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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Opening Remarks by Deputy Minister of Justice and Constitutional Development, Mr Andries Nel, MP, at the Robben Island Guidelines Commemorative Seminar, Tuesday 21 August 2012, Parktown, South Africa

Greetings from Minister Jeff Radebe, Minister of Justice and Constitutional Development.

We are gathered here today to commemorate the adoption of the African Union's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa by the African Commission on Human and Peoples' Rights ten years ago in 2002. The guidelines are, appropriately, known as the Robben Island Guidelines.

Appropriately so, because it was on Robben Island that President Nelson Mandela and many others who over generations resisted colonialism and fought Apartheid in South Africa were detained.

The adoption of the Robben Island Guidelines indeed marked a historic step forward in the prevention of torture on the African continent.

Now, after ten years, it is time to consolidate the experiences gained so far and to analyse the challenges which still remain in the fight against torture on the African continent.

But I would like to start by associating myself and the Government of the Republic of South Africa with condolences and the moment of silence in memory of those who no longer walk amongst us but the presence of whose spirits will no doubt be strongly felt as we discuss how we, the living, must rededicate ourselves to realizing the ideals human dignity and social justice and that so many before us have sacrificed so much for.

We express our condolences to the Government and the people of Ethiopia on the passing of Prime Minister Meles Zenawi.

We would also like to honour the memory of Sandile Baai, a commissioner of the SA Human Rights Commission who passed away last week. He made an immense contribution to the liberation of our country from Apartheid and continued to make an outstanding contribution to building a united, non-racial, non-sexist, democratic and prosperous nation.

We express our heartfelt condolences to the Baai family, friends, relatives and the South African Human Rights Commission.

Commissioner Baai's death is a loss not only to his family but also to the legal fraternity, the South African Human Rights Commission and the nation at large.

We will miss his services and dedication. We also share in the loss and our thoughts and prayers are with the family at this dark hour. May his soul rest in peace.

I would also think of those who lost their lives in the recent tragedy at the Lonmin Mine in Marikana in North-West Province.

In the words of President Zuma

“These events are not what we want to see or want to become accustomed to, in a democracy that is bound by the rule of law, and where we are creating a better life for all our people.

We assure the South African people in particular, that we remain fully committed to ensuring that this country remains a peaceful, stable, productive and thriving nation, that is focused on improving the quality of life of all, especially the poor and the working class.

It is against this background that we have to uncover the truth about what happened here. In this regard, I have decided to institute a Commission of Inquiry. The inquiry will enable us to get to the real cause of the incident, and to derive the necessary lessons.

However, today is not an occasion for blame, finger-pointing or

recrimination. Today challenges us to restore calm and to share the pain of the affected families and communities.

Today is about reminding ourselves of our responsibilities as citizens. We have rights that are guaranteed in the Constitution of the Republic, such as the rights of association, assembly and freedom of expression.

We can protest against any institution peacefully. It is one of the cornerstones of our hard won democracy.”

This seminar takes place on or proximate to a number of dates that have a rich significance for the matters that we are discussing here today.

Yesterday on 20 August 2012 we remembered that it was almost three decades ago in 1983 that the United Democratic Front, an umbrella body bringing together hundreds of youth, women, sports, cultural, religious, trade union organisations in opposition to Apartheid was formed. Many activists of the UDF were detained and tortured in successive states of emergency declared by the apartheid government.

On this day, 21 August, in 1998 former President **P.W. Botha** was found guilty of contempt of court for repeatedly ignoring subpoenas to testify in public before the **Truth and Reconciliation Commission** (TRC), the body responsible for

investigating human rights abuses committed during the apartheid era. Botha was fined ten thousand rand and given a one year prison sentence, suspended for five years, which could be brought into effect if he defied another TRC subpoena.

The TRC wanted to question Botha about human rights abuses perpetrated by security forces during the apartheid era, as he chaired the **State Security Council** from 1978 to 1989.

Botha had already been named in amnesty applications by former law and order minister **Adriaan Vlok**, and former Vlakplaas commander **Eugene de Kock** as having directly ordered murders, bombings and torture of anti-apartheid activists. Botha denied having given any such order in his written responses to the commission.

Tomorrow, on the 22 of August we will recall how the African National Congress made a presentation to the Truth and Reconciliation Commission. The submission of 300 pages comprised a detailed analysis of its record and strategy during its campaign against Apartheid. The document expressed the ANC's full support and desire to cooperate with the TRC to achieve its objectives. A list of ANC members who died in exile, including the names of 34 members executed by order of a military tribunal, was also contained in the document.

These dates remind us why South Africa has a firm commitment towards the protection and promotion of human rights, not only within the country but on our continent and the world over.

With our brutal history of oppression and segregation, it is of particular importance to South Africa that it plays an active role in the promotion of global human rights, this is confirmed by the central objective of our foreign policy which is aimed at creating a better South Africa in a better Africa and a better and safer world.

Our dedication to the promotion of human rights is entrenched in the Constitution of the Republic of South Africa, in the Bill of Rights, and informs our commitment to promoting peace, justice, human rights and the rule of law.

The right to human dignity is a non-derogable right both at international law in terms of the International Bill of Rights, and at national level in terms of our Constitution.

The Bill of Rights recognises the importance of human dignity and under no circumstances may the right to dignity be limited. This means that torture is illegal at both national and international levels. Torture undermines the basic democratic principles of human dignity.

South Africa played an important role in the negotiation, drafting and adoption of the Optional Protocol to the Convention on the Prevention of Torture in both New York and Geneva.

Further, South Africa has created a number of oversight mechanisms to combat torture such as the Independent Police Investigative Directorate (IPID), the Judicial Inspectorate of Prisons and the Human Rights Commission.

South Africa was also host and party to the successful conference, ten years ago, in 2002 in Cape Town on Robben Island, which gave rise to the *Robben Guidelines*-which we are commemorating during this seminar.

Our courts reinforce and uphold the Constitutional principles of dignity and the freedom and security of persons. Section 12(1)(d) of the Constitution articulates the principle that all persons have the right to freedom and security of their person and the right not to be tortured in any way.

Where torture has been used by the police to elicit statements, the courts have consistently ruled in favour of the victim. In the case of *S v Sibuyi and Others SA 237 (2006)* the appellants were subjected to torture by police officers in order to elicit confessions from them. In excluding the confession, the court stated: '*The courts are very strict in the interpretation, protection and the development of the human rights and in particular the Bill of Rights. Where there is a violation of the*

fundamental rights as enshrined in the Bill of Rights, the courts will lean in favour of the victim whose rights have been encroached upon. Where there is a confession extracted by means of unorthodox means in clear violation of the Bill of Rights, the probabilities are that such confession would be thrown out' [para 19].

The cases of *Mthembu v The State* [2008] SCA 51 (2008) and *Kutumela v Minister of Safety and Security*[2008] SA 430 (2008), are just some examples of the harsh stance courts take against persons being tortured, despite there yet being law enacted to prohibit torture.

South African courts have extended the application of the prohibition of torture beyond their borders.

That is, where courts are required to make a ruling on an extradition application which may involve persons being tortured in the country requesting extradition, the courts have ruled against granting such extraditions.

Bill South Africa will soon enact legislation which will be used to prevent torture and to punish perpetrators. The Prevention and Combatting of Torture of Persons Bill was introduced into Parliament early this year and the Portfolio Committee on Justice and Constitutional Development was briefed on it on 13 June 2012. The

Portfolio Committee invited comments on the Bill to be received by the end of July 2012.

Our efforts in the fight against torture are not limited to the enactment of the Torture Bill. In May this year a decision was taken to ratify the Optional Protocol to the Convention against Torture (OPCAT). A number of consultative meetings have been held to consider the proposed ratification and to acquire inputs from all relevant stakeholders. The Department will submit the relevant documents to Cabinet later this year.

But torture prevention is not the sole responsibility of government; it is a joint effort which requires networks across all levels of society. Civil Society participation to the processes of torture prevention is vital in that it lends credibility and legitimacy to the process. Civil society further plays a key role in initiating and sustaining dialogue at societal levels; and they also have a wealth of expertise and have established relationships. If the fight against torture is to be won, then all sectors have to come together to fight the debilitating scourge of torture. The role of torture prevention is not the sole responsibility of one organ or body, but is a collective responsibility which when shared eases the obligation and ensures successful outcomes.

I conclude by referring to another special occasion. Today is special day for another reason. Ahmed Kathrada, Isithwalandwe / Seaparankoe, a hero of our

people, who together with President Nelson Mandela was part of the high Command of our People's Army umKhonto we Sizwe and was arrested at Rivonia and was sentenced to life imprisonment on Robben Island is receiving the freedom of Johannesburg.

During his time on Robben Island it became known as a university of liberation.

Ahmed Kathrada said, "We want Robben Island to reflect the triumph of freedom and dignity over oppression and humiliation."

We are confident that, assembled at this seminar, are women and men, who poses the knowledge, experience and commitment to consolidate the experiences gained so far and to analyse the challenges which still remain in the fight against torture on the African continent and to remain true to the spirit of Robben Island as a University of Liberation.

I thank you.