



## Country File SOUTH AFRICA

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<b>Region</b>	Africa
<b>Legal System</b>	Civil Law / Common Law
<b>UNCAT Ratification, Accession (a), or Succession (d)</b>	10 December 1998
<b>Relevant Laws and Regulations</b>	<ul style="list-style-type: none"><li>- Constitution of the Republic of South Africa, 1996 ("Constitution")</li><li>- Prevention and Combating of Torture of Persons Act (Act 13 of 2013) ("PCTPA")</li><li>- Criminal Procedure Act (Act 51 of 1977)</li><li>- The Correctional Services Act (Act 11 of 1998)</li><li>- Policy on the prevention of torture and the treatment of persons in custody of the South African Police Service 1998 (policy)</li></ul>
Stand-Alone Torture Bill (Y/N)	Yes, but limited in scope
<b>Relevant Articles</b>	
<b>Definition of Torture (General) (Article 1)</b>	PCTPA, art. 3
<b>Prohibition on Torture (Article 1)</b>	<ul style="list-style-type: none"><li>- Article 12 (1) (d) and (e) of the Constitution</li><li>- Article 37 of the Constitution recognizes articles 12(1) (d) and (e) as non-derogable.</li><li>- PCTPA, art. 2</li></ul>
<b>Crime of Torture (Article 4)</b> <ul style="list-style-type: none"><li>▪ Definition</li><li>▪ Statute of Limitations</li><li>▪ Penalties</li><li>▪ Other</li></ul>	<p>PCTPA, art. 2-7</p> <p>PCTPA, art. 3</p> <p>PCTPA, art. 4, 5</p>
<b>Universal Jurisdiction &amp; Cooperation, (Articles 5, 9)</b>	PCTPA, art. 6

<b>Investigations, (Articles 12, 13)</b>	
<b>Remedies and Reparations, (Article 14)</b>	
<b>Exclusion of Evidence (Article 15)</b>	There is not a specific provision regarding exclusion of evidence obtained through torture. Article 35(5) of the Constitution specifies that: "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."
<b>Legal and Procedural Safeguards (Articles 2, 11, 16)</b>	- Article 35 of the Constitution (rights of arrested, detained and accused persons)  - Section 39 (notification of the cause of the arrest) and section 73 (access to lawyer, notification of the rights) of the Criminal Procedure Act (Act 51 of 1977)
<b>Non-Refoulement (Article 3)</b>	PCTPA, art. 8
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ <b>International Crimes</b> (War Crimes, Crimes against Humanity, etc.) Implementation of the Rome Statute of the International Criminal Court, Act 27 of 2002 (text not excerpted below).</li> <li>▪ <b>Correctional system</b> The Correctional Services Act (Act 11 of 1998), 2(b) states that one of the purposes of the correctional system is "detaining all prisoners in safe custody whilst ensuring their human dignity".</li> <li>▪ <b>Policy on prevention</b> The Policy on the prevention of torture and the treatment of persons in custody of the South African Police Service includes some provisions related to torture: §1(1)(k) (definition of torture); §2 (prohibition against torture); §6(2), (4) (access to lawyer and doctor).</li> <li>▪ <b>Assistance filing complaints, promotion of awareness of the prohibition of torture, education of public officials</b> PCTPA, art. 9</li> </ul>
<b>Comments</b>	
<b>Languages Available</b>	English
<b>Links &amp; Sources</b>	- Constitution of the Republic of South Africa, 1996 <i>available at</i> <a href="http://www.constitutionalcourt.org.za/site/theconstitution/english-09.pdf">http://www.constitutionalcourt.org.za/site/theconstitution/english-09.pdf</a>  - Correctional Services Act (Act 11 of 1998) <i>available at</i> <a href="http://www.info.gov.za/view/DownloadFileAction?id=70646">http://www.info.gov.za/view/DownloadFileAction?id=70646</a>  - Criminal Procedure Act (Act 51 of 1977) <i>available at</i> <a href="http://www.justice.gov.za/legislation/acts/1977-051.pdf">http://www.justice.gov.za/legislation/acts/1977-051.pdf</a>

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	<p>- Act 27 of 2002 implementing the Rome Statute of the International Criminal Court <i>available at</i> <a href="http://www.info.gov.za/acts/2002/a27-02/index.html">http://www.info.gov.za/acts/2002/a27-02/index.html</a></p> <p>- Prevention and Combatting of Torture of Persons Act (Act 13 of 2013) <i>available at</i> <a href="http://www.justice.gov.za/legislation/acts/acts_full.html">http://www.justice.gov.za/legislation/acts/acts_full.html</a></p> <p>- Policy on the prevention of torture and the treatment of persons in custody of the South African Police Service 1998 (on file with APT)</p>
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## Relevant Articles – SOUTH AFRICA

### ➤ Constitution of the Republic of South Africa, 1996

#### CHAPTER 2 BILL OF RIGHTS (ss 7-39)

##### 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.

(2) Everyone has the right to bodily and psychological integrity, which includes the right-

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent.

[...]

##### 35- Arrested, detained and accused persons

(1) Everyone who is arrested for allegedly committing an offence has the right-

- (a) to remain silent;
- (b) to be informed promptly-
  - (i) of the right to remain silent; and
  - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) 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;
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

(2) Everyone who is detained, including every sentenced prisoner, has the right-

- (a) to be informed promptly of the reason for being detained;

- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
  - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
  - (f) to communicate with, and be visited by, that person's-
    - (i) spouse or partner;
    - (ii) next of kin;
    - (iii) chosen religious counselor; and
    - (iv) chosen medical practitioner.
- (3) Every accused person has a right to a fair trial, which includes the right-
- (a) to be informed of the charge with sufficient detail to answer it;
  - (b) to have adequate time and facilities to prepare a defense;
  - (c) to a public trial before an ordinary court;
  - (d) to have their trial begin and conclude without unreasonable delay;
  - (e) to be present when being tried;
  - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
  - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
  - (i) to adduce and challenge evidence;
  - (j) not to be compelled to give self-incriminating evidence;
  - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) 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.

[...]

## 37- States of Emergency

### Table of Non-Derogable Rights

1 Section number	2 Section title	3 Extent to which the right is non-derogable
12	Freedom and security of the person	With respect to subsections (1) (d) and (e) and 2 (c)

### ➤ Criminal Procedure Act (Act 51 of 1977)

#### CHAPTER 5- ARREST (ss 39-53)

##### **39 - Manner and effect of arrest**

(1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.

(2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.

(3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

#### CHAPTER 11- ASSISTANCE TO ACCUSED (ss 73-74)

##### **73- Accused entitled to assistance after arrest and at criminal proceedings**

(1) An accused who is arrested, whether with or without warrant, shall, subject to any law relating to the management of prisons, be entitled to the assistance of his legal adviser as from the time of his arrest.

(2) An accused shall be entitled to be represented by his legal adviser at criminal proceedings, if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.

(2A) Every accused shall-

(a) at the time of his or her arrest;

(b) when he or she is served with a summons in terms of section 54;

(c) when a written notice is handed to him or her in terms of section 56;

(d) when an indictment is served on him or her in terms of section 144 (4) (a);

(e) at his or her first appearance in court, be informed of his or her right to be represented at his or her own expense by a legal adviser of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance.

[Sub-s. (2A) inserted by s. 2 of Act 86 of 1996.]

(2B) Every accused shall be given a reasonable opportunity to obtain legal assistance.

[Sub-s. (2B) inserted by s. 2 of Act 86 of 1996.]

(2C) If an accused refuses or fails to appoint a legal adviser of his or her own choice within a reasonable time and his or her failure to do so is due to his or her own fault, the court may, in addition to any order which it may make in terms of section 342A, order that the trial proceed without legal representation unless the court is of the opinion that that would result in substantial injustice, in which event the court may, subject to the Legal Aid Act, 1969 (Act 22 of 1969), order that a legal adviser be assigned to the accused at the expense of the State: Provided that the court may order that the costs of such representation be recovered from the accused: Provided further that the accused shall not be compelled to appoint a legal adviser if he or she prefers to conduct his or her own defence.

[Sub-s. (2C) inserted by s. 2 of Act 86 of 1996.]

(3) In addition to the provisions of sections 3 (g), 38 (2), 44 (1) (b) and 65 of the Child Justice Act, 2008, relating to the assistance of an accused who is under the age of eighteen years by his or her parent or an appropriate adult at criminal proceedings, any accused who, in the opinion of the court, requires the assistance of another person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings.

[Sub-s. (3) substituted by s. 99 (1) of Act 75 of 2008.]

## ➤ The Correctional Services Act (Act 11 of 1998)

### CHAPTER II- INTRODUCTION

#### **Purpose of correctional system**

2. The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing sentences of the courts in the manner prescribed by this Act;
- (b) detaining all prisoners in safe custody whilst ensuring their human dignity; and
- (c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

## ➤ Policy on the Prevention of Torture and the Treatment of Persons in Custody of the South African Police Service 1998

### 1. (1)

(k) *torture* may include, but is not limited to, any cruel, inhuman or degrading treatment or punishment, as referred to in section 12(1)(e) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and may further include any act by which severe pain, suffering or humiliation, whether physical or mental, is intentionally inflicted on a person for purposes of obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating him or her or a third person, when such pain, suffering or humiliation is inflicted by or at the instigation of or with the consent or acquiescence of a *member* or any other person acting under the authority or protection of *the Service*.

### 2. Prohibition against torture

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, state of emergency, internal political instability or any other public emergency will serve as justification for *torture* - there can simply be no justification, ever, for *torture*.

5. Person in custody to be informed of his or her rights

(1) Every person taken into custody shall be promptly informed, by the *member* who takes him or her into custody, in a language which he or she understands, of:

(a) the reason for his or her arrest;

6. Measures to prevent torture

(2) A *person in custody* shall have the right to consult with a legal practitioner of his or her choice subject to paragraph 6(2)(c), or to apply to be provided with the services of a legal practitioner by the state.

(4) A *person in custody* shall have the right to communicate with and to be visited by a medical practitioner of his or her choice.

➤ Prevention and Combatting of Torture of Persons Act (Act 13 of 2013)

Please proceed to the next page for a PDF of the Government Gazette containing the full text of the Act.

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 577 Cape Town 29 July 2013

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## THE PRESIDENCY

No. 545

29 July 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

**Act No. 13 of 2013: Prevention of Combating and Torture of Persons Act, 2013**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**



*(English text signed by the President)  
(Assented to 24 July 2013)*

# ACT

**To give effect to the Republic's obligations in terms of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; to provide for the offence of torture of persons and other offences associated with the torture of persons; and to prevent and combat the torture of persons within or across the borders of the Republic; and to provide for matters connected therewith.**

## PREAMBLE

**SINCE** section 12(1)(d) of the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to freedom and security of the person, which includes the right not to be tortured in any way;

**AND MINDFUL** that the Republic of South Africa—

- \* has a shameful history of gross human rights abuses, including the torture of many of its citizens and inhabitants;
- \* has, since 1994, become an integral and accepted member of the community of nations;
- \* is committed to the preventing and combating of torture of persons, among others, by bringing persons who carry out acts of torture to justice as required by international law;
- \* is committed to carrying out its obligations in terms of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

**AND SINCE** each State Party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,

**P**arliament of the Republic of South Africa therefore enacts as follows:—

## ARRANGEMENT OF SECTIONS

### Sections

1. Definitions
2. Objects and interpretation of Act
3. Acts constituting torture
4. Offences and penalties
5. Factors to be considered in sentencing

- 6. Extra-territorial jurisdiction
- 7. Liability
- 8. Expulsion, return or extradition
- 9. General responsibility to promote awareness
- 10. Regulations 5
- 11. Amendment of laws
- 12. Short title

Schedule

## Definitions 10

1. In this Act, unless the context indicates otherwise—
- “**accused person**” means any person who has committed or allegedly committed an act of torture;
  - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
  - “**Convention**” means the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 and ratified by the Republic on 10 December 1998; 15
  - “**court**” means a court contemplated in section 166 of the Constitution;
  - “**public official**” means any person holding public office and exercising or purporting to exercise a public power or a public function in terms of any legislation; 20
  - “**torture**” has the meaning assigned to it in section 3; and
  - “**victim**” means any person who has or has allegedly been subjected to an act of torture. 25

## Objects and interpretation of Act

2. (1) The objects of this Act are to—
- (a) give effect to the Republic’s obligations concerning torture in terms of the Convention, in particular— 30
    - (i) the recognition that the equal and inalienable rights of all persons are the foundation of freedom, dignity, justice and peace in the world;
    - (ii) the promotion of universal respect for human rights and the protection of human dignity;
    - (iii) that no one shall be subjected to acts of torture;
  - (b) provide for the prosecution of persons who commit offences referred to in this Act and for appropriate penalties; 35
  - (c) provide for measures aimed at the prevention and combating of torture; and
  - (d) provide for the training of persons, who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, on the prohibition and the combating of torture. 40
- (2) When interpreting this Act, the court must promote the values of Chapter 2 of the Constitution and the achievement of the objects referred to in subsection (1).

## Acts constituting torture

3. For the purposes of this Act, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person— 45
- (a) for such purposes as to—
    - (i) obtain information or a confession from him or her or any other person;
    - (ii) punish him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or
    - (iii) intimidate or coerce him or her or any other person to do, or to refrain 50 from doing, anything; or

(b) 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, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 5

#### Offences and penalties

4. (1) Any person who—  
(a) commits torture;  
(b) attempts to commit torture; or  
(c) incites, instigates, commands or procures any person to commit torture, 10  
is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

(2) 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. 15

(3) Despite any other law to the contrary, including customary international law, the fact that an accused person—

- (a) is or was a head of state or government, a member of a government or parliament, an elected representative or a government official; or
- (b) was under a legal obligation to obey a manifestly unlawful order of a 20 government or superior,

is neither a defence to a charge of committing an offence referred to in this section, nor a ground for any possible reduction of sentence, once that person has been convicted of such offence.

(4) No exceptional circumstances whatsoever, including but not limited to, a state of war, threat of war, internal political instability, national security or any state of emergency may be invoked as a justification for torture. 25

(5) No one shall be punished for disobeying an order to commit torture.

#### Factors to be considered in sentencing

5. Any court that imposes a sentence in respect of any offence under this Act must, 30 when considering the presence of aggravating circumstances and without excluding other relevant factors, take the following factors into account:

- (a) Any discrimination against the victim;
- (b) the state of the victim's mental or physical health;
- (c) whether the victim had any mental or physical disability; 35
- (d) whether the victim was under the age of 18 years;
- (e) whether the victim was also the victim of a sexual act as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);
- (f) the use of any kind of weapon to harm, threaten or intimidate the victim; 40
- (g) the infliction of serious mental or physical harm to the victim;
- (h) the conditions in which the victim was detained;
- (i) the role of the convicted person in the offence;
- (j) previous convictions relating to the offence of torture or related offences; and
- (k) the physical and psychological effects the torture had on the victim. 45

### Extra-territorial jurisdiction

6. (1) 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— 5

- (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 10

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

(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. 15

### Liability 20

7. Nothing contained in this Act affects any liability which a person may incur under the common law or any other law.

### Expulsion, return or extradition

8. (1) No person shall be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. 25

(2) For the purpose of determining whether there are such grounds, all relevant considerations must be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. 30

### General responsibility to promote awareness

9. (1) The State has a duty to promote awareness of the prohibition against torture, aimed at the prevention and combating of torture.

(2) Without derogating from the general nature of the duty referred to subsection (1), one or more Cabinet members, designated by the President, must cause programmes to be developed in order to— 35

- (a) conduct education and information campaigns of the prohibition against torture aimed at the prevention and combating of torture;
- (b) ensure that all public officials who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, are educated and informed of the prohibition against torture; 40
- (c) provide assistance and advice to any person who wants to lodge a complaint of torture; and
- (d) train public officials on the prohibition, prevention and combating of torture. 45

### Regulations

10. (1) The Cabinet member responsible for the administration of justice may make regulations regarding any matter referred to in section 9(2), which are reasonably necessary or expedient to regulate in order to achieve the objects of this Act.

(2) Any regulation contemplated in subsection (1) must be tabled in Parliament before it is promulgated. 50

**Amendment of laws**

**11.** The laws specified in the Schedule are hereby amended to the extent indicated in the third column thereof.

**Short title**

**12.** This Act is called the Prevention and Combating of Torture of Persons Act, 2013. 5

**SCHEDULE****Laws amended**  
*(Section 9)*

<b>Number and year of law</b>	<b>Short title</b>	<b>Extent of amendment</b>
Act No. 51 of 1977	Criminal Procedure Act, 1977	<b>1.</b> The amendment of Schedule 1 and Parts II and III of Schedule 2, by the inclusion of the offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013.
Act No. 121 of 1998	Prevention of Organised Crime Act, 1998	<b>2.</b> The amendment of Schedule 1 by the inclusion of the offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013.