill.

\textsuperscript{117} In 2006 South Africa signed the Optional Protocol to the Convention against Torture (OPCAT). OPCAT makes provision for a National Preventive Mechanism (NPM) which would be mandated to visit any place where people are deprived of their liberty. The function and structure of the NPM for South Africa had not been finalised at the time of writing. For a more detailed discussion on OPCAT in the South African context, see L. Fernandez The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as adopted in 2002 by the UN General Assembly 57/1999 Implications for South Africa, CSPRI Research Report No 2 CSPRI (2004).