

June 16 1976
OUR PAST IS STILL WITH US

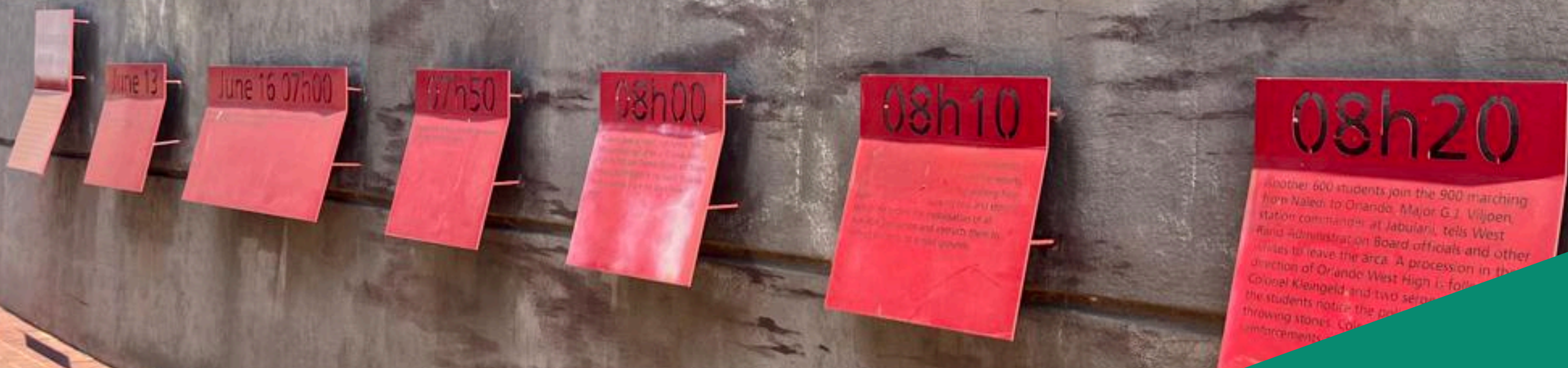


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THE STATE OF TORTURE REPORT

THE CENTRE FOR THE STUDY OF
VIOLENCE AND RECONCILIATION

2024

Introduction

Torture in South Africa has a complex and troubling history rooted in colonial and apartheid practices, where torture was used frequently by state security forces to suppress dissent and control Black and marginalised communities. Despite legal reforms during the post-apartheid dispensation, concerns about torture and ill-treatment persist, often associated with law enforcement practices and conditions in detention centres. Challenges therefore remain in fully eradicating torture practices and ensuring accountability within the justice and law enforcement systems.

This report aims to examine the prevalence and persistence of torture in South Africa to assess the current gaps in legal protections, as well as provide recommendations for enhanced monitoring, accountability, and victim support.

This report builds on the existing and ongoing work conducted by CSVR and the Pan African Reparations Initiative (PARI) network on torture and redress for torture. Drawing from publications such as *Stories of Torture Survivors Who Sought Redress in Post-Apartheid South Africa* (2016) and *Torture Victims Have a Right to Rehabilitation: A Guide for Service Providers to Assist Victims of Torture in Securing Their Right to Rehabilitation* (2021) publications, this report aims to capture the contemporary developments that concern torture in South Africa.

This report consulted secondary research, existing data from the literature, and Independent Police Investigative Directorate (IPID) statistics. Where there were gaps that needed to be filled, individual interviews were conducted with specialists who work within the field of torture and with Mental Health and Psychosocial Support (MHPSS) practitioners who work with individuals who have been identified as being vulnerable to torture and forms of cruel and degrading treatment at the hands of state officials.

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Cover Photo credit: The June 16 Memorial Acre in Jabavu, Soweto, taken by Sumaiya Mohamed



Pan African Reparations Initiative (PARI) statement

PARI is a loose network of organisations working with and advocating for the rights of victims and survivors of torture and ill-treatment in Africa. The network was established on the margins of the 52nd Ordinary Session of the African Commission on Human and People's Rights (ACHPR) in the Republic of Côte d'Ivoire in October 2012. Organisations dealing with victims of torture who attended the session informally organised themselves into a network of organisations advocating for reparation for victims of torture in Africa.

Through concerted advocacy and lobbying efforts, PARI aims to ensure that best practices on catering for the rights of victims are prioritised and highlighted and that African human rights mechanisms such as the African Commission on Human and People's Rights prioritise the rights to full and effective redress for victims of torture.

Since December 2012, The Centre for the Study of Violence and Reconciliation (CSV) has convened the PARI Regional Consultation meetings, where several recommendations and specific actions have helped shape the Pan-African reparations discourse. To date, PARI has lobbied for the development of a General Comment on Redress for Victims of Torture in Africa and the adoption of a Resolution on Rehabilitation for Torture Victims in Africa. This has resulted in the ACHPR's adoption of General Comment No 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) in March 2017.

Definition of torture

Torture is a method of violence that has been used throughout history for various purposes, including intimidation, punishment, and for extracting confidential information from a person or group of people. It is often framed from the purpose of interrogation where there is an aggressor who is a representative of the state, and a victim or a victim group. It has been identified that torture takes place in diverse situations where there is a violent abuse of power by individuals who are acting in violation of the human rights of individuals by exerting power and dominance while in their office of authority. As such, the understanding of torture transcends beyond a transaction of physical violence, but also in contexts where a representative of the state intimidates, prohibits an individual or group of individuals from accessing their basic rights which include resources as well as freedom of movement and autonomy.

Torture has significant impacts on victims and survivors, partly depending on the type of torture that has been enacted, and further due to the context under which the torture is being enacted. There are various types of torture methods that have been historically used, and due to the consequential type of injury the victim is then required to embark on a recovery process. The psychological impacts of torture are significant as torture is severely traumatic to the mind and the body. The impacts are further aggravated due to the organised and strategic methods of harm and power dynamics that are then realised when perpetrators violate victims through torture methods.

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which South Africa signed in 1993 and ratified in 1998, describes torture as:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” – **Article I, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (UNCAT)**

In 2013, the South African Prevention and Combating of Torture of Persons Act (PCTPA) was enacted, providing its own definition of torture as:

“any act or omission, by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as to (i) obtain information or a confession from him or her or any other person; or (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 any other person to do, or refrain from doing, anything; or 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.” – **Section 3, Prevention and Combating of Torture of Persons Act No. 13 of 2013**

Amongst the contentions with the torture definition include the way in which torture has been continuously used to intimidate, extort or exert dominance over the “other”. In some situations, acts of torture are dismissed or under recognised due to who the victim and perpetrator are. This often occurs when it is presumed that the perpetrator of the acts of torture is permitted to use heightened or excessive levels of violence to apprehend or coerce the victim into submission or confession. In situations where law enforcement, or the military are involved, it is often considered that excessive violence is acceptable, as part of the methods of fulfilling law or state security-related duties. It is also further misconstrued that in situations where people contravene the law and community mores, acts of torture are justifiable.

Hence, while there is a definition and understanding of torture, torture persists prominently where the excessive force by an “authorised person” is involved, or in situations where the victim is a person who is considered by broader society to be punishable.

Legal framework

There exists a robust legal framework for the prevention and prohibition of torture in South Africa. South Africa has ratified several crucial international and regional conventions and instruments aimed at preventing and prohibiting torture, indicating its formal commitment to combating torture, ensuring accountability for perpetrators, and providing support and redress for victims. In 1998, South Africa ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[1] UNCAT obliges State parties to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under their jurisdiction, providing that there are no exceptional circumstances that could justify the use of torture.[2] State parties are also prohibited from returning or extraditing a person to another state where there are reasonable grounds to believe that such a person would be subjected to torture or cruel punishment. [3]

[1] [1] United Nations General Assembly (1984) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85.

[2] Ibid, Article 2.

[3] United Nations General Assembly (1948) The Universal Declaration of Human Rights, 217A (III); United Nations General Assembly (1966) International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was ratified in 2019.[4] OPCAT aims to prevent torture or ill-treatment in contexts where people are, or may be, deprived of their liberty, such as places of detention.[5] As such, the objective of OPCAT is to create National Preventative Mechanisms (NPMs) and establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by South Africa in 1995, while not explicitly focusing on torture, addresses violence against women, which necessarily includes acts of torture.[6] Similarly, the Convention on the Rights of the Child (CRC), ratified in the same year, focuses on the general rights of the child and provides that no child is to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[7] Finally, the Rome Statute of the International Criminal Court (ICC), which South Africa ratified in 2000, provides that torture constitutes a crime against humanity, as well as a war crime liable for prosecution.[8]

At the regional level, the African Charter on Human and People's Rights (the African Charter), ratified in 1996, prohibits torture or other cruel, inhuman or degrading treatment or punishment.[9] The African Commission on Human and People's Rights (ACHPR), established by the African Charter, adopted the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa in 2002.[10] The Guidelines were the first regional instrument for the prohibition and prevention of torture in Africa in 2002, providing guidance for African Member States on how to implement the provisions of the African Charter regarding torture prevention and victim redress.[11]

Under South African domestic law, several pieces of legislation directly or indirectly prohibit torture or other cruel, inhuman or degrading treatment or punishment. The Constitution of the Republic of South Africa's Bill of Rights provides for the right to freedom and security of the person, including the right to be free from all forms of violence from public or private sources and not to be tortured in any way.[12] The Bill of Rights also provides for the rights of detainees, providing that they are to be treated humanely and protected from torture or cruel treatment or punishment.[13]

[4] United Nations General Assembly (2003) Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, A/RES/57/199.

[5] [5] ACT Inspector of Correctional Services (2018) Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Accessible at <https://www.ics.act.gov.au/opcat#:~:text=The%20Optional%20Protocol%20to%20the,be%2C%20deprived%20of%20their%20liberty>.

[6] United Nations General Assembly (1979) Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13.

[7] United Nations General Assembly (1989) Convention on the Rights of the Child. United Nations, Treaty Series, vol. 1577, p. 3.

[8] United Nations General Assembly (1998) Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, United Nations General Assembly.

[9] Organization of African Unity (1982) African Charter on Human and People's Rights ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

[10] Association for the Prevention of Torture (2024) The Robben Island Guidelines (2002). Accessible at <https://www.ap.t.ch/knowledge-hub/publications/robben-island-guidelines-2002#:~:text=The%20Robben%20Island%20Guidelines%20give,as%20providing%20redress%20for%20victims>.

[11] Ibid.

[12] Section 12(1)(d) & (e) of the Constitution of the Republic of South Africa, 1996

[13] Ibid, Section 35(1)(e) & (f).

The PCTPA highlighted above criminalises all forms of torture, defining torture in line with UNCAT and outlining the penalties for the commission of the crime.[14] The Criminal Procedure Act, on the other hand, includes provisions that prohibit torture and inhuman treatment during detention and interrogation. At the same time, the Correctional Services Act emphasises the rights of prisoners and detainees to be treated with human dignity.[15] The South African Police Services Act regulates the conduct of and prohibits ill-treatment committed by South African police officers.[16] The international and regional conventions and instruments to which South Africa is party, as well as the various legislative interventions at the domestic level, create a robust legal framework for the prevention and prohibition of torture in South Africa.

Torture in South Africa

Early history of torture in South Africa

South Africa has a complex history of torture. The earliest use of torture dates to colonial times, often used as a military tactic during times of war. In the early 20th century, British soldiers used torture methods during the Second Anglo-Boer War. This was observed through the establishment of concentration camps, where the degrading treatment of men, women, and children was practised.[17]

During the apartheid regime, political despotism and racial discrimination influenced the sanction of torture. According to Moyo-Kupeta (2014), torture was conducted by state apparatus such as the police, conducting discriminant (arbitrary) arrests, enforced disappearances, spaces of detention, and the sudden death of individuals in spaces of detention.[18] Due to the nature of the apartheid regime being a system built on white hetero-patriarchal values, political repression such as torture was informed by racial discrimination and persistent arrests of those classified as Black, Indian, and Coloured. In other instances, those deemed as political dissidents were also targeted by the state, “In the apartheid police system, the practice of torture was often routine, especially when political suspects were involved.”[19] Based on the testimonies presented before the Truth and Reconciliation Commission (TRC), state apparatus would use tactics such as assault, electroshock torture, and suffocation to extort information from victims.

[14] The Prevention of Combating and Torture of Persons Act No. 13 of 2013.

[15] The Criminal Procedure Act No. 51 of 1977; Correctional Services Act No. 111 of 1998.

[16] The South African Police Service Act No. 68 of 1995.

[17] Muntingh, L. 2012. The implications of torture in South Africa, p.10. University of Johannesburg. <https://www.uj.ac.za/wp-content/uploads/2021/10/muntingh-2012-torture.pdf>

[18] Moyo-Kupeta, A.Y. 2016. Torture in South Africa: The Act and the Facts, p.1. Centre for the Study of Violence and Reconciliation. <https://www.csvr.org.za/torture-in-south-africa-the-act-and-the-facts/>

[19] Hadebe, P. and Gopal, N. 2021. When torture mocks the law: Understanding police brutality in South Africa. *International Journal of Criminology and Sociology*, 10, p.233. <https://www.lifescienceglobalca.com/index.php/ijcs/article/view/7068/3688>

Notable examples include the cases of Ahmed Timol and Bantu Stephen Biko, who both died in security police custody after sustaining fatal injuries in 1971 and 1977, respectively.[20] Years later, in 1988, uMkhonto Wesizwe operative Phila Ndwandwe experienced forms of sexual torture, such as forced nudity, before her untimely murder by the Port Natal Security branch. Phila's experience further revealed the gendered nature of torture and that in the 4800 cases recorded in the TRC, different magnitudes of torture, such as mental, sexual, and menstrual torture, were sanctioned by state officials.[21]

Post-apartheid South Africa

In the post-apartheid South Africa, reports on torture continue to persist. It has been reported that torture happens in police cells, correctional services, other places of detention such as repatriation centres, in the public domain such as on the streets, and in some cases, in people's private spaces.[22] Despite South Africa being a signatory to the UNCAT and the OPCAT, and despite incorporating definitions of torture into its national legislation, there are still instances where information and other material gains are extracted from victims through torture.

At the end of the process, the TRC recommended reforms for the security sector, including the establishment of monitoring and accountability mechanisms to address the violent historical legacies of state organs such as the South African Police (SAP). In 1997, the South African Police Service Act 1995 established the Independent Complaints Directorate (ICD), now known as the Independent Police Investigations Directorate (IPID). The ICD was designed as an independent body to address serious complaints of abuse against the South African Police Service (SAPS), becoming a crucial part of the accountability system aimed at shaping policy reform in South Africa's new democracy.[23] The ICD was decentralised and operated independently, allowing it to carry out investigations and operations effectively. The Attorney-General took on the responsibility of prosecuting police officers and other state actors who were found liable under this legislation, including those involved in assault, torture, and murder of individuals in custody.[24]

In April 2012, the ICD was reconstituted and became the IPID under the IPID Act. IPID carries a mandate which sanctions the investigation of deaths in police custody; deaths as a result of police actions; any complaint related to the discharge of an official firearm by any police officer; rape by a police officer, whether the police officer is on or off-duty; rape of any person while that person is in police custody and any complaint of torture or assault against a police officer in the execution of his or her duties.[25]

[20] South African History Online. n.d., Ahmed Timol. <https://www.sahistory.org.za/people/ahmed-timol>

[21] Bonnes, S. and Jacobs, J., 2017. Gendered representations of apartheid: The women's jail museum at Constitution Hill. *Museum & Society*, 15(2), p.162. <https://journals.le.ac.uk/index.php/mas/article/view/830/777>

[22] Moyo-Kupeta, A.Y. 2016. p.1.

[23] Berg, J.2013. Civilian oversight of police in South Africa: from the ICD to the IPID. *Police practice and research*, 14(2), p. 332. <https://www.tandfonline.com/doi/abs/10.1080/15614263.2013.767094>

[24] Ibid, p.332.

[25] Faull, A. 2013. The Independent Complaints Directorate/ Independent Police Investigative Directorate: A review of statistics towards a clear and standardised approach for the future. *African Policing Civilian Oversight Forum*, p.2. https://apcof.org/wp-content/uploads/2016/05/No-9-The-Independent-Complaints-Directorate_-Independent-Police-Investigative-Directorate-A-review-of-Statistics-towards-a-clear-and-standardized-approach-for-the-future-Andrew-Faull-.pdf

Furthermore, the Correctional Services Act established the Judicial Inspectorate for Correctional Services (JICS). This oversight body reported on the treatment of inmates and was mandated to investigate misconduct in correctional facilities such as prisons and other detention spaces.

Additionally, South Africa established the NPM under OPCAT after the country's ratification of the Convention in 2019 with a role to provide independent monitoring and recommend systemic changes to reduce the risk of torture.[26] The NPM is coordinated by the South African Human Rights Commission (SAHRC) and has unrestricted access to all places of detention. IPID forms part of the South African NPM.

Despite the establishment of such accountability structures, case attrition persists. According to Cano et al., during the 2022/2023 financial calendar, the National Prosecuting Authority (NPA) prosecuted 53 cases out of the 2093 cases referred to them. Therefore, only 7.1% of cases were prosecuted out of the sample of cases deemed worthy of prosecution. [27]

Although police and other state authorities have standard operating procedures, they often fail to follow them. The case of Collins Khosa during the COVID-19 pandemic highlighted significant issues with these safeguards. Reports show that members of the South African National Defence Force (SANDF) subjected Khosa to degrading treatment in his own home before causing his fatal injuries. They poured alcohol over Khosa, choked him, and assaulted him with the butt of a machine gun in front of his family and community.[28]

[26] South African Human Rights Commission (2024) About the NPM. Available at <https://www.sahrc.org.za/npm/index.php/about-the-npm>

[27] Cano, I.2024. Exploring the impact of the Independent Police Investigative Directorate (IPID), African Policing Civilian Oversight Forum, p.8. <https://apcof.org/wp-content/uploads/exploring-the-impact-of-the-independent-police-investigative-directorate-ipid.pdf>

[28] *Khosa and Others v Minister of Defence and Military Veterans and Others* 2020 ZAGPPHC 147; 2020 (7) BCLR 816 (GP); [2020] 3 All SA 190 (GP); [2020] 8 BLLR 801 (GP); 2020 (5) SA 490 (GP); 2020 (2) SACR 461 (GP)

Recent court rulings on torture

In *Bosawa v Minister of Police (2024)*[29], the High Court addressed the issues of unlawful detention and inadequate legal recourse. Bosawa challenged the legality of his detention, arguing it was arbitrary and breached his constitutional rights.

Evidence submitted before the Court revealed that after his arrest, Bosawa was taken to the home of Buto, a friend of the victim, where police officers detained him and attempted to extort money. Bosawa reported being publicly assaulted and claimed the police tortured him, resulting in cuts and abrasions from handcuffs.

The Court found the police had no proper legal justification for detaining Bosawa and had violated due process. It ordered his release and awarded damages for the wrongful detention.

The case underscores the need for law enforcement to adhere to legal standards and protect constitutional rights against unlawful detention.

In the case of *Esyas v Magistrate McKenzie, Paarl Magistrates Court and Others (2024)*[30], Tsegaye Esyas, an Ethiopian asylum seeker, brought an urgent application to challenge an admission of guilt fine he paid without understanding the proceedings due to the lack of an interpreter.

Esyas had fled political unrest in Ethiopia and was arrested in South Africa for being an undocumented migrant after multiple failed asylum attempts. During his court appearance on 10 April 2024, the absence of an interpreter meant Esyas mistakenly thought he was paying bail rather than an admission of guilt fine, which led to his continued detention and the start of deportation procedures.

[29] *Bosawa v Minister of Police* 2024 ZAGPJHC 550.

[30] *Esyas v Magistrate McKenzie, Paarl Magistrates Court and Others* 2024 ZAWCHC 106.

Esyas alleged that Ms Annelise van Dyk, head of immigration, misled his family into paying the fine by falsely presenting it as bail and treated him inhumanely, causing him to attempt suicide.

The High Court found that the lack of an interpreter violated Esyas' right to a fair trial. It set aside the fine, ordered a refund, and instructed that his case be reheard by a different magistrate with a competent interpreter.

The Court condemned Ms. van Dyk for her unethical behaviour, which included deception, isolation, verbal and emotional abuse, and causing severe psychological distress to Esyas.

This case underscores the need for public officials to conduct themselves ethically and transparently and to abide by conventions that limit the cruel and degrading treatment of those detained.

These cases highlight the ongoing issues related to torture in South Africa, despite its criminalisation under the South African Constitution, international obligations, and domestic legislation.

These cases are extracted from the South African Legal Information Institute (SAFLII)

Types of torture

Physical torture: which is the most prevalent type of torture, involves inflicting severe harm or threatening to cause injury to an individual's body for purposes of intimidation, coercion, punishment, and to extract confidential information. Methods that have been used in the past include physical or sexual assault with hands, fists, or weapons.

Other methods include strangulation, stretching, waterboarding, electric shocks, and burning; they are all done to exert dominance and power over the victim. This form of torture is also usually accompanied by psychological torture, whereby methods such as solitary confinement, confinement in spaces where the environment is unfit for human use; deprivation of food, water, sanitary and menstrual supplies or clothes; sleep-deprivation; prolonged stress positions or strenuous exercises; continuous interrogation; manipulation of the senses (blindfolding, hooding, the use of lights, loud noise, music or shouting); mock executions; threats to relatives and loved ones or forced witnessing of torture; among many others are used on victims.[31]

Sexual torture: is another form of torture that is often prevalent in war or politicised contexts, often emerging as conflict-related sexual violence. Within the South African context, there is emerging evidence of forced and coerced sterilisation of HIV+ women during labour and pregnancy. These incidents have been reported to take place primarily in State hospitals where a majority of the population access gynaecological and maternal health care services. This form of torture involves women being coerced to consent to sterilisation due to their low socioeconomic status, and HIV status, often under the guise that the procedure is necessary.[32]

The list of torture methods is endless, with victims experiencing one or many types of the defined methods at the hands of public officials:

I think that the police, and the municipality really harass hawkers. And women, and for women also, the gender-based violence because you know, sometimes you need to give sexual favours for you not to be harassed."

The above quotation illustrates how the police and persons in positions of authority use their power and position to psychologically manipulate, extort, and coerce civilians by capitalising on their fears of sexual violation and immigration insecurity, which are risks that are experienced by sex workers and foreign nationals.

Based on the interviews, the emerging types of torture and ill-treatment include degrading treatment and inhuman treatment resulting from police procedural failures and their use of disproportionate force; sexual exploitation, where women are coerced into providing sexual favours to avoid harassment; and extortion of money and sex, especially of foreign nationals, involving arbitrary arrests and demands for bribes under threat of further mistreatment. In other instances, the conditions within spaces of detention do not meet the conditions and standards for those detained.

Perpetrators

According to definitions of torture, torture is committed by a public official or someone in a position of authority. Within the context of South Africa, SAPS have commonly been found acting in contradiction with the law and, more recently, with the deployment of the SANDF during the COVID-19 pandemic, cruel and degrading treatment, which carries proximities to torture such as in the Collins Khosa case, have implicated the two state organs as complicit in such acts.

[31] Evans, M.D. and Modvig, J. eds., 2020. Research handbook on torture: Legal and medical perspectives on prohibition and prevention, p.433. https://digital.library.tu.ac.th/tu_dc/frontend/Info/item/dc:190543

[32] Gender Equality on launch of investigative report on forced sterilisation in public health care services | South African Government

“So, we have just had a case here of a sex worker. I think there were two or three who were beaten badly by the police and covered with plastic bags over their heads. But when we tried to follow up – usually, we advise sex workers to take the number plates or to look at the badge of the police – when we followed up, we found that the police were not from eThekweni but from another area. They took advantage of them because they knew that even if the sex workers reported, nothing would happen. They came to the area looking for someone selling something, but the women had no information to offer.”

In the case described by above, the perpetrators are commonly identified as police officers who exploit their authority to abuse vulnerable individuals, in this instance, sex workers. The incident involved the brutal beating of several sex workers, who were also subjected to the humiliating treatment of having plastic bags placed over their heads. Despite attempts to hold the perpetrators accountable, the investigation revealed that the officers involved were from outside the eThekweni area, suggesting a deliberate exploitation of their position. This tactic of operating from a different jurisdiction allowed the police to act with impunity, knowing that the sex workers' reports would likely be disregarded.

The officers' actions underscore a systemic issue where those in positions of power can perpetrate violence against marginalised groups, confident that their abuse will go unchallenged due to the victims' lack of recourse.

Despite contentions with the definition, which states that perpetrators should either be state officials or any individuals acting in the capacity of the state, some of the interviews highlighted the adaptation of strategies of torture by organised groups within the city. For example, hawkers are often subjected to torture by inner-city groups in the Johannesburg area in order to extort information from them about the spaces in which they operate.[33] But both domestic and international torture conventions recognise violations by non-state actors only within the framework of state responsibility where they can be linked to the state, such as a state exercising control over paramilitary forces or failing in its positive obligation to prevent and respond to such violations.[34]

This often leaves such organised groups operating outside of this scope despite them deploying strategies that could be classified as torture.

[33] Interview

[34] Oette, L. 2006. Not only the State: Torture by Non-State Actors Towards Enhanced Protection, Accountability And Effective Remedies. REDRESS, p.11. <https://redress.org/wp-content/uploads/2018/01/JUNE-Non-State-Actors-9-June-Final.pdf>

“They [hawkers] also experience so much torture because they get blamed for things that go missing. They get assaulted and tortured by organised groups because they suspect them of theft, knowing certain information or other illicit activities in the city.”

This analysis highlights the systemic and widespread use of torture and cruel treatment by both state and non-state actors in South Africa. State officials, including the SAPS and SANDF, have repeatedly committed acts that meet the definition of torture, as seen in cases like Collins Khosa. Police officers, as described in the quoted account, have exploited their authority to target vulnerable groups, knowing they can act with impunity.

This reality has further trickled down into everyday life, with organised groups, as explained in the above quote, also using torture to extort information from hawkers, further exposing the blurred lines in defining torture. While international and domestic conventions primarily hold the state responsible, these groups often operate in contexts where the state fails to protect or regulate, complicating accountability. These examples emphasise the urgent need for systemic reforms to hold perpetrators accountable and protect the rights of vulnerable individuals.

Victims and Survivors

According to studies done by the CSVR over the past 10 years, victims of torture in post-apartheid South Africa were identified as including arrested individuals, criminal suspects, foreign nationals, and sex workers.[35] Based on the interviews, victims of torture include arrested individuals, criminal suspects, foreign nationals, sex workers, street traders, and waste pickers, among others.[36] CSVR’s mental health and psychosocial support clinic has provided counselling services from victims from the aforementioned areas, as well other civilians who have become victims of torture through intimidation or coercion when accessing their basic rights, or experiences of being violently deprived of access to public resources such as healthcare, maternal healthcare, basic education, and legal or immigration status.

Arrests often target specific groups, perpetuating existing power dynamics within society. According to CSVR’s research, ethnic and racial identity frequently determines the degrading treatment and torture experienced by individuals, both immediately and in the future. Notably, Black men who are poor or unemployed are particularly vulnerable to such abuse.[37] This criminalisation echoes both colonial and apartheid histories.

[35] Moyo-Kupeta, A. 2016. Torture in South Africa: The Act and the Facts, p.1. Centre for the Study of Violence and Reconciliation. <https://www.csvr.org.za/torture-in-south-africa-the-act-and-the-facts/>

[36] Ibid. p.1.

[37] Langa, M. 2015. Stories of Torture Survivors Who Sought Redress in Post-Apartheid South Africa. Centre for the Study of Violence and Reconciliation, p.33.

During the colonial and apartheid eras, urban authorities frequently targeted idle, young Black men with suspicion and hostility, viewing them as potential threats to public order – a racist perception that continues to influence policing and societal attitudes in the post-apartheid era.[38] The concept of idleness remains synonymous with vagrancy and unproductivity. Historically, black people's presence in urban centres was justified by their roles as domestic workers, miners, and other professionals who supported the urban centres for white residents. Apartheid influx controls mandated mass deportations to homelands[39] once contracts expired, restricting black people's rights to urban residence.[40] Today, loitering or being unemployed continues to mark individuals as being “anti-social” and “unproductive”, .According to Wafer(2017) , this encompasses activities such as “hustling, begging, petty trade, and prostitution”.[41] In today’s post-apartheid context, these activities remain outside the formal urban economy and are sometimes criminalised.

The interviews with specialists working with torture, policing, and precarious or criminalised work revealed that some victims of torture undertaking informalised work find themselves constantly harassed by the police and general public due to the nature of their work positioned within urban centres and within the dichotomy of formalised and informalised work. [42]

“I think the big thing is that we don’t see traders as in their workplace, working. We see them as people who are on street corners, street pavements who are hustling where we have to walk. People are just so horrible to them; we don’t see this as umsebenzi (work)- the police and the state also contribute to this thing.”

This is exacerbated when victims of torture are unaware that the violence that they are experiencing falls under the ambit of torture, further disempowering them from accessing their rights and the services and support that are often required to manage the loss of resource and sense of identity and autonomy.

Furthermore, through the analysis of the interviews and secondary sources, it was demonstrated that most torture victims exist within overlapping spheres where their race, gender, sexuality, nationality, and socioeconomic status expose them to cruel, degrading treatment and torture.[43] Therefore, these interlocking identities have compounding impacts on a person's likelihood of experiencing torture within the South African context. For example, a Black trans woman working in criminalised fields such as sex work faces a higher risk of torture or even murder because existing power dynamics have pushed her to the edges of society.

[38] Glaser, C., 2005. Managing the sexuality of urban youth: Johannesburg, 1920s-1960s. *The International journal of African historical studies*, 38(2), p.303.

[39] The term "homelands" referred to areas designated by the government for black South Africans, intended to serve as separate, self-governing regions. These homelands were part of the broader policy of racial segregation and were intended to reinforce the apartheid system by segregating people according to their ethnic and racial identities.

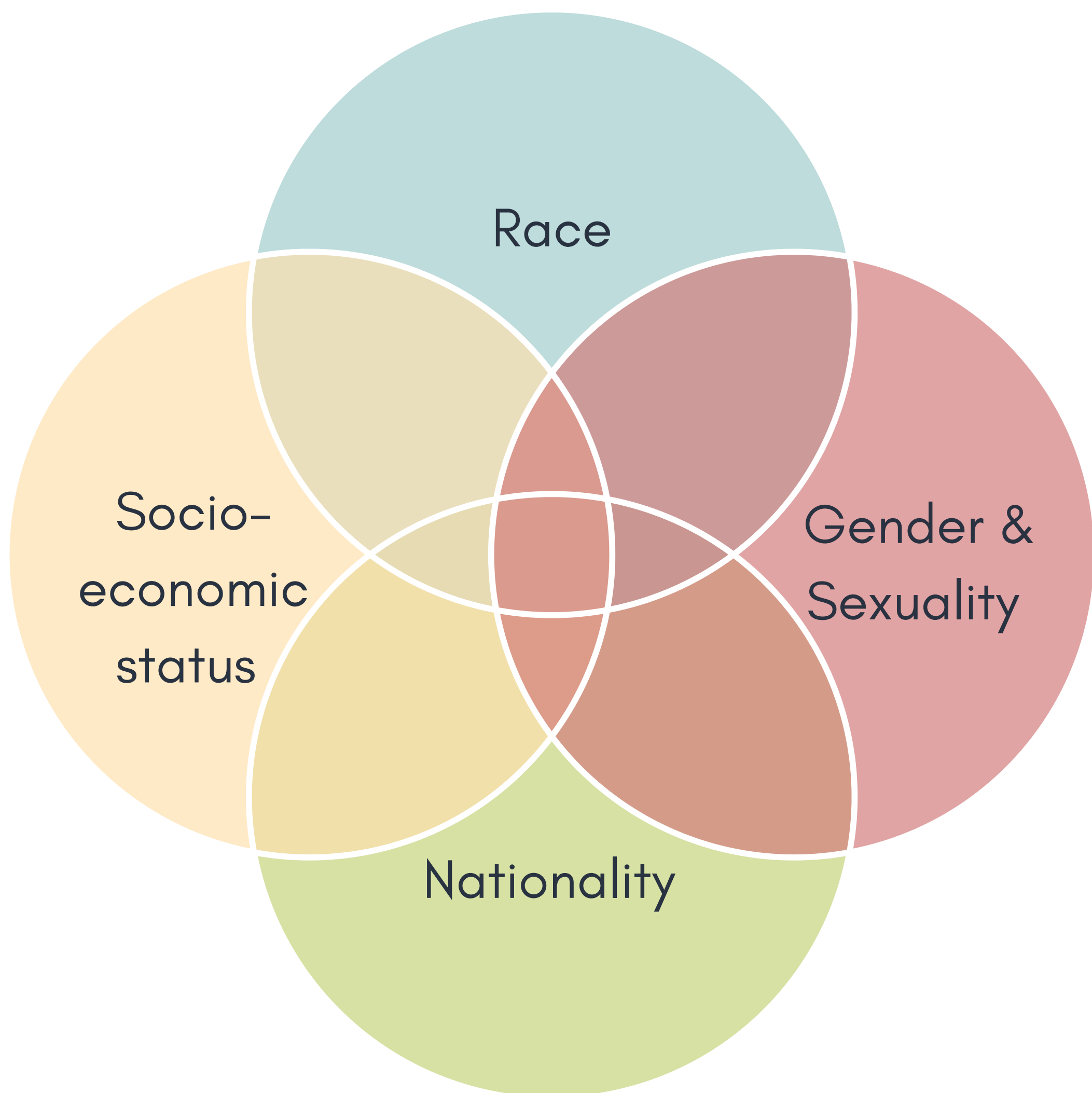
[40] Glaser, C., 2005. Managing the sexuality of urban youth: Johannesburg, 1920s-1960s. *The International journal of African historical studies*, 38(2), p.303. <https://www.jstor.org/stable/40034922>

[41] Wafer, A., 2017. Loitering: Reassembling Time in the City-of-the-Global-South. *Social Dynamics*, 43(3), pp.417-420. <https://www.tandfonline.com/doi/abs/10.1080/02533952.2017.1390876>

[42] interviews

[43] Ibid.

"Our organisation assists sex workers that are women, including transgender women. About 10% of men render services to the opposite gender, but women dominate the industry. Transgender women usually experience double stigma, where a client will intentionally approach a trans woman, and perhaps after the client services, they become violent and sometimes kill the woman."



Case Study one - Leanne

Leanne is a young queer woman who lives in Pretoria, South Africa. She works for an NGO near the city centre where she is a human rights activist advocating for queer rights. One afternoon when she was on her way to buy lunch, she was met by a police officer who was asking where she was going. She responded briefly that she was going about her business, to which the police officer demanded a more distinct answer about where she was going. Automatically, Leanne started to feel unsafe and called her partner via video call as a distraction and to ensure that if anything happened to her, someone would know. While she was on the phone, the police appeared behind her, and she felt her hand being pulled back and she was pushed against the wall. In the process, she dropped her phone. The police officer accused her of recording him and resisting the authority of a police officer. While she was pressed against the wall, the police officer began to threaten her sexually while whispering homophobic slurs in her ear. Due to the altercation, Leanne's arm was bruised and she also had scratches on her face from when she was being pressed against the wall. Her phone was also damaged as a result of it being dropped.

Leanne didn't open a case because she did not feel safe reporting a police officer to the police. Since the ordeal, she has felt unsafe and can't sleep. She has a lot of pain in her arm and has bruising on her face. She reached out for counselling to process the traumatic event.

Case Study Two - Nontobeko

Nontobeko is a middle-aged woman and mother of 1 who lives in Eastern Cape, South Africa. When she was 19 years old, she gave birth to her first child at a public hospital. Her water broke around 11am and she immediately went to the hospital and had to wait while she was having contractions. Eventually there was a delivery bed available at 5pm, and the hospital personnel expressed their dissatisfaction with her because she was “uncooperative”. While in labour, one of the hospital staff highlighted that her file stated that she was HIV+ and that it was highly recommended that she undergo a procedure for sterilisation so that she does not have any more children who “will be at risk of contracting HIV”. Nontobeko was in a lot of pain, this was her first birthing experience, and she was worried about HIV transmission to the child. She took the nurse’s advice as she was also informed that it was reversible at a later stage. She signed the consent form so that they could proceed with the procedure after she gave birth.

Nontobeko’s experience has been highly traumatic for her. She remained in a relationship with her child’s father and they eventually got married. However, he feels betrayed that she made the decision to undergo the procedure without consulting him. Nontobeko says she was under pressure to sign consent, and she was scared they would continue to say she’s uncooperative which would compromise the healthcare services she would be given. Nontobeko’s relationship has since ended – some of the issues related to them being unable to have children. Some of the other issues she has encountered include bleeding for extended periods.

Redress and Reparations

The Robben Island Guidelines highlight the need to protect victims of torture, cruel, inhuman, and degrading treatment, along with witnesses, investigators, human rights defenders, and families, from any form of intimidation related to investigations. The guidelines mandate that states provide reparations to victims regardless of the outcome of criminal prosecutions. States must ensure that victims of torture and their dependents receive appropriate medical care, access to suitable social and medical rehabilitation, and adequate compensation and support.[44] The guidelines also recognise that families and communities affected by torture should be considered victims.

Similarly, General Comment No. 3 of the UNCAT outlines expectations for states to implement comprehensive reparative measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, as per Article 14 of the Convention. Further, General Comment No. 4, adopted in 2017 to clarify the obligations of African States under the African Charter's prohibition of torture expands on state obligations to prevent such treatment while emphasising the protection of vulnerable groups who are at higher risk of abuse.[45] This is significant in the South African context since it underscores the necessity to adopt a robust approach to preventing and addressing torture in a context with deep historical roots in the practice. The Comment emphasises preventative measures and accountability measures that aligns with South African legislation, reinforcing the importance of a holistic approach to eradicating torture.[46] Reparations, according to the Comment, includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[47] Such an approach includes educating state officials, improving detention conditions, and establishing independent review mechanisms to investigate allegations of torture. However, despite these international guidelines and suggestions, the South African PCTPA lacks specific provisions for reparative measures for victims of torture.

According to the interviews, the conditions for redress are contrary to the Robben Island Guidelines, whereby victims mainly gain access to reparations based on the outcome of the criminal prosecution, particularly with the court decision. Civil society organisations, on the other hand, offer immediate reparations, such as rehabilitation in the form of psychosocial support that focuses on torture.

[44] Robben Island Guidelines, 2002

[45] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 2017.

[46] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 2017.

[47] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 2017, pg.4.

But we have a 24-hour helpline service that is there; it's available for sex workers to use. You can use it if either you want to have a conversation with someone you don't know personally or you are in need of psychosocial support, you are able to be assisted with that request. Or if you have been arrested, and the conditions don't meet the standards at the police station - you can also get assistance through that helpline. you can also report at our offices there too, if you have been in traumatic situations. Sometimes, if we are unable to handle the case then we refer to I'm a partner organisations, social worker or counsellors."

Best Practices

It is important that survivors of torture are attended to and provided services and support that aligns with the Global standards of Rehabilitation as outlined by IRCT.[48]

In the context of South Africa, it is key that a trauma-informed approach is integrated into service provision to ensure that it is survivor-centred and holistic, covering the necessary service areas that victims of torture would benefit from for purposes of healing, recovery, rehabilitation, and redress. South Africa has a history of human rights violations and ongoing inequalities, which continue to filter in the way that systems and structures respond to the needs of victims and survivors. The key service areas include medical healthcare, physical rehabilitation, mental health and psychosocial support, legal support, livelihood support and economic rehabilitation, family or community support, and social and cultural reintegration.

Service providers should be capacitated to function with an awareness of trauma and its negative impact on daily functioning (trust, safety, and decision-making abilities), how traumatised individuals navigate important services, and some of the barriers to accessing the essential services, which is particularly difficult in under resourced areas.

[48] International Rehabilitation Council for Torture Victims. n.d., Global Standards on Rehabilitation. [Global Standards on Rehabilitation - IRCT](#)

Mthembu, S. P. (2022). My body, my womb, my rights, my decisions: Feminist advocacy to seek justice for HIV positive women who are victims of forced sterilisations in South Africa. *Agenda*, 36(3), 22-31. <https://doi.org/10.1080/10130950.2022.2138768>

Analysis and Recommendations

State (various government ministries)

Capacitate personnel about trauma-informed service provision. Capacity building should be undertaken by experts in the torture field to ensure that the nuances of torture and the global standards of rehabilitation are integrated, and compliance is ensured.

Capacitate personnel about the gendered nature of torture and other ill-treatment, including the particular effects of sexual and gender-based violence, the aggravated torture and other ill-treatment on children, and the unique experiences of people with disabilities subjected to torture and other ill-treatment.[49]

Train the police force and investigators in particular and to adopt a trauma-informed and human-rights based approach to interviews. This approach includes empathy, patience, and sensitivity to the trauma experienced and the psychological state of complainants. It also requires investigators to comply with ethical considerations and the principle of “do no harm.”

Establish strong, holistic referral systems to connect victims of torture with appropriate mental health and psychosocial support services, including social services, counselling, therapy, and psychiatry; and medical care for physiological or physical injury and treatment. These referral systems take into consideration the multi-layered impacts of torture on victims, survivors, and their family members.

Special measures should be taken to provide access to redress procedures and mechanisms for victims in places of detention, as well as to marginalised and disadvantaged persons or groups with limited access to such mechanisms. Such measures may include the establishment of clinics that can provide legal advice or trauma counselling in remote areas, or the development of outreach programmes.[50]

Review existing legislation to ensure that NPM institutions have the full powers, resources, and mandates necessary to fulfil their OPCAT functions.[51]

[49] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 2017, pg. 6.

[50] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), 2017, pg. 7.

[51] South African Human Rights Commission (2024) About the NPM. Available at <https://www.sahrc.org.za/npm/index.php/about-the-npm>.

Local communities (stakeholders, community-based organisations, victims, service providers, etc.)

Facilitate dialogues at the community level to educate communities about what torture is, its impact on victims, their rights, and the role of IPID, amongst others. This is key to fostering an understanding of the nature of torture and the effects that it has on survivors. It may also bring the opportunity for survivors to speak out and mitigate the isolation of the trauma. When families also understand the gravity of the violation, there is a better understanding of the survivor's experiences.

Empower communities to respond to incidents of torture appropriately. When local communities are capacitated to understand the true definition of torture, they are better equipped to respond accordingly and to thereafter hold perpetrators accountable. Part of the reason torture persists is due to limited knowledge and awareness about where to report cases of torture that take place within their communities.

Awareness campaigns and dialogues about torture and its intergenerational impact on mental health and wellbeing of families are imperative to best support needs of survivors of torture. Through dialogue and storytelling, the acts of torture are also understood as violations that are targeted towards people due to their racial, gendered, socioeconomic, political (and other) identities, and aims to minimise victim-blaming.

Civil society organisations, academia, professional bodies, and traditional cultural leaders

Conduct workshops, trainings, and seminars during capacitation to enhance understanding. Organisations and institutions that capacitate, workshop, and influence groups and communities are responsible for understanding the different categories of violence that persist within their sectors or environments. If they have an in-depth understanding of torture and its nuances, they are better capacitated to develop mechanisms to mitigate and eradicate torture.

Within the academic domain, it is imperative that emerging professionals and practitioners are capacitated to develop and implement evidence-based approaches to mitigating torture, or support and treat survivors of torture and their families.

When traditional and cultural leaders are capacitated to integrate the psychosocial impacts of violence and torture into their approaches to support and intervene, it provides both an informed and supportive element that mitigates isolation that often persists with torture-related trauma. This provides for victims, survivors and their families to have a holistic understanding of the intersections of the impacts of violence and torture, and how these emerge in everyday life and sense of self.

National Human Rights Commission

Establish independent bodies or units within the NHRCs that will periodically inspect detention facilities, police stations, and other places where individuals may be held regularly. This includes regular visits to the abovementioned facilities where individuals might be at risk of human rights abuses.

Train policymakers on the NPM mandate

Build awareness of the existence of the NPM and its mandate on a national and international level to ensure that all places of deprivation of liberty in South Africa are accounted for and subject to independent oversight.[52]

[52] South African Human Rights Commission (2024) About the NPM. Available at <https://www.sahrc.org.za/npm/index.php/about-the-npm>.