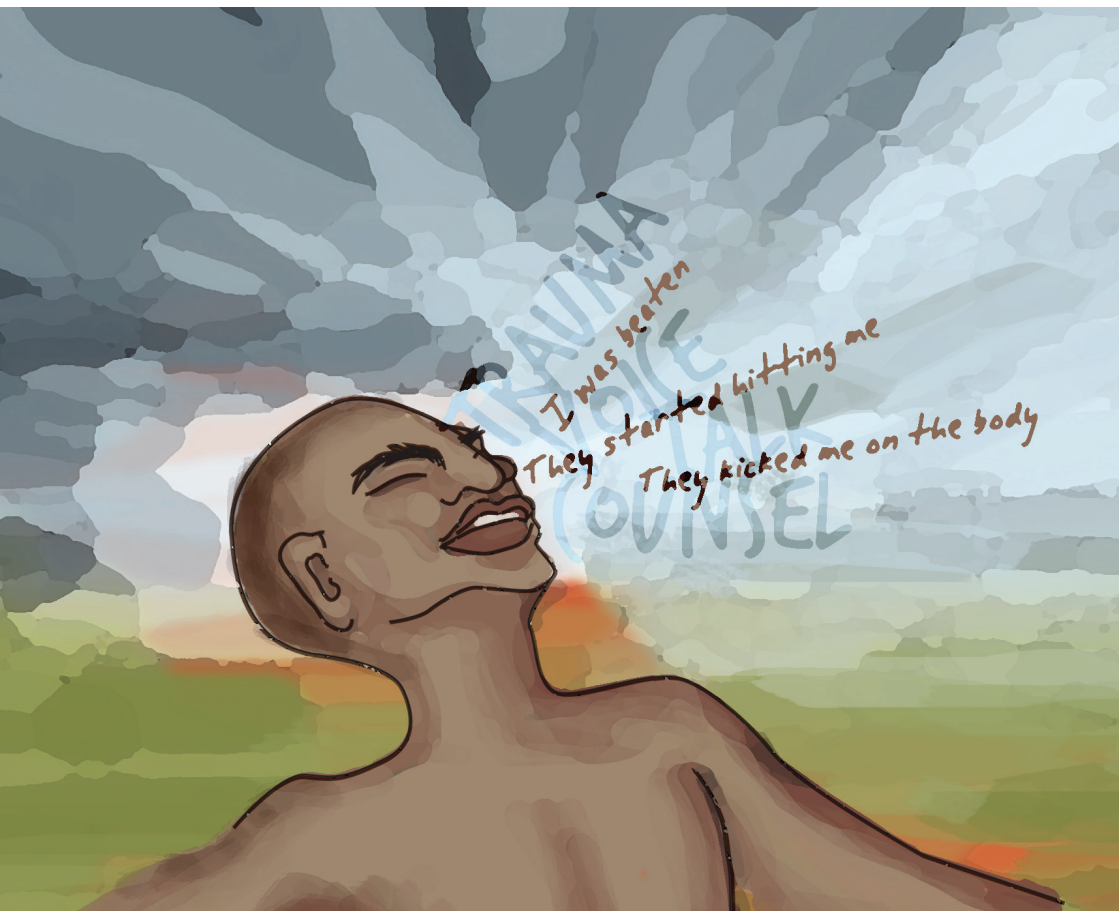




CSVR

The Centre for the Study of
Violence and Reconciliation

Stories of Torture Survivors Who Sought Redress¹ in Post-Apartheid South Africa



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¹ Redress in this report includes torture survivors' right of access to justice and right to compensation and rehabilitation.

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EXECUTIVE SUMMARY

This report forms part of a broader Centre for the Study of Violence and Reconciliation (CSVr) attempt to understand changing patterns of torture in the new South Africa. The report looks only at experiences of torture amongst young black males in South Africa who have brought civil claims against police through court processes. It looks at all the steps and challenges that torture victims encounter in seeking justice through court processes.

The report is based on individual interviews conducted with eight torture survivors recruited from the University of the Witwatersrand Law Clinic, which provided them with free legal assistance. The young black males in the study were more likely to be tortured by police based on existing negative stereotypes of seeing them as potential criminal suspects. The study shows that civil proceedings were used rather than criminal proceedings in dealing with cases of torture through court processes. It is also clear that torture had a negative impact on the psychosocial and physical functioning of the torture survivors.

The last part of the report offers specific recommendations regarding dealing with torture in the new South Africa, based on the key findings of the study. These include the need to raise awareness about torture and the right of torture survivors to access psychosocial, medical and legal services. It is also important that advocacy and lobbying initiatives are undertaken to deal with the problem of torture in South Africa.

1. INTRODUCTION

Over the last few years, there has been an increase in the number of studies on the practice of torture by the South African Police Service (SAPS) in post-apartheid South Africa.² Some of these reported torture practices have raised serious questions about the police's respect for human rights as enshrined in the country's constitution.

With the exception of the annual reports from the Independent Police Investigative Directorate (IPID), which cover a wide range of issues, including police corruption and abuse of power, there is little data on torture by the police. The paucity of data on this topic is attributed to the fact that police torture in South Africa is mainly associated with the brutal apartheid regime. However, with increasing media reports of incidents, torture is slowly being seen as an endemic problem in the new democratic South Africa and not as something belonging only to the apartheid past. For example, IPID's 2012/13 annual report shows that 6,723 cases were reported, with the majority being allegations of assault (4,131), followed by death in custody (275), rape by a police officer (146) and torture (50). Torture thus remains a major human rights violation in post-apartheid South Africa.

In addition to the South African constitution's prohibition against torture, the country ratified the United Nations Convention Against Torture (UNCAT) in 1998 and signed the Optional Protocol to the Convention Against Torture (OPCAT) in 2006, as well as other international instruments outlawing torture. Despite these instruments and conventions, torture was not actually criminalized in South Africa until the Prevention and Combating of Torture of Persons Act was officially enacted in 2013.

In terms of this new Act, torture is defined (drawing on UNCAT) as “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/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her 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”.

For the purposes of this report, the term ‘torture’ is used expansively to include Cruel, Inhuman and Degrading Treatment (CIDT) in terms of Article 16 of UNCAT, as it is not easy to distinguish

² L. Muntingh, *Guide to the UN Convention against Torture in South Africa* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2011); A. Dissel, S. Jensen and A. Roberts, *Torture in South Africa: Exploring Torture and Cruel, Inhuman and Degrading Treatment through Media* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2009).

between assault, assault with intent to cause grievous bodily harm and torture.³ It is argued that the term 'torture' is reserved for severe and aggravated forms of ill-treatment and always has a purpose, which often is to extract information or force/intimidate a person into making a confession.⁴ According to Weissbrodt and Heilman,⁵ a hierarchy has been created of what constitutes torture. The hierarchy begins with degrading treatment, followed by inhuman treatment and finally ends with torture. An act may start as CIDT before it develops into full-blown torture. In terms of this hierarchy, torture is an extreme and severe form of inhuman treatment, inflicted for certain purposes, which must result in severe physical or mental pain or suffering.⁶ It is important to note that the level of severity is something subjective and that all circumstances (for example, the nature of the act, intention of the perpetrator and duration of mental or physical suffering) of each individual case should be taken into account.

Against this backdrop, the current study was undertaken to look at 'torture survivors' experiences of seeking redress, including the right to justice and the right to compensation, as well as rehabilitation, in South Africa. The intent of the study was also to look at the steps that torture survivors followed in filing their cases and challenges they encountered until their cases were finalized in a court of law. Before torture was criminalized in 2013, many criminal and civil cases against perpetrators of torture were pursued under the common law of assault or assault with intent to cause grievous bodily harm.⁷ While this was a major limitation in investigating cases of torture, which resulted in impunity for some perpetrators,⁸ some law enforcement officials accused of torture have been prosecuted, tried and sentenced in terms of the common law.⁹

Currently, victims of torture obtain redress and fair and adequate compensation in terms of the common law through delictual claims by bringing a civil action against perpetrators.¹⁰ However, Streater¹¹ points out that prosecuting torture under common-law offences is problematic as this has not effectively reflected the gravity of the torture and therefore in some cases failed to punish perpetrators or adequately compensate victims.¹² This is because there was no specific law that criminalized torture at that time. Currently, the Prevention and Combating of Torture of Persons Act states that acts of torture must be punishable with appropriate penalties that take into account the grave nature of torture. So far, there have not been any cases decided in a court of law on the basis of this new anti-torture Act.

The current study discusses cases that have been dealt with in terms of the common law in seeking redress, which includes the right to justice and the right to compensation, in post-apartheid South Africa.

³ Dissel, Jensen and Roberts, op cit (n 2).

⁴ Ibid.

⁵ D. Weissbrodt and C. Heilman, "Defining Torture and Cruel, Inhuman and Degrading Treatment," *Law and Inequality* 29 (2011): 343–94.

⁶ Ibid.

⁷ O. Streater, *Review of Existing Mechanisms for the Prevention and Investigation of Torture and Cruel, Inhuman and Degrading Treatment or Punishment in South Africa* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2008).

⁸ Redress, *Reparation for Torture: South Africa* (1991).

⁹ See, for example, *S. v. Madikane*, 1990 (3) SACR 785 (N); *S. v. Moolman*, 1996 (1) SACR 267 (A).

¹⁰ Redress, op cit (n 8).

¹¹ Streater, op cit (n 7).

¹² Redress, op cit (n 8).

2. METHODOLOGY

2.1. Wits Law Clinic

Individual interviews were conducted with eight victims of torture.¹³ The victims were recruited from the Wits Law Clinic,¹⁴ which has provided them with legal assistance in seeking redress through court processes. Today the Wits Law Clinic is one of the biggest university law clinics in South Africa and is renowned for its work, particularly in the areas of public interest law and civil claims against the state as a result of police brutality, including assault and torture. The legal services are provided at no charge as their target group is people in Gauteng who are poor and marginalized.

2.2. Ethics and data collection

In terms of ethics, the Wits Law Clinic was approached to seek permission to interview torture victims they have assisted with taking civil action against police. Once permission was granted, all potential participants were called by one of the attorneys at the Wits Law Clinic to check their availability to participate in the current study. Participation in this study was voluntary. I received a list of potential participants and made arrangements for face-to-face individual interviews. The selection criteria for potential participants were that the person be a torture victim,¹⁵ that his/her matter had gone to court and that a judgement had been made in his/her case. Cases still sub judice (under trial) were excluded from the study.

The participants were provided with an information sheet explaining the nature of the study. Consent forms to voluntarily participate in the study were signed. All the interviews took an hour to two hours, with the interviewees narrating their stories of how they were tortured, how their injuries were sustained and the subsequent negative impact of this on their psychological and physical functioning. It was evident in the interviews that all the participants were still traumatized. They presented with strong symptoms of Post-Traumatic Stress Disorder (PTSD), with strong features of major depression.¹⁶ Five of the participants were referred to the Trauma Clinic at CSVR for free trauma counselling.

One of the key ethical issues in the study was of anonymity. Pseudonyms are therefore used in the report to protect participants' identities. Certain details in the stories shared in the interviews were disguised to make sure that the participants are not identifiable from the report.

¹³ The terms 'victim' and 'survivor' are used interchangeably in the report.

¹⁴ The University of the Witwatersrand Law Clinic has been in operation for forty years. It started as a small advice office with the assistance of students, who participated on a voluntary basis. Today the Wits Law Clinic is one of the biggest university law clinics of its kind in South Africa, and is renowned for its work, particularly in areas of public interest law and claims against the state as a result of police brutality. <http://www.wits.ac.za/lawclinic> (accessed 04 November 2014).

¹⁵ The torture must have happened in South Africa over the last 18 years, from 1995 to 2013 (this is to exclude torture victims prior 1994 or torture that may have happened outside South Africa).

¹⁶ It is important to mention that the participants were not formally assessed to make this diagnosis, but the researcher as a qualified psychologist with many years of experience of working with victims of torture felt that the participants presented with symptoms of PTSD with strong features of major depression.

2.3. Profile of the participants

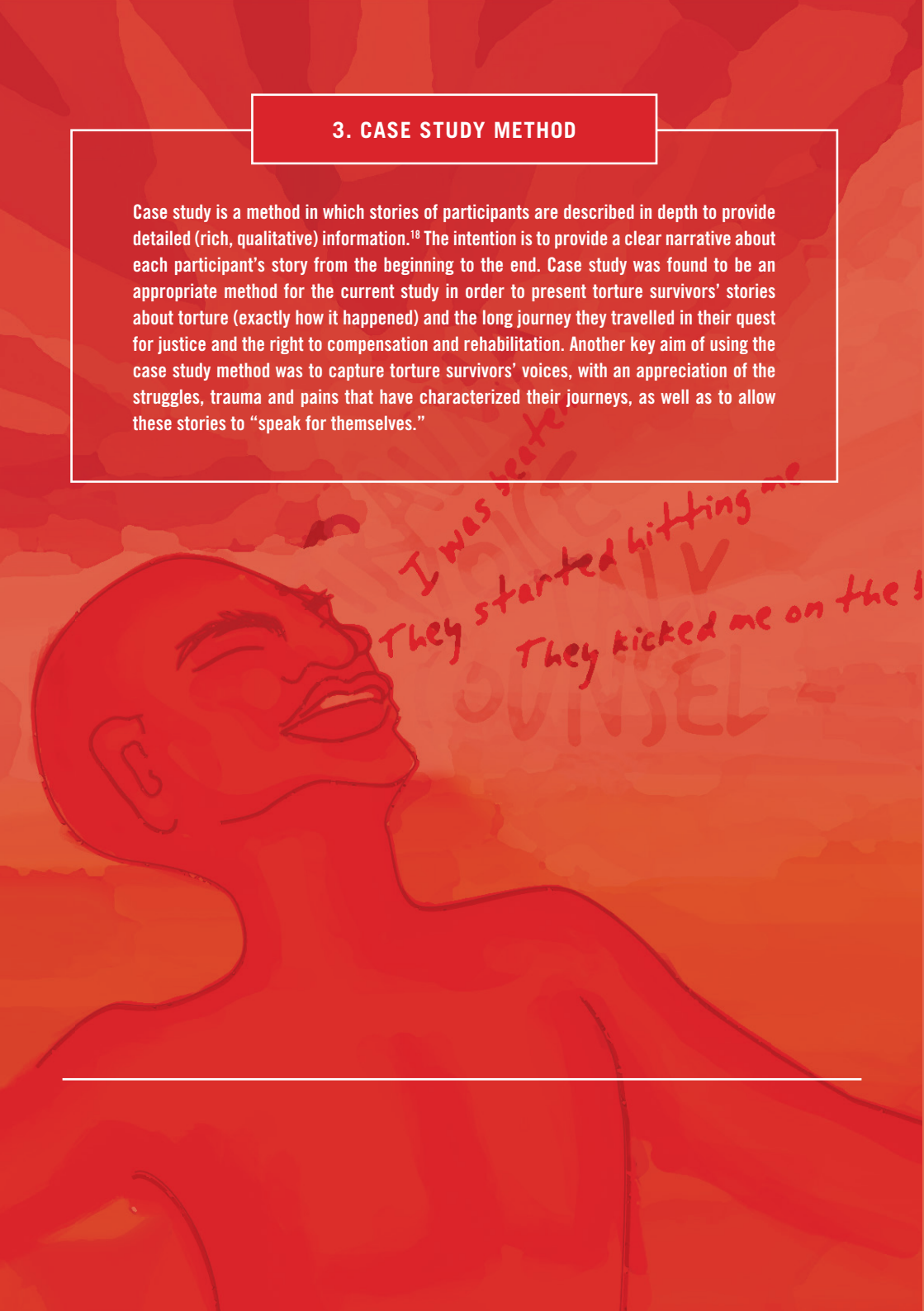
PSEUDONYM	GENDER	RACE	AGE
Aron	Male	Black	25
Lebo	Male	Black	48
Zama	Male	Black	32
Malose	Male	Black	33
Kevin	Male	Black	29
Tumelo	Male	Black	16
Oscar	Male	Black	25
Sipho	Male	Black	57

All eight participants were black, aged 25 years to 57 years, except for one participant who was a minor (13 years old) at the time he was severely tortured by police. All the participants were males, confirming Jensen’s view that being a young black male puts one at risk of becoming a torture victim.¹⁷ The story of each victim is shared in detail below: how they were tortured, by whom, the reason, its impact physically or psychologically and the legal processes followed to lay charges or bring civil claims against the perpetrator(s).

¹⁷ S. Jensen, Gangs, Politics and Dignity in Cape Town (Johannesburg: Wits Press, 2008).

3. CASE STUDY METHOD

Case study is a method in which stories of participants are described in depth to provide detailed (rich, qualitative) information.¹⁸ The intention is to provide a clear narrative about each participant's story from the beginning to the end. Case study was found to be an appropriate method for the current study in order to present torture survivors' stories about torture (exactly how it happened) and the long journey they travelled in their quest for justice and the right to compensation and rehabilitation. Another key aim of using the case study method was to capture torture survivors' voices, with an appreciation of the struggles, trauma and pains that have characterized their journeys, as well as to allow these stories to "speak for themselves."



CASE STUDY 1

ARON

Male

Black

25

Aron¹⁹ is a 25-year-old black male who stays in one of the townships in Gauteng. He asserted in the interview that he was unemployed for a few years until he decided to start a small business of buying shoes in bulk and selling them at a low price in his neighbourhood. In August 2010 he received a call from a man who asked to meet him at one of the malls in the neighbourhood. He thought this person was a potential customer who wanted to buy shoes as he asked him about his business over the phone. Aron agreed to meet the anonymous caller and asked his friend to go with him. Aron said that within five minutes of their arrival at the mall, police came and arrested him and his friend, and soon thereafter took them to a police station. At the police station Aron was separated from his friend.

The police started asking questions about the shoes he sells. He told them where he buys them and luckily had some of the slips, which he produced to show the police. He said, “The police did not buy my story. They started hitting me. They accused me of selling stolen shoes. They put a plastic bag over my head and tied my hands at the back. They poured water in the plastic bag. I was suffocating. They kept hitting me and asking me tell them where I get all the shoes. I was beaten and beaten. I kept on telling them that I buy these shoes, but they did not want to hear a word. They continued to hit me. They were kicking and kicking me. It was like they were kicking a dog.

“I was taken to the police cell. They kept me in the cell for two to three days without going to court or anything. I was then told to leave the cell on the fourth day and go home. I was in so much pain that I decided to go to the hospital after I left the police station. I was checked at the hospital and the doctor told me that I have internal injuries. I was admitted and stayed in the hospital for few days. I don’t remember how many days, but I stayed for more than a week and few days. I was discharged from the hospital, and my friend told me I must go to the police station and open a case. I went to the same police station to open a case. They [two police officers] took a statement and gave me a case number. After a week I got a call from the police station, but I was told that the police denied that they tortured me. The case did not go to court as I wanted these policemen to be arrested. I’m hurt that these people [police] did not take my case seriously.

“My friend then advised me to go to IPID²⁰ and report the case. I went there [IPID offices]. They took my details but they also did nothing, my brother [referring to me]. I lost all the hope because they [IPID] did not call me or say anything to me. I then lost all the hope. This was until October

¹⁸ N.K. Denzin and Y.S. Lincoln, *Handbook of Qualitative Research* (Thousand Oaks, CA: Sage, 1994).

¹⁹ The report uses pseudonyms to protect the identities of the participants.

²⁰ It is important to note that due to constraints the researcher did not follow up with IPID to check whether the case was opened or not, nor to ask for reasons why the case was not investigated.

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2010 that this other guy told me to go to Wits Law Clinic. I went there and met with lawyers. I explained everything to them. I submitted all the documents [mainly medical records and X-rays]. After this, I never heard anything from the lawyers [at Wits Law Clinic]. I had given up on the case. It took almost two years or more for the case to go to court. In April 2012 I got a call from Wits Law Clinic that I need to go to court. I went and then I was told that the police decided to settle the matter. They agreed to pay a certain amount of money.²¹ At that time, I was tired of this case. This case affected me, man [referring to me]. I was scared. I just wanted this case to end. It was stressful.

“Even now²² the case still affects me. I was worried about being killed. I hate police. I wanted these people [police] to be arrested. I did not know that they will only pay me. I would have been happy for them to pay me and still be arrested. My eyes are still painful since I was tortured. The whole experience also affected me on the mind. I cannot sit and relax. I'm always worried about my safety. The police station where I was tortured is next to where I stay. Seeing the police station brings back all the memories.”²³

²¹ The amount given is confidential as per the participant's request.

²² 13 June 2014, when the interview was conducted.

²³ Aron was referred to CSVr's Trauma Clinic for free trauma counselling.

Lebo is a 48-year-old black male who also lives in one of the townships in Gauteng. In talking about his experience of torture, he stated that his recent torture reminded him of his experience of torture under apartheid.

Lebo started our interview by talking about life under apartheid, noting that he left the country to join Umkhonto we Sizwe²⁴ in Angola after his girlfriend was killed by police in the 1980s. He elaborated that “when I skipped the country, because it was in 1984 when my girlfriend was shot by the police and died. In 1977 in September I was tortured by the police. It was a physical torture as well as psychological torture because one my friends was killed at the police station. We were taken to the police station where we were tortured in the police cells. He was murdered whilst I watched. We lived in the same street. I then decided to leave the country to go to the military. I crossed the border in 1985. We were about eight people when we left the country.”

Lebo went on to talk about life in exile until his return in the early 1990s: “I worked for a security company to protect the ANC [African National Congress] leadership when I returned from exile. I was then moved to work in the VIP unit, but I was never happy with this job until I resigned in 2002. I also had a medical problem that I had to be operated. This made it difficult for me to work. Even now it is hard for me to get an employment.”

In the interview Lebo spoke about being haunted by the traumatic memories of life in exile. A lot of time in the interview was spent talking about torture under apartheid, life in exile and trauma witnessed in Angola. Lebo spoke about his current excessive smoking and drinking in order to forget all these traumas.

In 2007 Lebo went with his brother to a party in one of the sections in his township. They were drinking in a yard. One of his friends went to the car to fetch a beer and was stopped by police. They wanted to arrest her for public drinking. She screamed while they were in the yard. She was pepper-sprayed. “I also went outside the yard. There were police cars outside. They also sprayed me with a pepper-spray. So the spray was hot on my eyes, and they held my hands and feet and were kicking me on the body. Others were pulling my hands and legs. They just kicked me. I was vomiting blood. They then left me lying on the ground. I was injured and bleeding through my nose also. I was so badly injured that I was taken to the hospital by my brother. I lost consciousness. My brother took me and when I regained consciousness we were on our way to the hospital. I was admitted and the doctors told me not to drink water or eat anything because

²⁴ Umkhonhonto we Sizwe (MK) was the military wing of the African National Congress (ANC).

**I will tell you the truth
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they are going to operate me the next day. I had an operation because I was severely injured on my stomach. Those people [police] were just kicking and kicking me. I still feel pains here on my stomach. In 2009 I also had to go for another major operation.”

I asked Lebo whether he reported the matter to the police. Lebo said, “I went to the police station to file a case, but the case dragged for long. You know, when you lay a case against police it is difficult for them to say ‘no’ if they do not want to open a case, but the case will drag and drag. I went to Wits Law Clinic²⁵ in October 2010 because police did not want to help me. I explained everything to the lawyer at Wits Law Clinic. The lawyer asked me to bring all the copies of my medical reports and the pictures of my injury. They [Wits Law Clinic] helped me with the case. It took almost four years before the case was completed in 2014. Yes, I went to court in November 2012, but never heard anything from Wits Law Clinic, until this year [2014] February. Wits Law Clinic called me early this year to say the police have decided to settle the matter. They will pay me for the damages.²⁶ I was happy to hear that, my brother [referring to me], because I’m not well even now. I have never been well since I was tortured by the police. I’m sick all the time. I feel pains and pains in my body. I take painkillers and painkillers (four to five pills), but these pains do not go away. I still experience pains on my stomach when I eat too much food. So sometimes I would eat certain food and it would make things worse. The other thing which scares me is what would happen if I develop complications.”

It was evident in the interview that Lebo was severely depressed when he spoke about his torture experience under apartheid and in post-apartheid South Africa. He spoke about finding it difficult to sleep at night. He said, “I will tell you the truth that I smoke dagga [marijuana] to get sleep. I know this is not good, but smoking dagga helps me sleep. I feel I need help to deal with all this pain in my mind.”²⁷

²⁵ He heard about the Wits Law Clinic from a woman in his neighbourhood.

²⁶ He asked me to keep his settlement confidential.

²⁷ Lebo was referred to CSVr’s Trauma Clinic for free trauma counselling after the interview.

Zama is a 32-year-old black male. He was working for a security company when he was arrested and severely tortured by police. In describing the sequence of events Zama mentioned that he was with his friend at a railway station waiting for a train to go to work. There was a woman seated next to him at the railway station. While they were seated there, a boy suddenly approached them, grabbed the lady's bag and ran away.

When Zama and his friend chased the boy with a view to recovering the lady's bag, they were immediately stopped and arrested by security guards and accused of working with the suspect. The police were called and they took Zama and his friend to the police station, where they were severely tortured. In describing their torture Zama said, "They used batons, slapped us and pulled us by the balls [private parts]. They were saying, 'Today we are going to kill you if you don't tell us about your friend who took that lady's bag.' They then covered our faces with plastics and started pouring water. You know you cannot breathe, while your head is covered with a plastic full of water. You feel you are dying. They will do that [covering their heads with plastic bags full of water], while kicking us. I was scared that I'm going to die the way those guys were kicking us." Zama and his friend were kept in police cells for two days and released without going to court. Zama asserted that he went to the hospital immediately after he was released. "I told the nurses everything. They did an X-ray which showed internal injuries. The doctor gave me some medication and painkillers because I was feeling pain in my body. The doctor instructed me to stay at home until I was feeling better. I lost my job because I was no longer able to go to work due to all these pains in my body. I heard about Wits Law Clinic from this other guy. I went to Wits Law Clinic and met with the lawyer who helped me with my case. The case took almost four years before it was completed in 2011."²⁸

Zama complained of pains that he still feels to date. "Sometimes I would get pains and would go to doctors and they would give me painkillers. I can say that sometimes I think of killing myself because I no longer have any worth in the world. Because sometimes when I urinate, I pass out blood. So I do not know what to do. I would even tell my mother that this is painful, I cannot stand this pain. But when I go to the doctors they just give me painkillers because I do not have money to go to the private doctors. I am just a hawker in the location [he lost his job after he was arrested by the police]. Right now I am taking too many painkillers. I take Anadin or Panado sometimes. I have a huge collection of pills that use to get the pain away, but they do not help. My heart is sore. I just told myself that it happened, life must go on."

²⁸ His civil claim was also successful. He asked to keep his claim confidential.

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Zama’s mother was at home when I interviewed him. She stated that she is highly worried about her son’s well-being since he was tortured by the police. She commented that her son would always say, “I would rather die. And I would say, ‘My child, you must not give up in life, things will be fine,’ but what worries me is that he always talks about death. So I am scared to leave him alone in the yard. Sometimes when I am not around I’m scared that he might hang himself or drink poison.”

Furthermore, Zama complained that he finds it hard to sleep at night. “I can’t sleep. I sleep at 3 am in the morning, and then I would wake up. Most of the time I feel down, because I feel like I am abandoned because there is no one who can help me about these things I went through. I also have pains on the gums. My gums also get painful.”

His mother complained about Zama’s angry outbursts, especially when he does not get what he wants. He easily loses his temper. Zama’s mother said, “He was such a friendly child, but since this thing [torture] happened he is no longer social [not going out to be with friends]. He sits alone. For example, I would be chatting with him and suddenly he would just keep quiet. When I ask him what happened, he would just say, ‘There is nothing, don’t worry, there is nothing.’” Zama’s mother was worried about the mental functioning of her son since he was tortured by the police. She said, “I feel he needs professional help before he loses his mind because sometimes I would check him and find that his room is unlocked and he is playing music so loud while he is sleeping.”²⁹

²⁹ Zama was also referred to CSVr’s Trauma Clinic for free trauma counselling after the interview.

Malose is a 33-year-old black male. In talking about his torture experience he related that he was with friends driving from a Christmas party when police stopped them at a road block. He stated that police wanted them to pay a bribe for drunk driving. Malose acknowledged that they had alcohol in the car, but said that they were not drinking and driving. The car was a meter-taxi, but Malose asserted that it was clear that police wanted the taxi driver to pay a bribe. "Then one police official came to me and said, 'Why are you answering questions, because we didn't ask you?' I said, 'I am just answering you guys because you are asking us questions.' They said, 'Why is the driver not answering?' I said, 'I do not know why the driver is not answering.' So this one police officer slapped me. Then everything just started there. Another one kicked me on my private parts. Then out of anger I said, 'You don't have to beat me up.' I think they just wanted a bribe from the driver. They told him he needed to pay a bribe because we were five in the car, which was an overload. The driver said he did not have money and that I was supposed to pay him because we had hired him. So when I heard that I said, 'You are not going to get a bribe because you have beaten me up.' And that's what made things worse. That is when they pepper-sprayed me in my eyes. Another policeman hit me with a fist on the stomach and they threw me into a police van. They also loaded the other guys I was with into another van. And then the meter-taxi driver was told to follow the police vehicles.

"The other policemen saw everything but they did nothing. They said they wanted to deal with me because I was talking too much or thought I was clever. They took me to the police station and took the other guys to another cell. They kept me in this room at the police station. They then undressed me, and now the beating got serious because when I went out there I was feeling like I did not have ribs. My hands were fucked up. My ribs were seriously damaged. After they beat me, they took me to the cell where other guys were kept.

"They took my clothes and I was left naked. I fainted in the cell. The other guys tried to pour me with water and I could hear them saying, 'This guy is dying.' My stomach was also painful because they badly kicked me on the stomach. My girlfriend came to the police station the day after my arrest and paid a bail of R900 for me to be released.

"I immediately went to the hospital. I was admitted and the doctor told me that I had major internal injuries. I was operated. The following day the same policemen came to the hospital because they heard I was there. The nurses heard that the police were looking for me and

decided to move me to another ward because they already knew my story. On the third day a doctor said that people get murdered at the hospital by unknown people. He suggested that it is better if we take you to another hospital where you will be safe. I stayed at this new hospital for two months. I had two other operations while at the new hospital. I still bleed now and then, my brother [referring to me]. I'm really fucked, my brother [referring to me]. I can't run, I just walk but not run. I feel pains all over my body.

"So I'm also fucked up psychologically. For example, I have been to the hospital about 10 to 15 times this year only. I have exceeded my sick leave at work. I cannot work. I cannot carry heavy things. My right side of the rib is painful. I was working as an operator with heavy machine before I got all these injuries, but now I cannot work with that machine. I lost my job.

"Another doctor told me that I had serious internal bleeding. That's why they made a hole and inserted pipes in my private parts. I struggle to urinate now. I had been with my girlfriend for more than 10 years, but she decided to leave me. I was not able to support her because I'm no longer working. We were also not able to have sex because I could not maintain erection."³⁰

The doctor explained that all his tissue was damaged when the police were kicking his private parts. Currently there is a hole in his private parts and that is why he is unable to maintain an erection. A pipe has been inserted into his penis to help him with urination.

"I went to so many doctors. Another doctor told me that I need another operation but I don't have money. I'm not working. I lost everything. I even sold my house. I have nothing now. I'm suffering. My life was never like this. These guys [police] destroyed my life. I feel angry that I want to have revenge. That is why I did not open any case against them after I was released from the hospital. I just want revenge.

"In 2007 I met this other guy and he advised me to go Wits Law Clinic for legal assistance. I told the lawyers everything and also gave them my medical records and photos of my injuries. It took almost five years before the case was completed. Yeah, the whole case was stressful. You know you did nothing wrong, but you get assaulted and killed by the police. I'm fucked up, my brother [referring to me]. I had to sell everything so I could live, when you don't have a job you seem lost. Your life is at a complete stop. I feel depressed. I feel like dying. This thing depresses me. I feel pains everywhere in my body. The police have agreed to pay me, but I don't know how much.³¹ "They did not even come to court. They sent their lawyers. I don't know how I feel because I wanted them to feel the pain or even get arrested."

³⁰ I observed that Malose was embarrassed to share this problem with me in the interview.

³¹ The court ruled in favour of Malose, but he was still waiting to know about his settlement at the time of the interview.

**I personally do not trust any policeman.
Even when I see them [police] I wish I
could just shoot them, and then I would feel
something has been done. I do not think I
can ever rely on a police for any help.**

Clearly, Malose was severely depressed in the interview. He said he did not want counselling, but I ultimately managed to convince him to go for free trauma counselling at CSVr's Trauma Clinic. It was evident in the interview that Malose was still angry about what had happened. He still wished for revenge against the police who tortured him. His physical health has been deteriorating over the last few months. He stated, "When I go for a scan, they only see blood. And they [doctors] said it's an infection. So they gave me tablets, but these pains are not getting any better. I'm still bleeding. A certain doctor at the hospital told me that I need to go for another operation. So I do not have any choice. I have to do it because this thing affects me."

Malose stated that he finds it hard to look at or trust police: "I personally do not trust any policeman. Even when I see them [police] I wish I could just shoot them, and then I would feel something has been done. I do not think I can ever rely on a police for any help."

Furthermore, he stated that "being depressed does affect me. I cannot sleep. Sometimes I tell myself that I do not have to take revenge, but sometimes I get angry when I look at myself and the pain that I feel every day. Those guys [police] did not have the right to do what they did. They should have just arrested me and charged me if they feel I disrespected them, but look at me now. I'm suffering and suffering, my brother [referring to me]."³²

³² For me as the researcher, this was one of the most difficult interviews I did for this research.

Kevin is a 29-year-old black male. He described how he was with his friend going to Germiston³³ when their car tyre had a puncture and they were forced to stop on the side of the highway. While they were waiting there, a police car came speeding up and stopped. Kevin says that, without any explanation, the police instructed them to lie down at the side of the road and started searching them.

“They said, ‘We have been looking for you. We even chased you last weekend and you were driving a Honda Ballade.’ They said, ‘We chased you for smash and grab.’ They said my friend was the one who was driving the last time and we were exchanging fire with them. I was shocked to hear all these because I don’t even own a gun. I have never been involved in any criminal activity. Without questions, they started kicking us and hitting us with a knobkerrie. I was bleeding and my friend was also bleeding. They said they want all the things that we have been stealing and our firearms. They continued to hit us and forced us into the police van. We were taken to the police station. The following day we were taken to the magistrate’s court, but we did not see the magistrate. They just took us back to the police station and released us. I went back to the police station to open a case (on the same day after I was released). I spoke to the station commander. I can no longer remember his name. He said that squad is notorious for beating up people. They are two white guys and four black guys. We submitted statements to this other policeman, who referred us to another policeman to take our statements.” However, to date Kevin has never heard anything about his case or whether there was an investigation or not. He also felt under threat and decided to stop going to the police station to ask about his case.

“We also got J88³⁴ and went to the hospital to see a doctor, who filled out our J88 forms. Someone at the hospital told us to go to IPID. When we got there, there was this guy who said we must go to Wits Law Clinic. We went to Wits Law Clinic and spoke with the lawyer, who took all the statements and asked for all the medical records and pictures of our injuries. It took almost two years before I got a call from Wits Law Clinic in 2012. We went to court in 2012, but the case was postponed. We went to court only once. Then I got a call in 2013 to say the police will pay us. I did not care about the money because I just wanted the case to finish.

“I have not been well since I was tortured. My hand was beaten with a knobkerrie and on the leg. My leg is not properly healed. I went to the doctor and they said the ligaments are torn. I do not know what ligaments are, but the doctor said I might need an operation to repair my ligaments but I do not have money to pay for all these operations.”

³³ The place name was changed to protect the identity of the participant.

³⁴ R. Kirsten and B. Hendrik, “Justice through the J88: The Doctor’s Role in the Criminal Justice System,” South African Medical Journal 103 (2013), <http://www.samj.org.za/index.php/samj/article/view/7084/5188>. For those victims who wish to make a case, the J88 form serves as a crucial piece of medical evidence. It is an official form issued by the Department of Justice which documents the medico-legal examination a healthcare practitioner performs on a victim and highlights findings that are potentially relevant for legal purposes.

**This thing affects me.
I feel so angry. This thing troubles me badly.
I cannot sleep properly, so I drink.
Alcohol suppresses my problems.
I feel better when I'm drunk.**

Kevin's wife sat with us during the interview at his house. She added that since her husband was tortured, he has changed. She said, "Sometimes he would just snap at me. He would run mad and start screaming. I would then calm him down. He is now very aggressive, but he was never like this before. He has too much anger. He always says, 'I hate police.' Also he does not sleep. He talks alone at night."

I noticed that Kevin was a bit drunk during our interview. I asked his wife about his drinking. She confirmed that after he was tortured he stopped working. Since then, he has been drinking excessively.

Kevin also confirmed that he has not been feeling well. He said, "I fight with my wife every night. This thing affects me. I feel so angry [started crying in the interview]." He continued to say, "This thing troubles me badly. I cannot sleep properly, so I drink. Alcohol suppresses my problems. I feel better when I'm drunk."³⁵

³⁵ Kevin was given the contact details of the CSVr Trauma Clinic to attend free trauma counselling, but he had not yet done so when I followed up with the clinic.

CASE STUDY 6

TUMELO

Male

Black

16

Tumelo was 13 years old³⁶ when he was severely tortured by police. What happened is that Tumelo went to church with his mother in 2011. It is reported that a church member lost her driver's licence and Tumelo was accused of stealing it. Tumelo told the person that he did not take her driver's licence.

On the Monday he went to school. While at school (he was in Grade 6 at that time), two police officers and the woman who accused him of stealing her driver's licence came to his classroom. He was taken to a police station. When they arrived at the police station he was taken to the toilet but not to the charge office. In the toilet, the police insisted that he take off his clothes and a plastic bag was placed around his head. He said he felt that he was suffocating and losing his breath. They then tied a belt around his neck while his hands were tied at the back. One of the police officers started hitting him with a black leather belt. The other police officer was hitting him with fists. Tumelo was bleeding through his nose and ears. He even soaked himself with urine. He was unable to scream because of the plastic placed over his head.

"The police officers said I must tell them where the driver's licence was, but I told them that I did not take it. They continued to hit me when I told them that I did not take it. They took me out of the toilet building and put me in a van without any charge. They dropped me off outside my school. I was crying until this other guy asked me what happened. I told him everything. He took me home. I was in pain and crying. My mother went to the police station the next day and opened a case against police." The case was opened in 2011, but nothing was done about investigating the matter. The mother also spoke about receiving threats from one of the perpetrators.

The child was taken to the hospital, where on medical examination by doctors it was discovered he had suffered internal injuries. His ears were full of blood. Since then his hearing has been impaired. His mother explained that "sometimes we would go to a doctor three times a week and they would put him on drips to draw out fluids in his ears. Sometimes they would use pipes to draw blood clots out because they said he was badly damaged in the ears. They gave me prescription orders to get medication, but I don't have money to buy this medication. He is always complaining about headaches and pains on his back."

Tumelo's mother was advised by an acquaintance in Alexandra township to go to the Wits Law Clinic after nothing was done by the police to investigate the matter. The Wits Law Clinic helped her. The court ordered police to pay the civil claim to Tumelo in March 2014.³⁷ It took almost

³⁶ Currently, he is 16 years old.

³⁷ The amount of money paid cannot be disclosed for confidentiality purposes.

**He is not happy. He is no longer like before.
His schoolwork has been affected.
His schoolwork has become poor.
So I think he still has that anger that he
hasn't received the justice he wanted.**

three years before the matter was concluded. Despite this, Tumelo's mother expressed her disappointment at the police for not doing anything to arrest the police officers who assaulted her child.

Tumelo's mother was also emotionally and physically affected by this incident. She said, "Since Tumelo was assaulted by those men I then started getting sick. I went to the clinic and the nurses told me that my blood pressure and diabetes levels were very high and I needed to go to hospital." Tumelo's mother was admitted to a hospital on three occasions after her son was tortured by police.

She is also worried about the psychological functioning of her son. She stated, "He is stressed. Even when I told him that you were coming to interview him he started behaving strangely. He gets angry. He is always angry. He is not happy. He is no longer like before. His schoolwork has been affected. His schoolwork has become poor. So I think he still has that anger that he hasn't received the justice he wanted. And after all we never received any counselling."³⁸

Tumelo's mother went further in the interview to express her feelings and emotions. She said, "I feel justice has failed us. We have knocked at every door. We went everywhere. And we tried to go using our last money. We tried our level best. We even called the presidential hotline to report this matter, but nothing happened. I just want to see justice taking place for my son."³⁹

³⁸ After the interview arrangements were made for Tumelo to go to CSV's Trauma Clinic for free trauma counselling.

³⁹ Attempts are currently being made by SAPS to investigate this case.

CASE STUDY 7

OSCAR

Male

Black

25

Oscar is a 25-year-old black male who lives in Gauteng. He had been sitting in the control room where he worked as a security guard when three policemen stormed into the room and arrested him. It was around midday on 4 May 2010. “They immediately put handcuffs on my hands and said that I stole something at the security company where I worked. They then took me to the nearest police station where I was ordered to sit down and electrocuted me with electrical cables on my body while tightly handcuffed. They also put something between my legs and covered my face with the cap I was wearing and then they put metal pins on my ears and they started to electrocute me again. I was crying and screaming. It was so painful.”

It was evident from the interview that torture has adversely affected Oscar both emotionally and physically. When asked how exactly he was affected by this experience, Oscar reluctantly said, “I experience a lot of fatigue and I have a weak erection and low sex drive. I feel my body is no longer the same since I was tortured. I always feel this pain in my body.”

He said, “I was electrocuted for about an hour. They were asking me questions throughout and even when I told them I didn’t know what they were talking about they did not stop electrocuting me. I was bleeding from my mouth because I bit my lower lip while I was being tortured.”

He said that when they realized he was bleeding they told him to wash his mouth so that they could take him to the front desk, where was forced to sign a paper. He recounted that after signing some paper at the front desk he was taken into the cells and released only after being locked away for four days.

“I was released without being taken to court and they didn’t even take my fingerprints; the whole thing was very strange. I was in pain and the first thing I did when I was released, I decided to go to hospital so that I could get help for these pains.

“Few days later I decided to lay charges of assault against the police who tortured me, but nothing was done by the police to investigate my case. I have not been well since this incident. I sometimes have cramps in my jaw and have a very painful headache from time to time. Since this incident I have not been able to sleep well at night because I have a painful shoulder and back. I can’t turn my neck to the left; it is very painful. I still have nightmares about these three policemen coming to arrest me and taking me to the police station and electrocuting me.

**I feel scared every time I see a policeman,
police van or a police station,
I just feel like they are coming to
arrest me again. I still cry sometimes
when I think of what happened.**

After a nightmare I would wake up sweating, feeling shaky and frightened and with my heart beating very fast. I don't think I am the same person anymore. I sometimes dream about snakes coming to bite me and this happens once a week and the dream lasts for about ten minutes. I feel scared every time I see a policeman, police van or a police station, I just feel like they are coming to arrest me again. I still cry sometimes when I think of what happened.”⁴⁰

He was referred to the Wits Law Clinic by a friend in August 2010, where he was helped to institute a civil claim against the Ministry of Police for the conduct of the three policemen who tortured him. The court ruled in his favour, but at the time of the interview he was still waiting to hear about his settlement. The court process took almost four years from when he reported the case in 2010. He described the process as very frustrating, but was thankful that lawyers at the Wits Law Clinic helped him free of charge.

⁴⁰ Given all these symptoms, Oscar was referred to CSVr's Trauma Clinic for free trauma counselling.

Sipho is a 57-year-old black male who lives in one of the townships in Johannesburg. In 2009 his son Themba (24 years old) was the co-ordinator of a community-based organization which was instrumental in organizing a service delivery protest against a local municipality. While seated in their house at around 8 pm, Sipho was shocked when a group of about 22 policemen stormed into his house and ransacked it. When recounting this experience Sipho stated, “The police said they were looking for my son [Themba] because he was instigating other members of the community to cause disorder in the community. When I told them that he was not at home they started hitting me. They kicked me everywhere. They also hit me with batons and even pulled me by the ears while I was lying helplessly on the floor. They didn’t stop even when I said, ‘Stop, please stop, you are hurting me, you will kill me.’ They didn’t show any mercy at all. You can imagine how it was like when so many young policemen attacked a helpless old man like me. I am very hurt by what they did to me all because they could not find my son at home. I think they would have killed him if they had found him at home.”

In talking about the emotional impact of this incident, Sipho said, “I am always very angry, sad and feel hopeless and helpless that nothing was done to arrest the police who tortured me. I can’t forget about what happened. I feel I’m no longer the same. My appetite is low. I always get these horrible headaches. I always feel tired. I cannot work because I feel so powerless. I don’t feel okay when I’m around people. I just want to be alone because in that way I get to think about stuff.”

Sipho’s case was referred to IPID for investigation, but to date perpetrators have not yet been arrested. His son Themba asserted in an interview with me that “we need closure as the family and we also want those policemen to pay for what they did.” He expressed his unhappiness that IPID had not yet completed its investigation to ensure all those policemen who tortured his father were arrested.

Themba mentioned that the family was not happy with the IPID investigation and has since approached the Wits Law Clinic for legal assistance in suing the Ministry of Police in a private civil litigation for the pain his father suffered as a result of torture. However, Themba maintained that he still wants the police who tortured his father to be arrested and be subject to criminal charges.

**I always feel tired. I cannot work
because I feel so powerless.**

4. FINDINGS AND DISCUSSION

Four key themes were identified in the eight stories described above: all the victims were, with one exception, young black males; the perpetrators were police officials; the proceedings were criminal rather than civil in dealing with cases of torture; and the torture had physical and psychological effects.

4.1 All victims were young black males

In the eight case studies discussed above, the victims of torture were mainly young black males. In their research, Barker⁴¹ and Jensen⁴² similarly found that young black males were more likely to be tortured by police because of all the racial stereotypes categorizing young black males as suspects for crimes committed in their neighbourhood.⁴³ The cases of Lebo, Zama, Kevin and Oscar are good examples of this argument that young black males are always seen as criminal suspects, which puts them at risk of torture by police. Furthermore, both Barker and Jensen argue that class seems to play a role in how police choose potential targets of torture, as many more young males in the townships are beaten by police than their male counterparts in the suburbs. The findings of a study conducted in Khayelitsha⁴⁴ in Cape Town and Kagiso⁴⁵ in Gauteng confirm the view that it is common for police to use excessive force against young black males in black townships. For example, 80 percent of the participants in Khayelitsha and Kagiso asserted that police violence happens on weekends, as the police often arrest people for public drinking. In the current study, this was also evident in the case study of Lebo, who was severely tortured for allegedly drinking in public.

In another case Malose and his friends were stopped by the police on their way from a Christmas party. Malose alleged that the police wanted him to pay a bribe, but he refused. The police felt that Malose was rude and arrogant in the way he responded to their questions. They started hitting him. He was arrested and taken to the police station where he was further assaulted until he fainted in a police cell. He was left in the cell naked until his bail was paid the following day. He went to the hospital, where it was discovered that he had major internal injuries and had to undergo multiple operations.

It is evident based on some of the cases in the report that young black males are more likely to be victims of police violence. To put it simply, one station commander was quoted in Jensen's study as saying, "Your average law-abiding citizen lives in specific middle-class areas, whereas

⁴¹ G. Barker, *Dying to Be Men: Youth, Masculinity and Social Exclusion* (London: Routledge, 2008).

⁴² Jensen, op cit (n 17).

⁴³ Ibid.

⁴⁴ M. Fawzy, K. Sensabaugh and R. Smith, *Assessing Attitudes toward and Understandings of Torture in Khayelitsha* (Johannesburg: Centre for the Study of Violence and Reconciliation, forthcoming).

⁴⁵ M. Langa and M. Merafe, *Profiling Torture and CIDT in the Hands of the Police: A Case Study of Kagiso Township, Gauteng* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2011).

⁴⁶ Jensen, op cit (n 17).

the problematic groups live in the townships; you can say most people in the townships are gangsters.”⁴⁶

4.2 Police officials as perpetrators of torture

Despite South Africa’s progressive legislation regarding torture, police officials continue to violate the human rights of young black males on a daily basis.⁴⁷ Police see their use of violence as a means of asserting their power over young males who seem to be challenging their authority.⁴⁸ For example, both Lebo and Malose were seen as challenging police authority by refusing to answer certain questions. Van Maanen argues that police see young black males such as Lebo and Malose, who defy or challenge their authority, as “assholes” and as such these young men are more likely to be the recipients of what police call “street justice” – a physical attack designed to rectify what police take as a personal insult or defiance to authority. Furthermore, Van Maanen⁴⁹ argues that “assholes” are the most vulnerable group to street justice, “since they, as their title implies, are not granted status as worthy human beings.” Many of the participants in this research were vulnerable in terms of their working-class status in society. Some acts of assault took place on the streets (in the case of Lebo and Malose) as part of the street justice which was also found to be common in the townships of Khayelitsha⁵⁰ and Kagiso.

Some acts of assault or torture took place inside police stations. For example, seven out of eight participants were severely beaten at various police stations in Gauteng. Interestingly, many of these incidents of torture took place in full view of other police officers. It seems that police were colluding with one another as some were taking turns torturing suspects. It seems that the main motive behind police’s use of torture methods was to extract confessions from criminal suspects. For example, Oscar, Kevin and Tumelo were tortured because police wanted confessions about crimes they were investigating at the time. Dissel, Jensen and Roberts⁵¹ have found the use of torture against criminal suspects to be common.

In addition, acts of torture were committed as a form of punishment. For example, Malose was severely tortured for defying the police’s authority at a road block where he refused to pay a bribe. In their study, Thomas and Langa⁵² found that there is a strong link between torture and corruption, so that individuals who refuse to pay bribes are more likely to be arrested and tortured than those who pay.

On the whole, it seems that abuse of power, asserting police authority and extracting incriminating confessions are the main reasons why police use torture against suspects. Interviews with police were not conducted in this study, but it would be worthwhile to talk to them about the meanings they make in the use of torture.

⁴⁷ Langa and Merafe, op cit (n 45).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Fawzy, Sensabaugh and Smith, op cit (n 44).

⁵¹ Dissel, Jensen and Roberts op cit (n 2).

⁵² K. Thomas and M. Langa, *Connection between Corruption and Torture of Foreign Nationals and Sex Workers by Members of the South African Police Service* (Johannesburg: Centre for the Study of Violence and Reconciliation, forthcoming).

4.3. Criminal versus civil proceedings in pursuing cases of torture

As mentioned earlier, South African jurisprudence has prohibited torture in terms of the constitution and international law. Before the Combating and Prevention of Torture of Persons Act 13 of 2013 was enacted, many criminal cases of torture were pursued under the common law of assault or assault with intent to cause grievous bodily harm, which was also the case in the current study.

4.3.1. Lack of assistance in criminally investigating allegations of torture

All the victims in the study tried to open cases against the police as required by the common law and the Independent Police Investigative Directorate Act 1 of 2011. For example, Aron, Lebo, Tumelo and Oscar went to the local police station to lay charges of torture against the police. However, all these participants reported that nothing was done to assist them, which is in contravention of Section 29 of the IPID Act, which states that any member of SAPS must immediately after becoming aware of torture committed by any police official notify IPID and provide all the necessary information required for investigation purposes. Due to lack of assistance by the police, some victims (e.g., Aron, Tumelo and Sipho) went directly to IPID to report their cases, but they have not received any feedback since. Common feelings amongst all the participants were anger, hopelessness, helplessness, disappointment and frustration that nothing happened after they reported their cases to various police stations and IPID.

Given all the cases in this study, it is evident that the prospect of success in pursuing cases of torture through criminal proceedings is limited. First, victims of police torture need to rely on the colleagues of the same police who may have tortured them to open their cases and notify IPID. It is the responsibility of IPID to investigate all allegations of police torture before submitting the file to the National Prosecuting Authority (NPA) for criminal prosecution. Second, it is possible that some police (as shown in the case studies) do not bother to assist victims of torture to open cases because these cases involve their colleagues, confirming Faul's view that there is always group solidarity amongst the police in protecting each other against allegations of torture.

Third, the evidence that torture has taken place must be proven beyond a reasonable doubt. The burden of proof in criminal proceedings lies with the victim. It is therefore difficult for victims to produce such evidence,⁵³ as some police do not co-operate with IPID in investigating cases of torture against their colleagues. These cases often are dismissed in court owing to lack of sufficient evidence for successful criminal prosecution. Fourth, some cases (e.g., Kevin and Sipho) were reported directly to IPID, but the complainants did not receive feedback. It is possible that IPID does not have the capacity to investigate the increasing number of assault and torture cases reported to its offices daily.

⁵³ Torture more often happens in private places (e.g., police cells) where there may be no witnesses to corroborate the victim's account of events.

Lastly, one of the victims (Kevin) decided to withdraw his case because of constant threats from perpetrators. It is reported that it is common for victims of police violence to be threatened, especially when they lay charges against the police. Tumelo's mother spoke about this fear and threats from colleagues of the perpetrator who were encouraging her to drop the charges against their colleagues. Tumelo's mother spoke about living in fear as a result of these threats, but she decided not to withdraw the charges. However, the case was never investigated. She suspects this is because police were protecting their colleague until she decided to go to the Wits Law Clinic.

Given all these difficulties, the victims were advised to go to the Wits Law Clinic by their friends, cousins and acquaintances, which assisted them to pursue their cases through civil proceedings. Before being referred to the Wits Law Clinic, many of the victims had given up on seeking redress due to all the difficulties they encountered in pursuing their cases through criminal proceedings.

4.3.2. Civil proceedings in dealing with torture

All eight victims of torture in this study started with criminal proceedings, which did not yield positive results as nothing was done to investigate their cases until they were informed about the Wits Law Clinic, which helped them to pursue their cases through civil proceedings. All the victims mentioned in the interviews that they did not know the difference between civil and criminal proceedings, but all they wanted was to see the law taking its course.

It was evident in the case studies that civil proceedings were easier to pursue than criminal proceedings in terms of the legal process. This is because the proof of burden in civil proceedings is based on a balance of probabilities. Here, all the torture victims needed to produce was some evidence (mainly medical reports and photos of injuries sustained) to prove that torture had taken place. On the basis of this evidence, courts ruled in their favour.

Furthermore, civil proceedings are directed against the state rather than an individual police official who has committed torture. As a result, victims are less likely to be threatened by the perpetrators as the civil claim is only directed towards the state. In all the cases in the study, the police accused of torture never appeared in court. State lawyers in some cases (e.g., Tumelo and Malose) were quick to settle and pay out civil claims to the victims.

4.3.3. Victims' experience of the legal system

Given all the factors above, it is evident that civil proceedings are easier to pursue, although this process is highly technical in terms of the law. The civil claim process involves a series of document exchanges (called pleadings) between lawyers in which each party files the basis of his/her complaint or defence. Usually in cases of torture, the process starts with the issuing of combined summons to the minister of police, in which details about the torture incident are provided and separate documents containing particulars of the claim are annexed to the summons. The minister of police (through state lawyers) has an option to accept or defend by either rejecting the merit of the case (substantive basis) or the manner in which the summons are written (technical basis). This process of exchanging documents continues until the pleadings are closed. At this stage, the case is ready for trial. However, many cases in this study were settled out of court, with costs of claims agreed upon before the trial. Nonetheless, the whole legal process took a long time (despite time limits set in the law) before the cases were finalized. For example, all the victims in this study waited three to five years before their cases were finalized (see the table below).

PSEUDONYM	Year in which torture happened	Year in which case was concluded in court
Aron	2010	2012
Lebo	2007	2014
Zama	2006	2011
Malose	2007	2012
Kevin	2009	2013
Tumelo	2011	2014
Oscar	2010	2014

Many of the victims were highly frustrated and some had even lost hope because their cases were delayed for so long before being concluded. Some victims at the time of the interviews were still waiting for money to be paid by the state. For them, this was like secondary victimization by the state, as the state's failure to pay their civil claims negatively affected urgent medical and psychological needs that needed immediate financial assistance.

4.3.4. Civil claims alone not enough

All the torture victims in this study were happy with the success of their civil claims, but they still wished that the police who tortured them would be arrested and held criminally liable for the suffering and pain they inflicted. The law allows victims to pursue their cases in terms of both civil and criminal proceedings, but criminal proceedings are not easy to pursue in cases of torture owing to all the problems discussed earlier. However, this was found to be one of the key wishes of torture victims in the study: for perpetrators to be punished criminally. Many victims expected punishment to include a prison sentence.⁵⁴ There was a feeling of disappointment amongst all the victims that the perpetrators were never prosecuted or punished, as many continued to work within SAPS despite the successful civil claims. It is important to note that all the cases in the study were dealt with in terms of the common law of assault or assault with intent to cause grievous bodily harm. This was before the new anti-torture law was enacted in 2013. Currently, the Prevention and Combating of Torture of Persons Act states that acts of torture must be punishable with appropriate penalties that take into account the grave nature of torture. So far there have not been any cases decided in a court of law on the basis of this new anti-torture Act.

4.3. Physical and psychological effects of torture

All the participants spoke about the physical effects of their torture. Some of the major injuries include hearing impairment for Tumelo, damage to internal organs for Malose, stomach pains for Kevin and chest pains for Oscar. Many of the injuries appear to be permanent due to their severe nature. They affect the participants' physical functioning. All the participants also complained about the psychological effects of torture. Some of the symptoms include anger, sleeping difficulties, tiredness, nightmares, flashbacks, intrusive memories, loss of self-esteem and withdrawal.

These physical and psychological effects of torture raise questions about whether the financial settlement given to some of the victims was fair and adequate to cover all their medical and psychological needs. Regarding the principle of compensation, each case needs to be looked at independently and the nature of the damages suffered ascertained before the award is given. As pointed out earlier, these cases were dealt with under common law, which was found to be problematic in some cases for not adequately compensating torture victims.⁵⁵ Some victims were not entirely satisfied with their settlements as the money was not enough to cover all their costs. It also appears that in the settlements only the physical needs of the victims were taken into account, while the long-term socioeconomic and psychological needs were neglected. Many victims in the study presented with a dire need for specialized medical and psychological services, which are currently not available for torture victims. It is therefore important that monetary compensation is

⁵⁵ Redress, op cit (n 8).

appropriate and proportional in meeting all the needs of torture victims, including mental health, lost opportunities and costs of medical, social and legal services.⁵⁶ It was evident in the study that some of the victims (e.g., Malose) would never be able to work again due to the severe physical injuries sustained under torture. It is important that all these permanent injuries are also taken into account when monetary compensation is provided. Tumelo, who was still in high school at the time of the interview, had a permanent hearing problem which was affecting his school performance. His self-esteem was so negatively affected that he was referred to CSV's Trauma Clinic for counselling. It is evident that the right to rehabilitation in terms of psychological services is something that needs to be taken into account when court decisions are made. All the victims in the study presented with severe psychological problems following the trauma of their torture experience. These were some of the needs identified in the study but not addressed fully in terms of court processes and civil claims damages awarded.

In the section below, specific recommendations are provided on how to deal with torture in post-apartheid South Africa and address the needs of torture survivors.

⁵⁶ Muntingh, op cit (n 2).

5. CONCLUDING REMARKS AND KEY RECOMMENDATIONS

It is evident that torture by police is common in post-apartheid South Africa, especially against young black males. It is against this backdrop that specific recommendations will be provided on how the issue of torture could be addressed, based on the key findings of the study. These recommendations include the need to raise awareness about torture and the right of torture survivors to access psychosocial, medical and legal services. It is also important that advocacy and lobbying initiatives are undertaken to deal with the problem of torture against criminal suspects in South Africa.

5.1. Public campaigns to raise awareness about torture and CIDT in the new South Africa

Many people in South Africa think of torture as a thing of the past, when police used to abuse political activists opposed to the apartheid government. It is evident from this study that torture of young black males in townships is a major human rights problem in the new South Africa. Many people seem to believe that it is acceptable for police to use torture against suspected criminals. The dominant public view is that criminals have more rights than the victims of crime. Statements such as this are often used by police to legitimize and justify violence against suspected criminals. It is therefore important that public campaigns (through the media and community meetings) are organized to raise awareness about torture and CIDT in the new South Africa. CSVr has already started some of this work through action groups formed by community members in Kagiso, Ekangala and the inner city of Johannesburg to raise awareness about torture by law enforcement officials. It is hoped that other human rights groups will join these action groups to seek justice and advocate for the needs and interests of torture survivors.

5.2. Access to psychosocial services for torture survivors

The victims in the study did not have access to psychosocial services until they were referred to CSVr's Trauma Clinic for free trauma counselling. It is important that comprehensive rehabilitation programmes are developed and implemented to meet the diverse psychosocial needs of torture survivors. It is important that such services are community-based to facilitate easy access. Here, the recommended programme involves working with communities in terms of capacity building on how to provide basic and better informed counselling services to torture survivors. Currently, this recommendation is being implemented in CSVr's community work, as we are in the process of recruiting frontline workers (e.g., priests, volunteers and lay counsellors)

within various communities) to train in basic trauma counselling with torture survivors. CSVr also plans to extend psychosocial services to families, as it was evident in this study that torture affects the direct victim as well as family members.

5.3. Access to medical services for torture survivors

Many torture survivors have specific medical needs due to severe injuries sustained under torture. It is therefore important that torture survivors have access to medical services. Higson-Smith and Flemming have found that many medical professionals in South Africa tend to neglect the medical needs of torture survivors.⁵⁷ They attribute this to lack of training and knowledge about torture and its effects upon survivors' health. Capacity-building workshops for medical service providers on the unique features of torture and its treatment are recommended. CSVr has started networking with medical personnel (e.g., doctors, physiotherapists and psychiatrists) to whom we refer torture survivors for medical care and assistance. Work is needed in this regard to recruit more health professionals to offer medical assistance to torture survivors.

5.4. Access to legal services for torture survivors

Many survivors of torture do not have access to specialized legal services to pursue civil or criminal cases against police once their rights have been violated. Legal cases of this nature are expensive for the majority of South Africans, especially for poor working-class young black males who are most likely to be victims of torture. It is important that partnerships are formed with various entities (e.g., the Wits Law Clinic) to offer legal services to torture survivors. It is also important that the resources of the South African Legal Aid Board are mobilized to provide legal services to torture survivors.

5.5. Advocacy and lobbying

The South African government has signed the Prevention and Combating of Torture of Persons Act into law. It is important that police found guilty of torture are prosecuted in terms of this law. It is also important that the state is held accountable to ensure that the needs and interests of torture survivors are respected. The state must award adequate and appropriate forms of reparation in civil claims. As part of its advocacy strategy, CSVr aims to advocate for the needs and interests of torture survivors as espoused in the Prevention and Combating of Torture of Persons Act, including the right to compensation and rehabilitation.

5.6. Monitoring police stations as places of detention

The South African government signed the Optional Protocol to the Convention Against Torture in 2006, but has not ratified it to date. OPCAT was created in 2002 in terms of Article 2 of UNCAT

⁵⁷ G. Higson-Smith and B. Flemming, "Tortured Exiles: An Invisible Population," *South African Medical Journal* 97 (2007): 840–41.

to establish independent national prevention bodies to monitor places of detention, such as prisons, police cells and police stations, to prevent acts of torture.

In terms of the findings in this study, it seems police holding cells are sites where torture happens. It is highly recommended that monitoring structures be implemented to monitor torture in police stations. Such monitoring processes could work as prevention mechanisms for torture in police stations and other detention centres, such as prisons, which also have been found to be places of torture.⁵⁸

5.7. Duty to investigate all allegations of torture

It was evident in the study that some allegations of torture were reported to relevant institutions such as the police and IPID but nothing was done to investigate the allegations. It is highly important that the duty to investigate allegations of torture is made compulsory for all parties mandated to deal with these cases. It is important that clear guidelines are provided in this regard, including time frames for the investigation and regular updates about the process.

5.8. Punishment of perpetrators of torture

The law is clear about punishing law enforcement officials found guilty of human rights violations, but in practice it is very rare for police to be prosecuted and punished through criminal proceedings for cases of torture, as shown in this study. It is therefore highly recommended that this impunity is addressed urgently by enforcing the law to prosecute perpetrators found guilty of torture, which was one of the wishes expressed by all the victims in the study.

⁵⁸ M. Langa, *Analysis of Existing Data on Torture in South Africa with Specific Focus on Annual Reports Published by IPID and JICS* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2013).

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The Centre for the Study of Violence and Reconciliation (CSV) is a multi-disciplinary non-governmental organisation (NGO) involved in research, community interventions, and training. CSV's main goal is to build reconciliation, democracy and a human rights culture and to prevent violence in South Africa and Africa.



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