



REPORT TO THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

I recently represented the Portfolio Committee on Justice and Constitutional Development at two events. At both these events, pertinent issues were raised and it was agreed to by the participants that these issues need to be brought to the attention of the Portfolio Committee. I have discussed the issues informally with our Committee Chairperson.

In addition, the issues raised at both events are related to areas of focus of the South African Human Rights Commission and for that reason it may be prudent to ask the Human Rights Commission for detailed information when we meet the Commission on **25 June 2008**.

1. THE CONVENTION AGAINST TORTURE ("CAT") and THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE ("OPCAT"):

On 1 April 2008, I attended a seminar in Cape Town on the Prevention of Torture, hosted by the Centre for the Study of Violence and Reconciliation and the Civil Society Prison Reform Initiative. A booklet on torture was presented to the participants, which I will make available to Members of the Portfolio Committee.

To quote from the booklet's Introduction:

"Regrettably torture, and cruel, inhuman and degrading treatment or punishment still takes place in South Africa; this reality did not end on 27 April 1994. Official statistics are not kept on the incidence of torture, but from departmental annual reports, research and media reports it is evident that torture remains a problem. No country, regardless of the strength and maturity of its democracy, can afford to become complacent about the issue of torture."

In 1998 South Africa ratified the UN Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and in 2006 signed the Optional Protocol to CAT (OPCAT). By signing a convention a state expresses, in principle, its intention to become a party to the Convention or Protocol. However, signature does not, in any way, oblige a state to take further action (towards ratification or not). Ratification involves the legal obligation for the ratifying state to apply the Convention or Protocol.¹ These two actions have placed significant obligations on South Africa to take measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment.

Apart from obligations under international law, the South African Constitution places the obligation on the state to protect and promote the dignity of all people and, derived from this obligation, protect them from torture and cruel, inhuman or degrading treatment or punishment."²

The crisp issue which needs to be brought to the attention of Members is the fact that, because South Africa ratified CAT in December 1998, the South African government therefore has certain obligations to implement measures which give effect to the objectives of CAT. These measures include:²

- Enact legislation criminalizing torture based at minimum on the definition

¹ Page 1 of the booklet

² Page 9 of the booklet

in Article 1. Further, such legislation must provide for penalties giving recognition to the seriousness of the crime of torture.

- Enact legislation implementing the principle of the absolute prohibition of torture, prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture.
- South Africa must ensure that under no circumstances are persons expelled, extradited or returned to a state where they may be subject to torture.
- All necessary measures should be taken to prevent and combat the ill treatment of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre. Non-citizens must be provided with adequate information about their rights. An effective monitoring mechanism should be established for these centres and all allegations of ill-treatment should be thoroughly investigated.
- The necessary measures should be taken by South Africa to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her.
- Consideration must be given to bringing to justice persons responsible for the institutionalisation of torture as an instrument of oppression under apartheid and grant adequate compensation to all victims.
- All deaths in detention and all allegations of acts of torture or cruel, inhuman or degrading treatment committed by law enforcement personnel must be promptly, thoroughly and impartially investigated to bring the perpetrators to justice.
- Strengthen legal aid to assist victims of torture, cruel, inhuman or degrading treatment or punishment to seek redress.
- Translate and disseminate CAT in all appropriate languages, and disseminate in particular to vulnerable groups.
- Implement measures to improve the conditions in detention facilities, reduce the current overcrowding and meet the fundamental needs of all those deprived of their liberty, in particular regarding health care.
- Children must at all times be detained separately from adults.
- Establish an effective monitoring mechanism for persons in police custody.
- Adopt legislation and other effective measures to prevent, combat and punish human trafficking, especially that of women and children.
- Ensure that legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children, and establish a monitoring mechanism for such facilities.
- Submit statistics to the Committee on the prevalence of torture and the prosecution of perpetrators.
- Distribute the Committee's Concluding Remarks widely in the appropriate Languages.

It is important that Members enquire whether progress has been made in addressing the above-mentioned issues, and if not, why not.

It has to be remembered that not all the issues listed are necessarily Justice issues *per se* (e.g. there are also issues that need to be addressed by Correctional Services and the ICD and/or Safety and Security), but it would be useful to obtain the information with a view to taking the matter forward (and possibly including some of the issues in our "exit report" for the next Portfolio Committee to address).

Since the Human Rights Commission does have a section 5 committee focussing on this area, it would be useful to obtain the Commission's views.

2. **THE CRC REPORT:**

On 22 April 2008, I represented the Committee at a Roundtable on Children's Rights meeting in Johannesburg, hosted by the South African Human Rights Commission and the Norwegian Ombudsman on Children. Members of academic institutions and civil society also attended the event. I was accompanied by our Committee researcher, Ms Christine Silkstone.

One of the important issues raised at the meeting, and which needs to be brought to the attention of Members, is the Convention on the Rights of the Child ("CRC") and South Africa's obligations flowing from the Convention. South Africa ratified the Convention on 16 June 1995 and the lead department is the Office on the Rights of the Child in the Presidency. In terms of our international obligations under the CRC, South Africa has to submit periodic reports to the CRC Committee in Geneva on progress made with regards to the implementation of, and compliance with, the CRC.

At the meeting I was informed by the participants that South Africa submitted its first report to the CRC Committee, but has failed to submit its second report and that the said second report is now some 5 years' overdue and that therefore, South Africa is not complying with its international obligations in terms of the CRC.

As the Human Rights Commission monitors South Africa's compliance and international obligations in terms of various international instruments, we need to enquire what the position is with regards to the CRC.

CB Johnson
23 June 2008