

# South African No Torture Consortium



## SUBMISSIONS ON COMBATING OF TORTURE OF PERSONS BILL Submitted on 31 July 2012

*(Submitted on behalf of the South African No Torture Consortium - SANToC)*

### Introduction

1. These submissions represent the views of a Consortium of South African based organisations working on issues relating to survivors of torture and trauma. Members of the Consortium are also members of the UNCAT Campaign.
2. These submissions are specifically intended to augment the Campaign's submission with a particular focus on the needs and rights of victims and survivors of torture (and their families). These submissions are a response to the limited extent to which the Draft Bill addresses the needs of victims regarding redress and rehabilitation.
3. These submissions call for a victim-oriented perspective in combating torture, cruel, inhumane and degrading treatment in line with the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) Article 14.
4. These submissions follow the structure of the Bill itself and consider in particular four sections, namely:
  - Acts constituting torture;
  - Offences and penalties (Prohibition of torture);
  - Liability (Compensation); and
  - General responsibility to promote awareness.

### Acts constituting torture

Draft Bill Article 3(b)	SANToC Comments – rights of victims
"But torture does not include pain or suffering arising from, inherent in or incidental to lawful sanctions."	<ul style="list-style-type: none"><li>• The limited exclusion of lawful sanctions in UNCAT refers only to sanctions that are permitted under international law.</li><li>• To limit the scope of UNCAT to domestic South African law would result in failure to comply with the general principle of international law as expressed in the Vienna Convention on the Law of</li></ul>

#### Organisations in the Consortium:

Centre for the Study of Violence and Reconciliation, Johannesburg: (011) 403-5650  
Institute for Healing of Memories, Cape Town: (021) 683 6231  
Khulumani Support Group, National Contact Centre, Jhb: (011) 833 2045 or 082 268 0223  
The Solidarity Peace Trust: (039) 682 5869  
The Trauma Centre for Survivors of Violence and Torture, Cape Town: (021) 465 7373

## Liability (Compensation)

Draft Bill Article 7	SANToC Comments – rights to victims
<p>"Nothing contained in this Act affects any liability which a person may incur under the common law or any other law."</p>	<p>UNCAT is specific about the state's obligation to ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation including full rehabilitation where possible (Article 14, UNCAT).</p> <p>We recommend that the Bill be expanded to include the full right to redress for victims and survivors of torture and their families.</p> <p>(1). In addition to victim entitlements available under civil law, the Bill should address redress for survivors through state provision of effective procedural remedies:</p> <ul style="list-style-type: none"> <li>• Judicial remedies to be made available for victims/ survivors to claim reparations;</li> <li>• All forms of torture are eligible for remedy (including psychological or mental suffering);</li> <li>• Remedies must be available against the state and not just against individual perpetrators;</li> <li>• Ensure that access to procedural remedies is effective (for example independent medical assessments); and</li> <li>• Reparations awards are enforceable.</li> </ul> <p>(2) Adequate and appropriate forms of reparations for victims and survivors of torture (and their families) must include:</p> <ul style="list-style-type: none"> <li>• <b>Restitution</b> – restoration of liberties and employment. In the event that a victim is (or family members are) unable to find employment because of the physical, mental and emotional effects of torture, victims must have access to state support grants;</li> <li>• <b>Compensation</b> – for damages equal to the gravity of the offence (inclusive of medical care, loss of employment and lost education opportunities);</li> <li>• <b>Rehabilitation</b> – medical, psychological and legal forms for victims of torture, their families and communities.</li> <li>• Victims and survivors of torture should</li> </ul>

	<p>requirements for education and information regarding prohibition against torture in the training of personnel involved in the custody, interrogation and treatment of individuals subjected to any form of arrest, detention or imprisonment;</p> <p>We recommend the following be included:</p> <ul style="list-style-type: none"> <li>• Provision of specialised training and development for state (across all government departments) and civil society institutions working with victims and survivors of torture and their families;</li> <li>• Any such training programmes, information sharing and awareness initiatives must include: psychological effects of torture on victims and provision of victim-sensitive services.</li> </ul>
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**This submission is endorsed by the following organisations:**

**Consortium for Refugees and Migrants in South Africa – *CoRMSA*  
Lawyers for Human Rights - *LHR***

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