

The role of the SAHRC

The South African Human Rights Commission (SAHRC) is a national human rights institution mandated by South Africa's Constitution to protect, promote, and monitor human rights in the country. Furthermore, the SAHRC has a mandate to investigate, report, facilitate redress where applicable, carry out research, and educate on human rights.

The SAHRC was established in 1995, and is a chapter 9 institution. Chapter 9 institutions are mandated by South Africa's constitution and are mandated to guard constitutional democracy.

The aim of law enforcement officials in South Africa

The aim of law enforcement officials in South Africa is to enforce the law. With this responsibility, comes the inherent duty to do so lawfully and within their constitutional mandate.

When law enforcement officials torture someone, they undermine our democracy.

The SAHRC's vision and mission

The SAHRC's vision is to transform society, restore dignity and secure rights for all. To this end the SAHRC, as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.

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Explaining Torture

Transforming society

Securing rights

Restoring dignity

What is the Prevention and Combating of Torture of Persons Act 13 of 2013?

For the first time in South Africa, there is a law that establishes torture as a crime in the country. This law is called the Prevention and Combating of Torture of Persons Act 13 of 2013.

Torture is referred to in the Constitution, but this law goes further to make it punishable by law. In the past, before torture was a crime, when someone was tortured the guilty party would be charged with other crimes, such as assault, rape, culpable homicide, murder, etc.

What is the punishment if found guilty of the crime of torture?

Since torture is a serious crime, it carries a punishment of imprisonment. This can include life imprisonment. This law also states that when a person is guilty of torture they cannot just pay a fine or be given a suspended sentence.

What is torture?

Simply described, torture is when:

- There is an intentional act causing severe pain and suffering to the victim.
- This suffering can be either physical and/or mental.
- It must be committed by a public official or a person acting on behalf of a public official.
- Torture occurs when it is done for the purpose of:

a) Obtaining information (for example during interrogations and questioning by the police) from the tortured persons or a third party (for example, wife, family, or even business partner);

b) Punishing the victim for what he/she has done or what he/she is suspected to have done or what a third person has done or suspected to have done; and

c) Intimidating or forcing the offender or third person to admit to or do something for any reason based on discrimination of any kind. Discrimination can be on any grounds, for example, sex, gender, sexual orientation, religion, political opinion or affiliation, or ethnicity).

Who is a public official?

A public official is a person who is acting in his/her official capacity as an employee of the State. For example, police officers, officials in correctional centers, army officers, nurses and doctors in public hospitals, teachers, and immigration officers.

Who can be found guilty of the crime of torture?

- A public official who either commits or tries to commit torture, or forces someone else to commit torture.
- Any person who participates in torture or conspires with a public official to help him/her commit torture.
- A public official who obeys an order to commit torture.

Is torture different to other crimes (assault, maiming, etc.)?

Torture is different because it can only be committed by or with the help of a public official. Torture is a very serious crime that has severe physical and psychological effects.

What remedy is there for victims of torture?

The Prevention of Torture Act allows for a criminal case to be opened. The Independent Police Investigative Directorate (IPIID) and the Judicial Inspectorate for Correctional Services (JICS) are the respective authorities who will investigate any crime that law enforcement officials have committed. Victims of torture can open a civil case against the relevant authority.

How is the South African government responsible for preventing torture?

The South African government is responsible for:

- Educating the public through education and information campaigns about the law against torture.
- Educating all public officials who are involved in custody, interrogation or treatment of arrested, imprisoned or detained persons about the crime of torture.
- Assisting and advising victims who want to lodge a complaint.
- Training public officials on the prevention and combatting of torture.

Can South Africa deport or extradite someone if they are going to be tortured?

No. South Africa has an international obligation to investigate all torture claims, including those from outside the country.