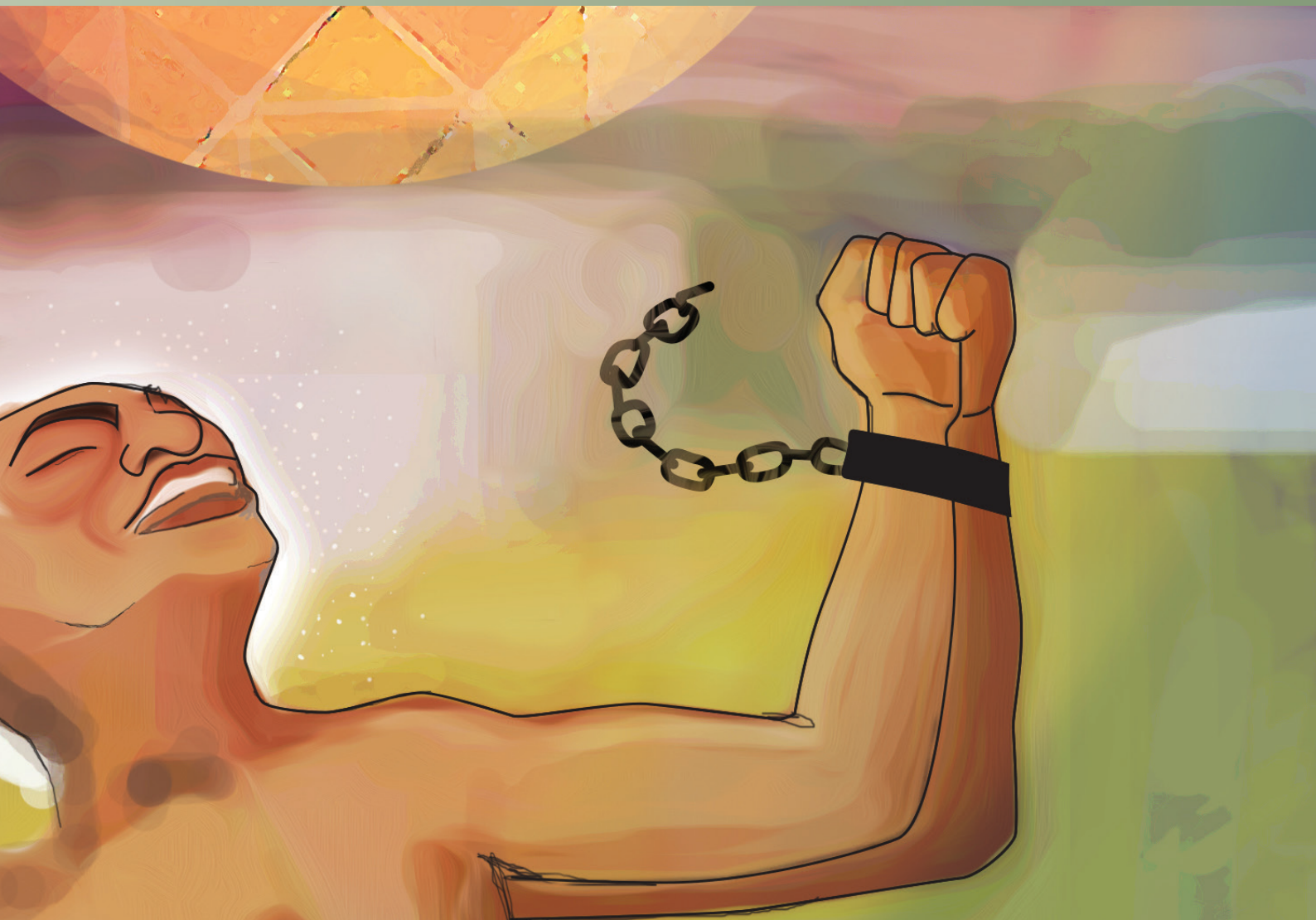




TORTURE IN SOUTH AFRICA: The Act and the Facts

Fact sheet on torture – September 2014



Key facts about torture:

→ Torture in South Africa is largely associated with state responses to political activism during the apartheid era

BUT

→ Torture exists and is real in South Africa today.

→ Torture is a human rights violation and is prohibited in the Bill of Rights of the South African Constitution

→ Torture is now a recognized crime in South Africa and perpetrators of this specific crime can be charged, tried and prosecuted under the **Prevention and Combating of Torture of Persons Act 13 of 2013** (“The Anti-torture Act”).

→ South Africa enacted anti-torture legislation on 25 July 2013 almost 15 years after ratifying the United Nations Convention against Torture (CAT) – South Africa is yet to ratify the Optional Protocol on the Convention against Torture (OPCAT)

→ In Africa, 13 out of 54 countries have enacted anti-torture legislation.

→ Article 5 of the African Charter on Human and People’s Rights prohibits torture and the Robben Island Guidelines provides a guide on preventing torture in Africa

→ In South Africa torture happens in police cells, correctional services, other places of detention (or where freedom of movement is restricted), on the streets and in some cases in people’s private spaces.

→ Victims of torture in the post-apartheid South Africa include arrested persons, criminal suspects, non-South African nationals and sex workers amongst others.

→ The Anti-torture Act applies to state agents – members of the police, prison warders, nurses, teachers and other officials responsible for detained persons or other people acting with the consent and authorization of the State.

→ Key state institutions responsible for monitoring, investigating and preventing torture include the Independent Police Investigative Directorate (IPID), the Judicial Inspectorate of Correctional Services (JICS) and the South African Human Rights Commission (SAHRC).

→ Before July 2013, acts of torture were investigated and prosecuted as assault cases. In 2012-2013, the Independent Police Investigative Directorate reported 4131 cases of assault and 50 cases of torture.

→ From October 2012 to June 2013, CSVr received 114 cases of torture in the Trauma Clinic.

→ Torture affects individuals, families, communities and whole societies with very real physical, mental and social consequences.

→ The needs of torture victims are central to the prevention and combating of torture. Responses to this must include adequate remedy.

What is Torture?

DEFINITION

torture

- noun: 1. the action or practice of inflicting severe pain on someone as a punishment or in order to force them to do or say something.
- verb: 1. inflict severe pain on.



Torture is a specific crime, which can only be committed by a closed group of people, namely public officials in their official capacity or by anyone else with consent of a public official acting in their official capacity. A public official who witnesses torture and fails to report it is also guilty of the crime of torture.

If any one of the four elements of the crime of torture is missing, torture would not have been committed.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

ARTICLE 5

NO ONE shall be subjected to torture or to, cruel, inhuman degrading treatment or punishment.

What are the international and African normative frameworks governing torture?

- Torture has been prohibited in all countries of the world since 1948 when the Universal Declaration of Human Rights came into force;
- Article 5 of the Universal Declaration of Human and People's Rights and article 7 of the International Covenant on Civil and Political Rights of 1966 prohibit torture. Article 37 of the UN Convention on the Rights of the Child also prohibits torture of children under the age of 18, and the Rome Statute Establishing the International Criminal Court also defines widespread and systematic torture as a crime against humanity which can be prosecuted at the ICC.
- Article 5 of the African Charter on Human and people's Rights also prohibits torture and the Robben Island Guidelines sets out measures and guidelines on the prevention of torture in Africa.
- Under the auspices of the African Charter, the African Commission on Human and People's Rights is mandated to protect and promote the rights of African citizens in the African Charter. By April 2014, the African Commission had heard 62 cases on Article 5 of the African Charter – the second highest number of cases heard by the African Commission.
- Article 3 and 4 of The Constitutive Act of the African Union by extension also compliment the protection of human rights at regional and international level including prohibition of torture and use of force amongst member states. Article 4 of the Maputo Protocol and Article 16 of the African Charter on the Rights and Welfare of the Child provides for protection of women and the child from all forms of torture, among other abuses.
- In 1984, the United Nations Convention against Torture (UNCAT) which defines and criminalizes torture in international law was adopted.
- The Optional Protocol on the Convention against Torture (OPCAT) was adopted in 2002 and only came into force in 2006.
- South Africa ratified the UNCAT in 1998. Since then, South Africa has had a duty to pass legislation to ensure that torture becomes a crime punishable by law.
- South Africa signed OPCAT in 2006 but has not yet ratified it. Ratification of OPCAT will establish an independent national preventive oversight mechanism to monitor the implementation of the Convention against Torture at national level (this includes monitoring, investigating and reporting).
- The Bill of Rights in Chapter 2 of the South African Constitution also prohibits torture. Section 14(1)(d) specifically provides for the freedom and security of the person including the right not to be tortured in any way.
- With the passing of the Prevention and Combating of Torture of Persons Act in 2013, South Africa has now complied with its international law obligations under the UNCAT to criminalize torture. The Anti-torture Act highlights the seriousness of the crime of torture through its harsh punishment of imprisonment up to life imprisonment, and further by stipulating that there is no justification for committing a crime of torture (section 4(4) of the Anti-Torture Act)
- However, the Anti-torture Act is forward-looking and does not apply with retrospective effect – victims of apartheid are not covered by the Act.

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

ARTICLE 5

EVERY individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Why is torture important – what distinguishes it from other crimes?

- ✓ The impact of torture is quite complex and far-reaching. Torture affects individuals, their families and whole societies. When torture is inflicted, it impacts the victim physically, mentally and socially.
- ✓ The fact that torture is committed by a public official, someone in a position of authority by virtue of their state-given powers; means that a victim is helpless and cannot defend himself or herself when torture occurs.
- ✓ The impact of torture on victims can be broadly placed in three categories namely; physical, mental (psychological) and social.
- ✓ The physical symptoms of torture includes all physical injuries which victims sustain including, amongst others, head injuries, Spinal cord injuries, headaches, chronic pains and aches, loss of eyesight, stiffness in limbs and joints, dislocation of joints, muscle damage, damage to sexual and reproductive organs, bone fractures, painful wounds and scars, paralysis and skin damage, for example, lacerations, bruises and burns
- ✓ The mental or psychological symptoms of torture include, amongst others, sleep disturbance (too little sleep or too much sleep), suicidal thoughts, concentration problems, lack of energy, sexual dysfunction, anger outbursts, confusion or disorientation, memory loss, feelings of shame, feelings of excessive guilt, mood swings, extreme sadness, depression, feelings of hopelessness, loss of interest in life, flashbacks and avoidance or numbing.
- ✓ Social symptoms of torture include breakdown in inter-personal and social relationships, loss of capacity for engaging in intimate relationships, isolation and withdrawal, aggression, substance abuse- especially mind-altering drugs, loss of community and spiritual connection, compromised relationship skills, compromised parental skills and compromised occupational skills.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS OF 1966

ARTICLE 7

NO ONE shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Is Torture really happening in SA?

- Research by CSVR and other organizations who work with victims of and survivors of torture has revealed that torture is not something of the past; it still exists in South Africa.
- The contemporary faces of torture include victims police brutality, excessive use of force by the police during arrests, crowd control, police patrol and interrogation of criminal suspects
- Some gripping examples (Marikana in August 2012, Mido Macia in February-March 2013, the blind busker in Cape Town in July 2013, the beating to death of a hawker by Metro-Police in Johannesburg in January 2014, the beating and stripping naked of a man in Cape Town by police in March 2014 and the torture of Ubunye Hostel men by police in KZN in March 2014), ill-treatment of inmates by prison warders in South African prisons (St Alban Prison in Port Elizabeth in January 2013, Groenpunt Prison in January 2013 and the torture, forced psychotic treatment and shock therapy for problematic and aggressive prisoners at Mangaung Prison during 2012 and 2013 period)
- The post-apartheid victims of torture consist of people in the wrong place at the wrong time and less popular groups of society, including persons in conflict with the law (arrested persons and criminal suspects), non-nationals and sex workers which victims are less likely to conjure a public outcry when tortured.
- Independent Police Investigative Directorate (IPID) Statistics and Figures for specific crimes- from the 2012-2013 annual report show a low number of torture cases, but there is a possibility that some of the other crimes classified in other classes of crime may qualify as torture.

Table 1

| Class | Intakes Received by IPID |
|-------------------------------------|--------------------------|
| Deaths in Police Custody | 275 |
| Deaths as a result of police action | 431 |
| Rape by Police Officer | 146 |
| Rape in police custody | 22 |
| Torture | 50 |
| Assault | 4131 |

Judicial Inspectorate of Correctional Services (JICS) Statistics for Unnatural deaths in 2011 (the most recent year of reporting)

Table 2: Unnatural deaths

| Causes of Unnatural Deaths | Numbers |
|----------------------------|---------|
| Suicide | 20 |
| Homicide | 11 |
| Unknown cause of death | 16 |

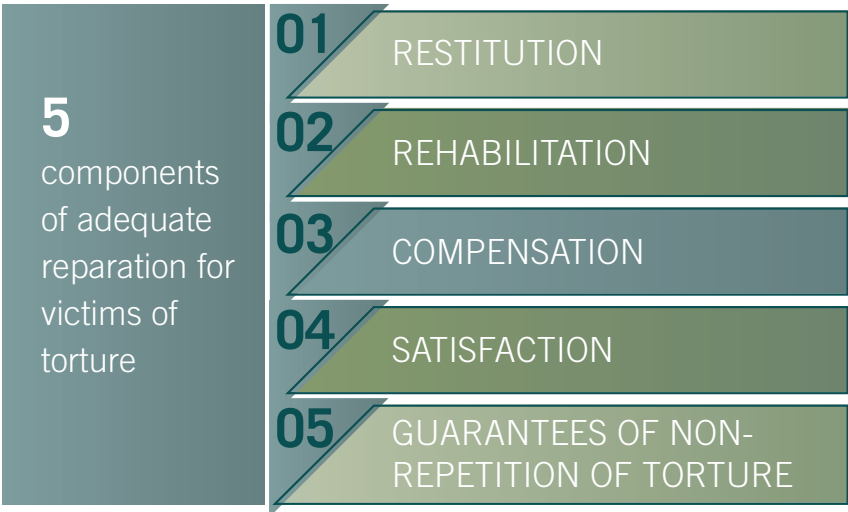
The majority of unnatural homicide deaths in prison were committed by prison officials.

In addition to the above figures, CSVR clinical team has received and offered psychosocial services to 114 torture victims during the period of 1 October 2012 to 30 June 2013.

What are the key issues for victims?

- CSVR has observed that for victims and survivors of torture to recover and regain their lives after experiencing torture, their needs require that redress should be prioritized.
- Part III of the Robben Island Guidelines of 2002 provides for Reparation for victims of torture. However, the Guidelines do not specify what this reparation entails or what it should look like.
- There is a general belief that the term reparation is synonymous with compensation. Although compensation is key, reparation and adequate remedy for victims go beyond compensation. Art 14 of UNCAT alludes to this, and
- General Comment 3 of the UN Committee against Torture defined and gave effect to 5 components of adequate reparation for victims of torture namely, restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition of torture.
- **Restitution** for losses suffered by victims and such restitution must be aimed at restoring the individual to his or her original state before torture occurred.
- **Medical and psychological rehabilitation** must be guaranteed access to enable the tortured person to function normally again in society after torture.
- **Compensation** requires putting specific mechanisms in place to ensure that torture survivors receive compensation without having to go through rigorous and lengthy civil claims procedures which can result in their secondary traumatization.
- Although it is argued that compensation is already provided for through a civil claim of damages to be instituted in South African courts; this process is still dependent on a successful claim of damages through an expensive civil court procedure which many victims of torture cannot afford.
- **Satisfaction** (in the form of public acknowledgment, public apology and memorialization) is vital for victims and their families, enforcing their right to know the truth and to find closure.
- **Guarantees of non-repetition of torture** require public accountability by the state through promoting awareness about torture and bringing identified perpetrators of torture to book. Failure to provide full redress to torture victims and survivors, and the communities affected perpetuates the cycle of torture and can aggravate the cycle of victims of torture turned perpetrators.
- For post-apartheid era torture victims, the Torture Act is silent on reparations for torture victims. Article 14 of the UNCAT is noticeably omitted, save for relief under the auspices of common law civil claim for damages and bringing the perpetrator of torture to book.

GENERAL COMMENT 3 OF THE UN COMMITTEE AGAINST TORTURE





CSVVR

The Centre for the Study of
Violence and Reconciliation

Regional Key Facts as of August 2013 – Countries that have domesticated the UNCAT

Table 3

| | Country | Anti-Torture Legislation | Related sentence |
|----|-------------------|-----------------------------------|---|
| 1 | Algeria | YES | 5 to 10 years imprisonment |
| 2 | Burundi | | 10 to 20 years or 20 to life depending on aggravating circumstances |
| 3 | Cameroon | YES | Life imprisonment |
| 4 | DRC | YES | 10 to 20 years imprisonment, life imprisonment where torture resulted in death” |
| 5 | Egypt | YES | 3 to 10 years |
| 6 | Equatorial Guinea | YES | 6 months to 6 years |
| 7 | Libya* | YES | To be specified |
| 8 | Madagascar | YES | 2 to 5 years to life imprisonment |
| 9 | Mauritius | | 5 years imprisonment |
| 10 | Senegal | YES | No sentence specified |
| 11 | South Africa | YES | Imprisonment up to life imprisonment (no sentence specified) |
| 12 | Tunisia | YES | 8 years |
| 13 | Uganda | Given presidential assent in 2012 | 15 years imprisonment |

<http://www.achpr.org/#>
* <http://www.omct.org/statements/libya/2013/04/d22237/>

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