



CSVVR

The Centre for the Study of
Violence and Reconciliation

**EXPLORING EXPERIENCES OF TORTURE AND CIDT THAT OCCURRED IN SOUTH AFRICA AMONGST
NON-NATIONALS LIVING IN JOHANNESBURG**

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Acknowledgements

This report would not have been possible without the support and assistance of the following institutions and people:

- USAID for financially supporting this project.
- Non-nationals in interviews to talk about their violent encounters with law enforcement officers in South Africa.
- Key stakeholders of various institutions for agreeing to meet us and discuss possible ways of accessing some of their clients.
- Yolán Moodley, Etienne de Beer, Tsamme Mfundisi, and Lauren Gmeiner for all your work hard in Hillbrow and recruiting potential participants.
- Jasmina Brankovic for your proofreading and editing the report.
- Lastly, Megan Bantjes for managing and coordinating this project. Your critical comments are highly appreciated.

Executive summary

This report is a part of Centre for Study of Violence and Reconciliation (CSV), Trauma and Transition Project, to understand changing patterns of torture and cruel, inhuman and degrading treatment (CIDT) in the new South Africa. This report specifically looks at the experiences of torture and CIDT amongst non-nationals in South Africa.

The report is divided into four parts. The first part provides a literature review on torture and CIDT. The term 'torture' is defined and interrogated in terms of its strengths and limitations. The report argues that the term should not be used restrictively, but expansively to also include CIDT. Furthermore, it argues that the issue of gender should be taken into account in determining whether an act constitutes torture or CIDT. It is also important that the definition of torture is contextualised to cover experiences of torture survivors within the South African context. This is aimed at challenging the universalisation and westernisation of the United Nations Convention against Torture (UNCAT) definition of torture, which may be missing or excluding unique and excruciating torture and CIDT experiences of marginalised non-nationals who are living within South Africa's borders legally or illegally.

The South African government, like many other states, has committed itself to the eradication and prevention of torture. The first part of the report also looks at the government's support of international and continental instruments, charters and conventions/legislations against torture and CIDT. Despite this commitment, the South African government is so far failing to protect and prevent law enforcement officials' abuse and harassment of non-nationals (Faul, 2010; Masuku, 2006). There has been a growing call to officially criminalise torture, which led to the enacting of the Combating of Torture Bill in 2003 (currently known as the Prevention and Combating of Torture of Persons Bill), but to date the bill has not been promulgated by parliament. Some commentators (e.g., Bruce, 2012; Muntingh, 2008) argue that this shows the South African's government's lack of practical and legal commitment to eradicating and combating torture, particularly against marginalised groups such as unemployed black youth (Langa & Merafe, 2011), individuals suspected of being part of criminal syndicates (Dissel, Jensen & Roberts, 2009) and non-nationals (Masuku, 2006).

This brings us to the second part of the report, which addresses how non-nationals are treated by the South African government, which has promulgated various legislations and acts, such as the Immigration Act, to protect the rights of non-nationals as enshrined in the South African constitution. On paper, all these legislations look progressive, but in practice non-nationals are continuously subjected to abusive and harassing practices by various government officials, including

law enforcement officers (Masuku, 2006; Vigneswaran & Hornberger, 2009). It seems that policing of non-nationals is informed and influenced by the negative stereotype that they are responsible for the high levels of crime in the country (Vigneswaran & Hornberger, 2009). As a result, this policing is characterised by violent practices and xenophobic attitudes, and this is what the study explores.

The third part of the report deals with methodology. The report provides some detailed information about the context in which the study was conducted and the steps the researcher took in recruiting potential participants from organisations in the migrant network, as well as organisations in Hillbrow. Challenges the researcher encountered in accessing potential participants are also discussed. Furthermore, the report provides information on how qualitative data was analysed, as well as how thematic content analysis was used to explore the stories shared by the participants. Some of these stories and direct quotes will help readers of this report to understand the context in which torture and CIDT occurred, the patterns of the abuse and how torture survivors responded or dealt with the effects of torture and CIDT.

The fourth part of the report outlines the key findings of the study, namely threats of violence and deportation and verbal abuse of non-nationals by law enforcement officials, places where these acts of ill-treatment and intimidation occur (e.g., police stations and prisons), hierarchies of risk of torture and CIDT in terms of one's nationality and gender, and the impact of all these abusive experiences on the psychosocial and physical functioning of the participants in the study.

The last part of the report offers specific recommendations regarding dealing with torture and CIDT of non-nationals in the 'new' South Africa, based on the key findings of the study. These findings will be used as a resource to raise awareness about torture and ill-treatment of non-nationals. Existing conventions and charters such as UNCAT, the Optional Protocol of the Convention against Torture (OPCAT) and the Robben Island Guidelines should be used for advocacy and lobbying purposes to protect and promote the rights of non-nationals in South Africa. In conclusion, it is recommended that civil society organisations such as CSVR should play a leading role to ensure that the South African government is held accountable to its obligations under UNCAT and OPCAT by criminalising torture.

1. Introduction and research aims

Over the last few years, there has been an increase in media reports and research studies on the practice of torture and ill-treatment of non-nationals¹ by law enforcement officers² in post-apartheid South Africa (Dissel, Jensen & Roberts, 2009; Masuku, 2006; Muntingh, 2011). Some of these reported harassment and ill-treatment practices have been raising serious questions about law enforcement officers' respect for non-nationals' human rights as enshrined in the Constitution and other treaties that the South African government has signed to treat non-nationals with respect and dignity. Despite some of these reports, little is still known about patterns and experiences of torture and cruel, inhuman and degrading treatment (CIDT) amongst non-nationals in South Africa. In order to address this gap, the current study was undertaken to explore experiences of torture and CIDT that occurred in South Africa amongst non-nationals in Johannesburg between 2009 and 2011. This is the first major aim of the study. In terms of Landau, Ramjathan-Keogh and Singh's (2005) work, non-nationals are a vulnerable group. They argue that particular factors make non-nationals vulnerable, such as xenophobia, language barriers, lack of access to documentation, law enforcement officers' tendency to target them and struggles to access the justice system when they do have legal problems. Landau and his colleagues found that all these factors also contribute to putting non-nationals at risk of being victims of law enforcement officers' abuse and ill-treatment.

Currently, there are various non-profit and community-based organisations that offer a range of services (humanitarian, legal and advocacy, etc.) to non-nationals, but very few of them focus on torture and CIDT as their primary area of research and intervention – an area of interest for the Centre for the Study of Violence and Reconciliation (CSV). Against this backdrop, the second aim of this study is to thoroughly document all the lessons we have learnt in the process of recruiting potential participants from members of the network of organisations that serve migrants (e.g., Lawyers for Human Rights, Jesuit Refugee Service and Zimbabwean Exile Forum), as well as from other organisations in Hillbrow (e.g., churches, youth clubs and music or cultural groups), some of which have not been focusing on torture and CIDT or any other human rights issues, as compared to the organisations in the migrant network. Lessons learnt in this research process will inform our future community interventions on how and where to access non-nationals who are survivors of torture and CIDT in South Africa for them to access our services and assistance. Few organisations in

¹ The term 'non-national' is used in the research report to refer to asylum seekers, refugees and undocumented immigrants.

² The law enforcement officers/officials in this study refer to the police, metro police, prison warders and military officials.

South Africa directly deal with the issue of torture and CIDT of non-nationals. It is therefore important that the information collected in this research project also be used for future community interventions in terms of fostering partnerships with existing and new organisations and raising awareness about torture and CIDT and their psychological effects. This is also to ensure that those who need help are accessed and referred to relevant organisations. Networking with all these organisations (in the network and outside the network) is intended to increase access to non-nationals who have not been approaching organisations oriented towards meeting the specific needs of migrants.

At the policy level, the findings of this research study will be used for advocacy and lobbying purposes to expose how law enforcement officials are treating non-nationals in South Africa. In addition, the findings will be used to inform our regional and international interventions on policy reform for immigrants. Recent research reports (see, for example, Amit et al., 2009; CoRMSA, 2011; Hornberger, 2008) show that non-nationals are at risk of torture and CIDT perpetrated by law enforcement officials. It is therefore important that the findings of this study be used to influence policies (e.g., the Prevention and Combating of Torture of Persons Bill, which is currently before parliament) and to advocate for the needs and rights of torture survivors, such as the right to rehabilitation and compensation. Given the fact that the current study is qualitative in nature, it is important that participants' voices are integrated and used progressively in the advocacy agenda to be undertaken by CSV. Clear, practical recommendations are discussed in the report's conclusion, some of which are already being implemented within CSV.

2. Literature review

2.1. Definitional arguments regarding torture and CIDT

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” (Universal Declaration of Human Rights, 1948)

A number of international conventions and charters prohibit torture, including the Universal Declaration of Human Rights, the Geneva Conventions, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights. These conventions and charters mention that no one should be subjected to torture, or CIDT. The United Nations Convention against Torture (UNCAT) is one of the most referenced conventions when it comes to the prohibition of torture worldwide. It only came into existence in 1984, with the aim of preventing torture around the world and providing some clarity for those seeking a definition of torture. This is the most accepted definition of torture worldwide. In terms of Article 1 of UNCAT, torture is 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 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. (UNCAT, 1984)

Therefore, elements that need to be taken into account for any act to qualify as torture are as follows:

- Nature of the act: The severity of the act should be assessed in terms of its impact either physically or mentally.
- Intention of the perpetrator: The act must be inflicted intentionally. Negligence is not sufficient to qualify as torture, although this view is contested.
- Purpose: To extract confession, for punishment, for intimidation or for discrimination. This list is not exhaustive as torture may be inflicted for purposes not listed here.
- Involvement of public officials: This also is contested, as some include the involvement of non-state actors (Muntingh, 2011; UNCAT, 1984).

Many countries, including South Africa, have signed UNCAT and ratified it. Even countries that have not signed or ratified the convention are bound by it, so that “no one shall be subjected to torture or to CIDT” (Universal Declaration of Human Rights, 1948). Despite this progress, there has always been a debate around what constitutes torture. The UNCAT definition refers mainly to torture in which the state is directly or indirectly involved. Torture is often associated with oppressive/totalitarian regimes where it is mainly used as a political instrument to break the spirit of resistance and to cause suffering to political opponents (Punamäki, Qouta & Sarraj, 2010; Reeler, 2009). However, Rejali (2007) disagrees with this view, arguing that it is a misnomer or misconception to always associate torture with autocratic governments, as many democratic states use it for all kinds of reasons, such as the elite maintaining its position of power or intimidating political opponents (Rejali, 2007), or dealing with violent crime in the South African context (Dissel et al., 2008; Mutingh, 2008). Amnesty International in a 2000 worldwide survey found that 75 percent of countries (including some that have signed and ratified UNCAT) systematically practiced torture (in Quiroga & Jaranson, 2005). This includes well-known democratic states such as the United States, which is accused of using torture methods against terror suspects in Guantanamo Bay, Abu Ghraib prison and other sites of detention in army facilities. In the so-called ‘war on terror,’ some US lawmakers feel the use of torture is justified to force suspects to reveal information about their terrorist activities (Nowak, 2006). Clearly, this is in contravention of Article 2 of UNCAT, which states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be evoked as a justification of torture.” US lawmakers who support the practice argue that ill-treatment of prisoners does not constitute torture as defined by UNCAT (Nowak, 2006).

A number of scholars and activists advocate for the narrow definition of torture as enshrined in UNCAT. They argue that “the most important criteria in the definition of torture are the intention and purpose.” Torture is therefore seen as an “act inflicted by a public official, with the intent and purpose of extracting a confession or information, punishment, intimidation, coercion or discrimination” (Quiroga & Jaranson, 2005, p. 1). From this viewpoint, it is evident that the manner in which the US treats terror suspects meets the criteria for the narrow UNCAT definition of torture (see Nowak, 2006, for further discussion of this point).

Many scholars and activists argue, however, that the UNCAT definition is too narrow as it emphasises torture inflicted by state agents and does not acknowledge individuals tortured by non-governmental agents (Campbell, 2007). Who should be held responsible for acts of torture committed by non-state actors (e.g., rebel groups or private security officials)? Is it the state or non-state actors themselves? The UN Committee against Torture (2008) clarifies this question as follows:

Where state authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. (Redress & Amnesty International, 2008, p. 8)

In this quote, it is accepted that the state has a legal duty and obligation to protect its citizens against any form of violence, including torture inflicted by non-state actors, but this becomes difficult in instances where the state is non-existent, such as in Somalia, where there has not been an elected government since 1991 and al-Shabaab and other insurgent groups have been violating the rights of Somalis with impunity. It is also possible that the state may be complicit in allowing some acts of torture to take place. UNCAT is clear that states that fail to prevent, investigate and prosecute those accused of torture should be held accountable in terms of existing continental and international laws and conventions. It is through existing mechanisms such as OPCAT (which the South African government has not yet ratified) that some of these allegations of torture could be monitored and investigated in detention sites like prisons, psychiatric hospitals, repatriation centres, places of safety and so forth. OPCAT "aims to prevent torture and improve conditions of detention and treatment of detainees through regular visits by an international body (the Sub Committee for the Prevention of Torture) and national bodies (known as National Preventive Mechanisms)" (Streater, 2008, p. 1). It is therefore important that all states sign and ratify existing mechanisms, such as OPCAT, to prevent torture throughout the world by putting national and international mechanisms in place.

2.2. How is torture different from CIDT or how is CIDT different from torture?

In this report, the term 'torture' is not used restrictively but rather expansively to include cruel, inhuman and degrading treatment (CIDT) (Dissel, Jensen & Roberts, 2009). Interestingly, Article 16 of UNCAT acknowledges that actions which do not meet the criteria of torture should be considered CIDT:

Each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting on an official capacity.

Article 16 obliges all states to prevent acts of CIDT, even if they do not amount to torture as defined by Article 1 of UNCAT. As a result, a debate has emerged in the literature on how one should assess whether an act constitutes torture or inhuman or degrading treatment. In terms of UNCAT, specific acts are identified as constituting torture. These acts include “severe” beating, burning, suspension, simulations of execution, mock burials, electric shocks, loud noises, suffocation, prolonged denial of rest, sleep, food, insufficient hygiene, or medical assistance, prolonged isolation and sensory deprivation by a public official or other person acting on an official capacity (Reeler, 2009; Quiroga & Jaranson, 2005; Weissbrodt & Heilman, 2011). Furthermore, torture involves threats to kill or torture relatives of the victim. Some acts may not qualify as torture in terms of “severity,” and these acts are considered CIDT (Weissbrodt & Heilman, 2011).

Despite this detailed definition, it is not always easy to draw a line between acts that constitute torture and those that constitute CIDT. It is argued that everything “depends on the nature, purpose and severity of the treatment applied” (Dissel et al., 2009, p. 11). 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 (Dissel et al., 2009). According to Weissbrodt and Heilman (2011), a hierarchy has been created of what constitutes torture. The hierarchy begins with degrading treatment, then inhuman treatment and finally 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 (Dissel et al., 2009; Weissbrodt & Heilman, 2011). It is important to note that the level of severity is something subjective and all circumstances (e.g., nature and duration of mental or physical suffering) of each individual case should be taken into account.

It is also argued that personal characteristics, such as the age, gender and vulnerability of the survivor, should be taken into account in determining whether an act constitutes torture or CIDT (see Dissel et al., 2009, for detailed discussion of this point). This is because some acts of torture or CIDT are deliberately inflicted upon certain people on the basis of their sexuality,³ gender⁴ or race. In this study, the focus is on non-nationals. In South Africa, are these individuals targeted by law

³ Harassment of gay men and lesbians in Uganda and many other African countries, including Kenya, by law enforcement officials is an example of how one’s sexuality can be a source of risk for arrest and torture.

⁴ The UNCAT definition of torture was constructed at a time when the dominant understanding of torture was the harm caused to prisoners in state detention centres who were predominantly men. Torture was tightly defined to account for their situation, and women’s experiences were neglected (Redress & Amnesty International, 2008). It is therefore important that the gender of the victim is always taken into account as women are more likely to be raped as a form of torture. According to Human Rights Watch (1998, in Palmary, 2005), sexual violence against girls and women in times of armed conflict is also very common. It is evident that women are more likely than men to be tortured through rape by a public official or other person acting in an official capacity or by non-state actors (Redress & Amnesty International, 2008).

enforcement officials because they are not South African? UNCAT provides illustrative examples that ill-treatment of and discrimination against certain individuals based on their personal characteristics (e.g., immigration status in this study) could constitute torture or CIDT. The inclusion of 'discrimination' in the UNCAT definition means that some acts of torture or CIDT could be deliberately and intentionally directed against certain people to cause severe mental or physical pain or suffering. In South Africa, it is very common for law enforcement officials to harass non-nationals because of the latter's powerlessness position in society (Masuku, 2006). According to Nowak (2006), the powerlessness of the victim is also something important in determining whether an act constitutes torture or CIDT. This includes acts that could be humiliating in nature, such as being called derogatory names (e.g., *makwerekwere*) or threats of deportation against those who refuse to pay bribes to a public official or another person acting in an official capacity. Deportation of non-nationals to their countries of origin where they could face the death penalty or be tortured contravenes Article 3 of UNCAT. In South Africa, there are prominent cases in which non-nationals (e.g., Khalid Rashid of Pakistan and Mohamed Hendy of Jordan) were deported to their countries, where there was high probability of them being tortured (see Muntignh, 2008, for detailed discussion of these cases). Lawyers for Human Rights (2011) also reported many cases of Zimbabweans and Congolese being deported to their home countries without correct administrative procedures being followed. These decisions were criticised by the Amnesty International (2011), which stated that the South African government is failing to protect the rights of non-nationals with this type of deportation. In terms of UNCAT, the South African government has a legal duty to protect non-nationals from torture or CIDT. Article 3 obliges states not to expel, return or extradite a person to another state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

Non-nationals should be protected from torture as required by Article 3 of UNCAT, and not only in their countries of origin but also while living in South Africa. In terms of continental and international conventions, such as Universal Declaration of Human Rights, the Convention of Governing the Specific Aspects of Refugee Problems in Africa and the Convention Relating to the Status of Refugees, states should not discriminate against non-nationals or subject them to any form of inhuman or degrading treatment, such as unlawful arrest without fair trial, detention in unhygienic repatriation centres and prolonged denial of rest, sleep, food or medical assistance by a public official or any other person acting in an official capacity (Mutingh, 2011, p. 31). In South Africa, non-nationals are protected not only through Article 3 and 16 of UN CAT and all these other conventions but also through Section 9 of the South African constitution, which obliges the state "not to unfairly discriminate directly or indirectly against anyone on one or more grounds, including

race, sex, gender, marital status or nationality,” as well as the Refugee and Immigration Acts. It is therefore important that this study explore experiences of torture and CIDT amongst non-nationals in South Africa despite the country’s progressive domestic laws and the continental and international conventions the government has signed and ratified.

2.3. Torture and CIDT in South Africa

The focus of this sub-section is to discuss torture in the ‘new’ South Africa. This is put in context by an initial discussion of torture under apartheid, which shows some of the shifts that have occurred since the transition to democracy in 1994. The new government has showed commitment to preventing and eradicating torture, although the fact that some conventions are not yet ratified raises questions about this commitment.

2.3.1. Torture under apartheid

The use of torture in South Africa was very common under apartheid and mainly focused on political activists, who were subjected to all kinds of abuses, including long periods of detention without trial, mock executions, beatings, suffocation and electric shocks (Foster, Davis & Sandler, 1987; Spitz, 1989). Some political activists disappeared while others died in detention as a result of torture (Foster, 1987). Steve Biko is one prominent anti-apartheid activist (amongst many others) to have died in the hands of apartheid security forces as a result of torture and ill-treatment in prison. The psychological consequences of this state-sponsored violence on political activists have been documented by Gill Straker in her book, *Faces of Revolution: Psychological Effects of Violence on Township Youth in South Africa* (1992). Some of Straker’s key findings are that many political activists were traumatised by the high levels of state-sponsored violence (including torture) and that many left the country to train as soldiers in neighbouring countries, such as Angola, Mozambique, Zimbabwe, Botswana and Tanzania, while others were arrested and severely tortured in prison (Foster, 1987; Straker, 1992; Spitz, 1989). Gobodo-Madikizela (2003) contends that the psyche of the whole nation (especially the black community) was severely affected by this violence. To date, psychological effects of mass violence under apartheid are still felt in many black communities (Kaminer & Eagle, 2010). Muntigh (2011) asserts that the report of the Truth and Reconciliation Commission (TRC) demonstrates torture of political activists (including ordinary people in black communities) as one of the most common human rights violations under apartheid. Despite this, most perpetrators have never been arrested or prosecuted, which is one of the major criticisms levelled against the TRC (see Posel & Simpson, 2002, for further discussion on the limitations/criticisms of the TRC process).

It is alleged that the TRC dealt with a limited number of torture cases despite overwhelming evidence that the practice was widespread (Posel & Simpson, 2002). Today, many torture survivors have not been assisted in terms of compensation or provided with trauma counselling or medical assistance to deal with the severe long-term effects of their torture experience (Muntignh, 2008). As a result, civil society organisations such as CSV, Khulumani Support Group, the Institute for the Healing of Memories, the Solidarity Peace Trust and the Trauma Centre for Survivors of Violence and Torture have been advocating for the needs of past and present victims of torture through the South African No Torture Consortium (SANToC).⁵ These organisations also work individually to advocate for the needs of torture survivors. SANToC is aimed at coordinating these organisations to speak with one voice in pressuring the South African government to criminalise torture and ratify international conventions, such as OPCAT.

2.3.2. Torture in the ‘new’ South Africa

During the period of transition, the South African interim government showed some commitment to preventing and eradicating torture by signing UNCAT in 1993 and ratifying it in 1998. In terms of UNCAT, the South African government is obliged to ensure that no acts of torture occur in territories over which it has jurisdiction (Higson-Smith, Mulder & Masitha, 2006; Muntignh, 2011). The government also supports many other international and African instruments/charters against torture and CIDT (see Dissel et al., 2009, for detailed discussion of this point), including the African Charter on Human and People’s Rights, the Universal Declaration of Human Rights and the Robben Island Guidelines.

The issue of torture was also directly incorporated into the new South African constitution, which states that each person has the right to be free from torture. Specific sections of the Bill of Rights also prohibit the use of force or torture. For example, Section 12 states that everyone has a right not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading way. Section 35 (subsection 1) states that everyone who is arrested for allegedly committing an offence has the right not to be compelled to make any confession or admission that could be used in evidence against that person. Furthermore, subsection 5 of Section 35 states that evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render a trial unfair or otherwise be detrimental to the administration of justice.

⁵ SANTOC was launched in 2008 to advocate for the needs of torture survivors in South Africa and to put pressure on the South African government to criminalise torture and adopt and ratify OPCAT. The organisations that form SANTOC are CSV, Khulumani Support Group, Institute for the Healing of Memories, Solidarity Peace Trust and the Trauma Centre for Survivors of Violence and Torture.

All these provisions were aimed at eradicating torture in the 'new' South Africa. Despite these progressive legislative frameworks and constitutional rights changes, however, it seems that torture is still a problem in democratic South Africa. The difference is that the victims are no longer political activists but marginalised groups, such as criminal suspects and non-nationals (Muntingh, 2011). Muntingh (2011) argues that because many victims of torture are criminal suspects, "this does not evoke the same moral condemnation like when victims were political activists under apartheid" (p. 45). As a result of high levels of crime, many South Africans argue that the torture of criminal suspects and non-nationals is justified. There is little public sympathy for criminal suspects and non-nationals, which can also be seen in the rise of vigilantism, where criminal suspects are harassed and in some cases beaten to death by community members (Harris, 2001). Cases in which non-state actors (e.g., community members) are involved in the killing of criminal suspects or non-nationals who are blamed for social ills raises questions about UNCAT's narrow definition of torture (Hassim, Kupe & Worby, 2008). The dominant discourse amongst many community members is that police are not doing enough to deal with crime or criminals. It seems that in response to this public pressure, some police leaders⁶ have been advocating for the use of violence against suspected criminals. Moreover, some police leaders and politicians publicly blame increased levels of crime on non-nationals. This has resulted in law enforcement officials targeting non-nationals in their crime prevention strategies, as well as harassing and abusing them (Masuku, 2006).

It is evident that marginalised groups, such as unemployed black youth (Langa & Merafe, 2011) and non-nationals (Masuku, 2006), are at risk of torture or CIDT in the new South Africa. This was confirmed by a recent Amnesty International (2011) report in which the torture of criminal suspects in custody was mentioned as one of the major human rights abuses in the new South Africa. Like Dissel et al.'s (2009) study, the Amnesty International report includes stories told by torture survivors who were subjected to extreme forms of torture or CIDT. The most common methods of torture and CIDT in these stories are beatings, electric shocks, suffocation, verbal abuse and threats of violence. From 2009 April to March 2010, the Independent Complaints Directorate, which is now called the Independent Police Investigative Directorate, or IPID, "received five direct complaints of torture and 920 complaints of assault with intent to cause grievous bodily harm, some of which were being investigated for evidence of torture. Seven of the 294 deaths in custody were linked to torture and 90 others to injuries sustained in custody" (Amnesty International, 2011, p. 296).

Despite these shocking figures relating to torture and CIDT by law enforcement officials, it is worrying that torture is still not classified as a criminal offence in South Africa. Currently, no law

⁶ Former Police Commissioner Bheki Cele's controversial remark regarding "shoot to kill." *Sowetan*, 28 June 2011

prohibits or criminalises torture, although civil and criminal cases can be pursued under common law offences of murder, assault with intent to do grievous bodily harm, rape and attempted rape. The South African government's failure to classify torture as a criminal offence is contravention of UNCAT, which obliges all states to consider torture a punishable criminal offence. Streater (2008, in Sideris, 2010, p. 70) points out that prosecuting torture under common law offences is problematic for the following reasons:

- Common law offences do not include all of the crimes of torture as defined internationally, for example mental suffering.
- The official capacity of the perpetrator is not considered as an aggravating factor under common law.
- Common law offences have a statute of limitations, setting a time limit within which to start prosecution.
- Common law offences may not effectively reflect the gravity of the torture and therefore fail to punish adequately.

Despite these limitations, criminal and civil cases against perpetrators of torture and/or CIDT continue to be pursued in South Africa (Muntingh, 2011). There is a growing call to officially criminalise torture, which has led to the enacting of the Combating of Torture Bill in 2003 (which is now the Prevention and Combating of Torture of Persons Bill. However, the process of finalising the bill has taken longer than expected and to date the bill has not been promulgated by parliament. Some commentators (e.g., Muntingh, 2011; Streater, 2008) argue that this shows the South African government's lack of practical and legal commitment to eradicating and combating torture. This lack of commitment is further demonstrated by South Africa's failure to ratify OPCAT, which would give independent bodies the power to regularly visit places of detention to assess their conditions and prevent torture (Streater, 2008).

It is urgently important that the South African government adopts and ratifies OPCAT as soon as possible so that more independent bodies can be involved in the prevention and eradication of torture as required by UNCAT. According to Streater (2008), there is also an urgent need to establish an independent inspectorate agency as required by OPCAT to prevent torture and ill-treatment of non-nationals arrested and detained under the Immigration and Refugee Acts in detention centres such as Lindela in Krugersdorp and another detention centre at Musina in Limpopo Province. Currently, there is no statutory body that specifically investigates cases of torture and CIDT amongst non-nationals in detention centres (Streater, 2008; Muntingh, 2011). Human Rights Watch (1998) has revealed that torture and ill-treatment of non-nationals in detention centres such as Lindela is very common, but still there are no monitoring mechanisms or agencies to investigate

all these reported cases. Many non-nationals also get deported to their home countries without due judicial, legislative or administrative processes being followed (Human Rights Watch, 1998). As indicated above, this contravenes Article 3 of UNCAT, as some individuals who are deported are at high risk of being tortured on their return home. On the whole, violations of legislative/administrative procedures, ill-treatment, detention and deportation of non-nationals demonstrate that they are treated in the country, despite South Africa's progressive legislation (Streater, 2008).

South Africa does, however, have institutions to investigate police misconduct or offences, including torture and CIDT, such as the Independent Police Investigative Directorate (IPID) (previously known as the Independent Complaints Directorate, or ICD), which was established under the South African Police Service Act of 1995. The ICD was criticised for being ineffective in dealing with cases of police misconduct as a result of lacking the independence to prosecute. In 2011, the enactment of the Independent Police Investigative Directorate Act gave the IPID the power to independently investigate and make recommendations that would be binding to the South African Police Service (SAPS). It is too early to tell whether the IPID is more effective than the ICD, which had the power to investigate cases and make recommendations to the Police Commissioner but no power to enforce them. As a result, police officials who were accused of misconduct, including torture and CIDT, often enjoyed impunity. Many victims of torture and CIDT were left feeling helpless and powerless as they did not have any recourse through the ICD, which was seen as a toothless institution in dealing with their cases (Langa & Merafe, 2011). We will wait and assess how the new institution deals with cases of torture or CIDT at the hands of police officials.

2.4. Non-nationals in South Africa and their experiences

As a result of civil wars, dictatorship, poverty, poor economies, political oppression and lack of freedom, South Africa has become a major destination for non-nationals (Landau, Ramjathan-Keogh & Singh, 2005). Many non-nationals come from the Great Lakes region (Democratic Republic of Congo, Burundi and Rwanda), the Horn of Africa (Sudan, Somalia and Ethiopia), Angola and, more recently, Zimbabwe, given its current economic and political crisis. Non-nationals represent a growing population in South Africa, but there are no reliable official statistics on non-nationals because many enter the country illegally and do not approach the Department of Home Affairs (DHA). Studies conducted by Landau et al. (2005) and Amit et al. (2009) reveal that the asylum process has significant administrative irregularities, such as staff shortages, corruption, extortion and sexual exploitation. Long queues are very common at the DHA and reception centres throughout the country. Without proper identity documents and facing discrimination and high unemployment

rates, many non-nationals are unable to find a job in South Africa. In response to these difficulties, some non-nationals have set up small businesses in the inner city, although many complain about crime, harassment and confiscation of their goods by law enforcement officers, such as metro police officers and the police. It is reported that some acts committed by law enforcement officers meet the criteria of torture and CIDT as defined by UNCAT (Polzer, 2005). It seems that many of the police's violent practices are fuelled by law enforcement officials' xenophobic attitudes towards non-nationals.

2.4.1. Non-nationals as a scapegoat for all social ills in the new South Africa

South Africa is a highly xenophobic society. Xenophobia is defined as a "hatred or fear of foreigners" (Harris, 2002, p. 167). Due to high levels of xenophobia, South Africans do not respect the rights of non-nationals, as was demonstrated by the widespread violent attacks on foreign nationals that occurred in 2008 (Hassim, Kupe & Worby, 2008). South Africans accuse non-nationals of taking their jobs. However, Landau, Ramjathan-Keogh and Singh (2005) have found little evidence to support this claim. In fact, non-nationals are creating jobs through street trading, despite being abused and harassed by law enforcement officials on a daily basis (Landau et al., 2005). In this understanding, xenophobia is characterised by a *negative attitude* towards non-nationals, and this attitude is used to justify violence against non-nationals (Hassim, Kupe & Worby, 2008).

Are foreigners scapegoats? Some suggest that non-nationals are always scapegoats for social ills in South Africa (Harris, 2002). For example, in the community of Mizamoyethu in Cape Town and, more recently, in Alexandra and Thokoza townships in Gauteng, non-nationals were blamed for draining community resources perceived as legitimately ear-marked for locals, such as government-provided houses, as well as for causing increased levels of violence and crime (Hassim, Kupe & Worby, 2008). Another widespread belief is that non-nationals sell drugs, dress smartly and flash money around to steal local women (Gqola, 2008). It seems that competition over scarce resources influences solidarity within local communities along fundamental lines, whereby community identities may at times supersede national identities or work to legitimate exclusionary and discriminatory practices towards non-nationals. These perceptions are used to justify any form of xenophobic violence against non-nationals. Altbeker (2005) has found that police officials seem to be embracing such perceptions in their policing of non-nationals.

2.4.2. Policing of non-nationals in South Africa

Despite South Africa's progressive legislation regarding torture, law enforcement officials violate non-nationals' human rights on a daily basis. In everyday policing, law enforcement officials identify

non-nationals as the 'other' on the basis of their cultural and physical features, including their hairstyles, accents, vaccination scars and dress style. In most cases, non-nationals are arrested on the basis of their physical appearance, accent and attire (Harris, 2002). The excerpts below show how South African police use biocultural features in 'othering' non-nationals:

To establish whether a suspect is illegal or not, members of the police focus on a number of factors. One of these is language: accent and inability to speak one of the African languages. Appearance is another factor in trying to establish whether a suspect is illegal- hairstyle, type of clothing worn as well as physical appearance. (Minaar & Hough, 1996, in Harris, 2002, p. 174)

It's very easy. People from Nigeria, Ghana, Cameroon and places like that have big noses, big lips, and round heads. (Matsinhe, 2011, p. 303)

These features are seen as markers or signifiers of difference. More recently, xenophobic violence across South Africa has highlighted the role of symbolic and other social markers in the identification and stigmatisation of and discrimination against non-nationals by law enforcement officials and the public in general. For example, one police officer in Altbeker's (2005) study was quoted as saying he "can tell by looking at the crime scene whether the crime has been committed by a South African or Mozambican citizen," adding, "There are many murders here, but there is South African murder and Mozambican murder. A South African murder is usually a shebeen thing. Alcohol is involved. People are drunk and then fight until someone is dead. But if it is a Mozambican murder, then it is probably about business" (Altbeker, 2005, p. 92). Relying on such stereotypes, police often harass non-nationals during their investigations even though they later turn out not to be perpetrators of any crimes (Altbeker, 2005).

Furthermore, many surveys indicate that police elicit bribes from arrested non-nationals in exchange for freedom (see for example, Altbeker, 2005; Faul, 2010; Landau et al., 2005; Polzer, 2005; Steinberg, 2008). For example, one police officer was quoted saying, "We would go to this location around Sebokeng and would say to the illegal immigrants, you must pay fee or we are taking you in" (Faul, 2010, p. 208). It is asserted in many studies that it is common for South African police to demand that illegal immigrants pay *tjo-tjo* (bribes) not to be arrested (Altbeker, 2005; Steinberg, 2008; Vigneswaran & Hornberger, 2009). Interestingly, one police officer described non-nationals as "walking ATMs" (Faul, 2010, p. 208) due to the fact that many carry cash in their pockets as they do not have access to banking facilities in South Africa. Faul (2010) found that some law enforcement officers use force against non-nationals who do not have money or refuse to pay a bribe. Polzer (2005) argues that a poor understanding of non-nationals' rights on the part of the police undermines South Africa's commitment to protect these rights. It is important that awareness-raising campaigns be held to educate public civil servants, such as law enforcement

officers, about the rights of non-nationals (Hornberger, 2008). Altbeker (2005) also found that police officials are very resentful towards non-nationals. They see non-nationals as a burden and as adding to their workload. In addition, police face pressure from the public to do “more” to deal with non-nationals, who are stereotypically seen as committing crimes and other illicit activities, such as selling drugs. It is claimed that non-nationals are arrested in large numbers during police raids and patrols in order to boost and manipulate crime statistics, as well as to show the public that police are doing something about non-nationals (Vigneswaran & Hornberger, 2009). Vigneswaran and Hornberger (2009) see these kinds of practices as a form of surrogate policing or public performance policing in which easy targets, such as unemployed youth in townships or non-nationals, are used as a substitute for ‘real’ criminals. The use of violence against these vulnerable groups is *informally* seen as part of the job (Matshediso, 2011), although many (if not all) police officers know that this is wrong. Steinberg (2008) talks about the “unwritten rules” of policing: police usually know what is acceptable and unacceptable but often develop their own “unwritten rules” in their everyday policing of communities. Some of these “unwritten rules” include the use of torture to get confessions from suspected criminals. For example, one police officer said, “Sometimes we use illegal means to get information from the suspect. Sometimes you must *moer* (beat) him” (Faul, 2010, p. 203). Some of these torture methods are applied to both South Africans and non-nationals, but non-nationals are seen as easy targets because they are less likely to report their cases of torture and CIDT for fear of deportation (Harris, 2002).

On the whole, non-nationals fear law enforcement officials as a result of their lived experiences and violent encounters with them. Therefore, one aim of this study is to explore the experiences of torture and CIDT amongst non-nationals living in Johannesburg and the impact of these torture experiences on their functioning.

2.5. Effects of torture

A lot has been written about torture and its effects on torture survivors (see, for example, Başoğlu, 2006; Campbell, 2007; Friedman, 2003; Sideris, 2010). For example, the physical effects of torture include health problems, namely head injuries, back pains, spinal cord problems, damage to internal organs, loss of hearing, difficulty urinating and others (Campbell, 2007; Higson-Smith & Bro, 2007; Reeler, 2009; Sideris, 2010). It would be difficult in this short report to discuss each of these health problems in depth, but it is acknowledged that torture impacts negatively on survivors’ physical, psychological and social functioning. One of the major focuses in this report will be on the diagnosis of post-traumatic stress disorder (PTSD), which is challenged and critiqued in some of the literature for its failure to take sociopolitical and community issues into account. Major criticisms have

emerged against the medicalisation of PTSD, particularly in working with marginalised groups, such as non-nationals who are survivors of torture (Eagle, 2002; Lykes, 2002; Summerfield, 1999). It is important that the social impact of torture be taken into consideration in the healing process and advocacy initiatives being undertaken in communities.

As indicated above, the psychical and psychological consequences of torture are well documented in the existing literature (Başoğlu, 2006; Campbell, 2007; Friedman, 2003; Sideris, 2009). The most common psychological impact of torture is PTSD, despite all the contestation around this diagnosis. It is argued in the literature that PTSD is characterised by the following symptoms: flashbacks, nightmares, intrusive memories, numbing, withdrawal, fantasies of revenge, anger, shame, self-blame and loss of dignity and identity (Başoğlu, 2006; Campbell, 2007; Friedman, 2003; Higson-Smith & Bro, 2007; Kaminer & Eagle, 2010; Reeler, 2009; Sideris, 2009). In many studies, it has been found that PTSD is likely to coexist with other mental disorders, such as depression, anxiety, panic attacks and substance abuse (Reeler, 2009; Sideris, 2009). However, some researchers (Campbell, 2007; Lykes, 2002; Summerfield, 1999) question the existence and validity of the PTSD construct. These researchers argue that the prevalence rate of PTSD is high in many studies of torture survivors because there is a bias in the instruments/methods used to collect the data. Commonly used instruments in assessments of PTSD include the Semi-Structured Interview for Torture Survivors, the Harvard Trauma Questionnaire and the Hopkins Symptom Checklist (Campbell, 2007). On the whole, this shows the dominance of the PTSD model in the existing literature on torture and its effects.

The literature does not say much about the social impact of torture on communities. As mentioned above, one of the major criticisms of the PTSD model is that it reduces torture survivors to purely psychiatric subjects, while ignoring the social and political context in which torture happens (Lykes, 2002). Clearly, this talks to the individualistic nature of PTSD, rooted in Euro-centric philosophy (Eagle, 2002). The applicability of this diagnosis to non-western populations, such as non-nationals who are victims of human rights violations, political repression and torture, is thus questionable. This is because the PTSD model downplays history, culture and the valuing of the collective over the individual (Lykes, 2002; Eagle, 2002). It is therefore important to assess the impact of torture on the community as a whole, rather than focus on the individual victim only. In her work, Lykes (2002) has found that torture affects the community in the following ways: lack of trust amongst members as people start suspecting each other of being spies/informers, anger against the state and its agents for perpetrating torture against community members, a sense of hopelessness as people are living in fear, loss of connections within the community and the emergence of a culture of violence as all parties begin to see violence as the only way to solve their

problems. Lykes argues that this problem then continues from one generation to another, where violence becomes endemic and affects all community members. It is clear from this review that torture does affect communities at a systemic level (Sideris, 2010).

Therefore, questions are raised about our current interventions to assist torture survivors. Are our interventions holistic enough to meet the diverse needs of torture survivors? Some of the needs for torture survivors include medical care and legal assistance. Agger et al. (2008) argue that trauma counselling alone is not sufficient for torture survivors, who require interventions that address medical, psychosocial, economic and legal needs. Agger and his colleagues contend that an effective intervention project should entail some of these activities, namely reaching out to torture survivors in communities and empowering them through legal education, mediation, seeking justice and advocacy. They include the quest for justice in the healing process of torture survivors, as they have found it to be very powerful in making torture survivors feel empowered through the whole process of legal education and understanding the criminal justice system, even if their court cases are not successful (Agger et al., 2008). Furthermore, as part of this project, torture survivors are encouraged to become active in the human rights movement by giving public testimonies, engaging in awareness-raising activities about human rights and encouraging others to report their cases of torture or CIDT (Agger et al., 2008). These are some of the activities we are hoping to initiate at CSVR in working with torture survivors.

2.5.1. The right to rehabilitation

The right to rehabilitation of torture survivors has not been a priority for the South African government. Specialised rehabilitation services for torture survivors are currently unavailable. A few services are provided by non-governmental organisations with insufficient resources to meet all of the needs of torture survivors. The need to fight for the right to rehabilitation for torture survivors in South Africa is clear. This is in line with Article 14 of UNCAT, which states that “each state party shall ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.” There is no law that forces the South African government to offer rehabilitation services specifically to torture survivors. This is because the state has not yet domesticated UNCAT. It is important that this right be included within the proposed Prevention and Combating of Torture of Persons Bill of 2012. In their review of the draft bill, Reilly (2009) and Mogapi (2012) observe that the bill lacks a survivor perspective, meaning “no measures to protect complainants or witnesses from reprisals, no right to reparations or rehabilitation, no special procedures regarding interviews

of traumatised people, and no victim-sensitive complaints mechanism” (p. 4). Both Reilly and Mogapi therefore suggest that it is important for civil society organisations such as CSVR and others to advocate for the right to rehabilitation and make it victim sensitive. This should include medical and psychological care as well as legal and social services for torture survivors. In its submission to parliament, CSVR has made some of these recommendations (Mogapi, 2012).

The key findings that come out of this study with non-nationals will be used for such advocacy and lobbying activities to influence policies and legislations. The focus on the right to rehabilitation is important to promote access to medical, psychological and legal services, as well as for the effective prevention of torture within South Africa.

3. Methodology

3.1. Research design

Research methods have become ways of approaching a question ... but first we need to identify our goal and be able to justify our choice of the research methods. (Willig, 2001, p. 2)

The research in this study was qualitative in nature. The word qualitative “implies an emphasis on the processes and meanings” that people make out of their lived experiences (Denzin & Lincoln, 1994, p. 4). Based on this assertion, the researcher found qualitative research methods to be relevant for the current research project to explore non-nationals’ experiences of torture and CIDT in South Africa. This is because Parker (1992) defines qualitative research as focusing on “(a) an attempt to capture the sense that lies within, and that structures what we say about what we do; (b) an exploration, elaboration and systematization of the significance of an identified phenomenon; (c) the illuminative representation of meaning of a delimited issue or problem” (p. 3). A core feature of qualitative research is that “satisfactory explanations of social activities require a substantial appreciation of the perspectives, culture and ‘world-views’ of the actors involved” (Parker, 1992, pp. 3–6). As Burgess (1991, in Smith, 1995) notes, prominence is given to “understanding the actions of participants on the basis of their active experience of the world and the ways in which their actions arise from and reflect back on experience” (p. 178).

The decision to use a qualitative approach was based on the fact that qualitative methods allow researchers “to study selected topics in depth and detail, as well as study phenomenon as they unfold in the real world situations” (Durrheim, 2006, in Stadler, 2010). Seeing that the purpose of the current study was to explore non-nationals’ experiences of torture, a qualitative research was appropriate as it allowed the researcher to gain a rich and in-depth understanding of the torture experiences of this vulnerable group. Furthermore, the qualitative research design allowed the researcher to explore the everyday experiences of non-nationals in their interactions with law enforcement officers. This design also allowed the participants to freely express their experiences in their own terms.

Lastly, one of the key assumptions in qualitative research is a “sensitivity to context,” or to how the ideological, historical and socioeconomic climate influences participants’ narratives (Coyle, 2007, p. 22). The context in which non-nationals live in Johannesburg was also of central interest in this study in terms of seeking to appreciate the meanings that participants create about their lived experiences and violent encounters with law enforcement officials in South Africa. The participants

in this study were recruited from two settings, namely organisations in Hillbrow and the organisations in the migrant network in Johannesburg. The section below motivates why these two settings were chosen as research sites for the research.

3.2. Research settings

3.2.1. Hillbrow as the first research setting

The organisational approach was employed to access participants for the study. This involved approaching various organisations in Hillbrow that work with non-nationals to ask for permission to recruit their clients to participate in the project. Why was Hillbrow chosen as a research site? Historically, Hillbrow was a 'whites only residential area' in Johannesburg under apartheid, but many white people started leaving the area in the late 1980s and early 1990s. Since then, many buildings have become dilapidated and the area has entered a state of decay. Today, the majority of Hillbrow's inhabitants come from rural areas in South Africa and from neighbouring African countries, such as Zimbabwe, Nigeria, Mozambique and the Democratic Republic of Congo. This part of the inner city is characterised by high levels of crime and drug dealing. In a general survey conducted by the Institute of Security Studies, Leggett (2002) asserts that the residents of Hillbrow described the area as a "crime hotspot." In light of these facts, it is reported that police raids are very common, but residents noted in Leggett's study that such raids have not been successful due to the police's corruption and abuse of power. Sixteen percent of respondents in Hillbrow admitted to having being illegally arrested at some point, and 21 percent claimed that the police had in the past asked them for money (Leggett, 2002). Leggett contends that it is common for police in Hillbrow to harass people or arrest them illegally in search of drugs or stolen goods. Given these findings, Hillbrow served as a good research area to explore non-nationals' experiences of torture and CIDT that have happened in South Africa.

In Hillbrow, the researcher only recruited participants from organisations that are not part of the migrant organisations' network, such as Voice of Wrongfully Imprisoned, Sisonke and Amis De Bukavu International. The main reason for this was to try and access non-nationals who may not be accessed through organisations in the migrant network. Another reason was to learn more about these organisations in terms of the services they offer and their target groups for the purpose of possible future community interventions in dealing with issues of torture and CIDT.

3.2.2. Migrant organisations' network as the second research setting

The second research setting was a migrant organisations' network made up of a number of organisations that protect and promote the rights of migrants living in South Africa. Some of the

organisations the researcher approached in the migrant network include Jesuit Refugee Services, Lawyers for Human Rights, Methodist Church, Somali Association of South Africa, Solidarity Peace Trust and Zimbabwe Exile Forum. The main reason for approaching these organisations was to foster and strengthen CSVN's existing working relationship with them in terms of advocacy and lobbying initiatives, but with a specific focus on issues of torture and CIDT amongst non-nationals in South Africa.

The section below discusses the steps and procedures followed in recruiting potential participants for interviews. This section also includes some discussion of the key ethical issues that were taken into account in recruiting and interviewing participants.

3.3. Procedures in recruiting participants for this study

CSVN as a human rights organisation is actively involved in the migrant organisations' network. The first step was to use some of the network's meetings to inform other organisations about this study on the torture of non-nationals and to ask for their permission and assistance to recruit their clients for interviews (by explaining the nature of the study to them and putting copies of the information sheet on the notice boards at their offices, including the contact details of the researcher).

For organisations that do not belong to the network, we first sent them emails asking for meetings with key stakeholders to tell them about the study and to request permission to recruit their clients. We also searched for the names of churches, youth clubs and non-governmental organisations in Hillbrow on the Internet. Those with contact details were contacted, and meetings were arranged with key gatekeepers to tell them about the study and ask for their help in recruiting potential participants. Other gatekeepers gave us the contact details of organisations of which we were not aware, and thus the recruitment process snowballed. Overall, the strategy of using organisations to access potential participants was beneficial as many of them work directly with non-nationals on a daily basis. For example, three participants saw the advert about the study (see appendix) and immediately called the researcher to arrange their individual interviews. These participants were eager to be interviewed, although two of them had unrealistic expectations that the researcher was actively going to assist them to file their cases in court and sue law enforcement officials for harassment and ill-treatment. The need for legal assistance was cited by almost all of the participants as a priority. This is one of the key recommendations the researcher discusses later in the report.

Some of the key gatekeepers also helped the researcher to recruit participants as they knew people who have been harassed and abused by law enforcement officials. Out of the 16 participants interviewed in this study, seven were referred to the researcher by key gatekeepers. It is important

to note that participation in this study was entirely voluntary.

The remaining six participants were accessed through snowballing. Some of the interviewees gave the researcher the contact details of their fellow non-nationals who had also been harassed and abused by law enforcement officials. In this way, the researcher used existing networks to access other participants who met the criteria for this study.

3.5. Key ethical concerns in the study

All ethical issues were taken into account in conducting this research study. The study was approved by the CSVR Ethics Research Committee, composed of three reviewers who are leading scholars in the area of violence prevention, including torture and CIDT. Once the study was approved, the researcher arranged meetings with key stakeholders to get their permission to recruit their clients. Once permission was granted, the researcher gave all the potential participants an information sheet explaining the nature of the study (see appendix) and those people who wished to participate in the study signed the informed consent form (see appendix). Other ethical issues such as confidentiality and privacy were also taken into account. For example, pseudonyms are used in the report to protect participants' identity.

Because the study dealt with a sensitive topic on torture or CIDT, its effects on the participants were a concern. According to the observations of the researcher, who is also a qualified counselling psychologist, the participants did not show any emotional difficulties as a result of their participation in the study. In fact, they used the interviews as a platform to express their need for legal assistance and complain about how law enforcement officials mistreat and harass them on a daily basis. Their narratives sounded as if violence by law enforcement officials was normalised and seen as part of policing culture in South Africa. Nonetheless, the participants were given the contact details of institutions such as Lawyers for Human Rights, Probono, Wits Law Clinic, Hillbrow Clinic and Trauma Clinic in case they needed any legal, medical and psychosocial assistance.

3.6. Data collection method: Individual interview

Schurink (1998) identified individual interviewing as the most common method of data collection in qualitative research. It is argued that individual interviewing allows an exploration of issues that may be too difficult or complex to explore through quantitative methods. Interviewing also helps the researcher to develop a better understanding of the meanings participants make of their lived experiences (Parker, 1992; Schurink, 1998). Individual interviews are generally used in qualitative research to understand deep levels of feelings, attitudes, behaviours and experiences (Schurink, 1998), which was the main aim of this research project.

The researcher conducted semi-structured interviews with the participants. This was done through a combination of a checklist on types of torture and CIDT and open-ended questions. In the first section of the interview, the researcher used the checklist to ask each participant whether she/he had experienced any incidents of harassment, intimidation or ill-treatment at the hands of law enforcement officers (e.g., the police, metro police, prison warders) in South Africa in the past three years (see appendix for interview schedule). This allowed the participants to remember and list all the incidents of torture and CIDT they experienced in South Africa, including who did it, how many times and where. The researcher then qualitatively explored these experiences more in-depth by asking each participant which of the experiences listed were the most difficult and for more detailed narratives of those particular experiences. This form of data collection was effective as it allowed the participants to report comprehensively about their experiences of torture and CIDT. Furthermore, it allowed the researcher to adapt his questions depending on the participants' narratives or issues and themes they raised. In keeping with Berg's (1995) recommendation, the researcher also used probing questions to elicit more information on ideas that were introduced by the interviewees. On the whole, the researcher was flexible and facilitative in his interviewing to allow participants to express their views and feelings. Some interviews were longer, while others were shorter. The researcher's overall impression is that the participants were hopeful that the key findings of the study would be used for advocacy and lobbying purposes to combat and prevent torture amongst non-nationals by law enforcement officials in South Africa.

3.7. Data analysis

All the interviews were transcribed before being subjected to a detailed analysis. Thematic content analysis was used, which involved reading and re-reading of participants' narratives to code and identify key themes in the interviews. In this study, the researcher followed Smith's (1995, p. 20–21) and Terre Blanche, Kelly and Durrheim's (1999, pp. 140–141) suggestions on how to do thematic content analysis:

- First, the researcher read all the transcripts a number of times to note significant themes in what the respondents said. The researcher then summarised the themes and made connections and associations amongst them, which served as preliminary interpretations.
- Second, the researcher started generating themes by coding them. In the process of generating themes, the researcher looked at the emerging themes and looked for connections amongst them for further analysis.
- Third, the researcher produced a master list of themes and ordered them coherently for further analysis. Once this was done, the researcher classified emerging themes into

different categories.

- Fourth, the researcher examined each theme to define more clearly what the theme captured.

The process of classifying, categorising and re-categorising themes was guided by the research aims. Once the themes were classified, the researcher examined their similarities and differences to write a detailed report about torture of non-nationals in South Africa.

In addition, Microsoft Excel was used to analyse basic descriptive statistics. Each variable was assigned a code of identification to denote the participants' age, gender, education level, employment status, torture experienced, where it happened and any assistance (legal, medical or psychological) received following the experience of torture.

In the section below, the key findings of the study are discussed. The section begins with descriptive information about the characteristics of the participants in the study.

4. Key descriptive characteristics of the participants

4.1. Nationality and gender differences

Nationality of the participants

For this study, interviews were conducted with sixteen non-nationals about their experiences of torture and CIDT at the hands of law enforcement officials in South Africa from 2009 to 2011. Out of these participants, seven were Zimbabwean nationals (four males and three females), four Congolese (three males and one female), three were Somalis (three males) and two were Nigerians (two males). It is evident in this sample that Zimbabwean nationals were many as compared to other national groups, followed by Congolese and Somalis. This is in line with Department of Home Affairs statistics, which indicate that there are many more Zimbabwean nationals living in South Africa than any other non-national group. It is estimated that more than 1 million Zimbabwean live in South Africa (Amit et al., 2009; CoRMSA, 2011; Hornberger, 2008). As noted above, these statistics may not be representative of all non-nationals in the country as many non-nationals do not visit Home Affairs as a result of administrative irregularities, allegations of corruption, long queues and fear of being arrested and deported to their countries of origin. The rising number of Zimbabwean nationals in South Africa may be attributed to the political and economic instability in Zimbabwe (Reeler, 2009). As a result, there is a mixture of asylum seekers, mainly political activists escaping persecution and torture by state agents, and economic migrants who see South Africa as an African economic hub that offers job opportunities (Reeler, 2009). Similar dynamics are in play with other non-nationals, such as Congolese and Somalis (Amit et al., 2009; CoRMSA, 2011). A debate has emerged regarding whether Nigerian nationals qualify as asylum seekers/refugees or whether they are economic migrants (Amit et al., 2009; CoRMSA, 2011). However, our interest at CSVr is not the legality or illegality of non-nationals but the manner in which they are treated by those in positions of authority, such as law enforcement officials. Given their marginalised position, non-nationals are more likely to be harassed and abused, irrespective of their status (a point the researcher discusses more in-depth later in this section).

Gender of participants

In terms of gender, eleven of the participants were male and five were female. It is evident that men were overrepresented as compared to women. Clearly, this raises questions about access to non-national women, particularly Somali and Nigerian women, as they were not represented in the study

despite all attempts to access them. One factor that contributed to the absence of Somali women is that the Somali men who were the gatekeepers were not keen to help the researcher (who is male) to access Somali women. Here, it is possible that culture played a role, as in Islam, men and women are treated differently. For example, some Islamic norms do not allow Muslim women to meet with men who are not related to them in private spaces (Elliot, 1996).

One gatekeeper said this to the researcher when he requested to speak with Somali women about their experiences of torture: “Somali women are a no go area for any outsider. We are no longer allowing outsiders to talk to our women.” The Somali male gatekeeper went on to talk about Sonke Gender Justice Network, which once facilitated a workshop with Somali women about domestic violence and steps they need to follow in reporting their abusive husbands to the police in terms of the Domestic Violence Act. The gatekeeper mentioned that many Somali men were angry about this workshop and that the decision was taken not to allow outsiders to talk to their women. He said, “We have our own ways of dealing with our women and we don’t want our women to be corrupted like South African women and started telling us about rights and rights. Our women have respect unlike South African women.” Other attempts were made to access Somali women through one organisation that mainly works with women from Somalia, but they were not interested in participating in the study.

In terms of Nigerian women, we did not find an organisation that mainly works with Nigerian nationals. Many organisations (in and outside the migrant network) seem to be accessing mainly Zimbabwean and Congolese nationals. We met the male Nigerian participants in the study on the streets of Hillbrow. They were not referred to us by any organisation, like all the other participants. They asserted that their women are back at home as their motivation to come to South Africa was to seek economic opportunities. One Nigerian participant described Johannesburg as the “city of gold indeed as there are so many opportunities to make money despite all the stereotypes that Nigerians sell drugs.” Later in the report, the researcher discusses some of these stereotypes and how law enforcement officers use them to justify their harassment and ill-treatment of non-nationals in South Africa.

4.2. Differences in age and marital and employment status of participants

In the study, nine of interviewees were between the ages of 25 and 30, three were between the ages of 31 and 35 and three were between the ages of 36 and 40. The majority of participants were in their late 20s. In terms of their marital status, eleven of interviewees were single or never got married, three were married and two were widowed (all Congolese women who narrated in their individual interviews that their husbands were tortured and killed by government agents in the

Democratic Republic of Congo and that this was the main reason they fled to South Africa). Participants were also asked whether they were tortured or not in their home countries. These findings will be discussed later in the report.

In terms of employment status, two of interviewees were sex workers (all Zimbabwean women) and five were hawkers or street vendors (selling sweets, vegetables, fruit, old clothes and books). Of interviewees working as hawkers or street vendors, four were women and one was male. It is evident that more women than men were involved in street trading. Of the participants, nine were unemployed, of whom all were men and many were Zimbabwean and Congolese. All the Nigerians interviewed were unemployed but described themselves as “hustlers,” meaning that they were making other plans to make money rather than seeking formal or informal employment. They explained that some of their plans involved selling cell phones, computers and old coins and diamond/gold items (e.g., watches, rings). It was interesting to note that some of the participants initially approached the researcher as a potential buyer and sought to sell him some of these items, including illicit drugs, but retreated once the researcher explained that he was only doing research about how non-nationals were being treated by the law enforcement officials. This possibly may have made some participants to be guarded in their responses. However, others opened up once they were assured that the researcher was not a spy or undercover police agent. Their trust was eventually solid enough that some participants were willing to connect the researcher with their fellow Nigerian nationals to participate in the study.

All the Somali interviewees said they owned small businesses in and outside the inner city of Johannesburg. They described themselves as “legitimate businessmen” at the mercy of law enforcement officials (particularly metro police) who often see them as easy targets for demands for bribes. Somali participants also complained about law enforcement officials coming to Mayfair⁷ almost every day to confiscate their goods if they refused to pay bribes. All these violent dynamics of how law enforcement officials treat different non-national groups in South Africa are discussed later in the report.

Immigration status of participants

All the participants in the study have been living in South Africa for more than five years. All spoke about their own lived experiences of harassment by law enforcement officials, despite the fact that fourteen of them had Section 22 (a permit from the Department of Home Affairs that attests that their status is still pending, which needs to be renewed every three months). Eight participants mentioned that their Section 22 permit had expired and attributed their failure to renew their

⁷ It is an area in the south of Johannesburg where there are many Somalis who own shops.

papers to the inefficiencies of the Department of Home Affairs, its long queues and some officials demanding that they pay bribes for their papers to be renewed. Amit and colleagues (2009) found administrative irregularities such as staff shortages, corruption and extortion to be very common at the Department of Home Affairs and reception centres throughout the country.

In this study, it became evident that law enforcement officials are torturing or ill-treating non-nationals, irrespective of their status in the country. Five participants reported that their valid papers were torn up by law enforcement officials. All the participants said this was a common occurrence. Three participants who had papers but forgot to carry them along were denied an opportunity to go home and get their papers. This made it difficult for some of these participants to provide any evidence of their immigration status once they were arrested. Two participants shared painful stories of how they were forced to sleep at Hillbrow police station for three days because they did not have their papers with them at that time the police searched them. Here, police seem to be actively involved in making legal immigrants “illegal,” which conjures up images of black people under apartheid being forced to carry their *dompas* at all times or risk being arrested. It is evident that papers do not serve their purpose, which is to protect non-nationals against these forms of abuse and harassment, as law enforcement officials just ignore them. These officials seem to be acting above the law, as some participants were arrested even though they had legal documents with them. For example, two participants shared stories of paying bribes in order for law enforcement officials not to destroy their papers. These officials were accusing them of carrying fake documents, despite the fact that their papers were legitimate. It also became evident in some of the interviews that law enforcement officials were unable to make the distinction between refugees and asylum seekers and other immigrants. All non-nationals were generalised as “illegal,” irrespective of their immigration status, which then rendered them vulnerable to all forms of abuse, as discussed in the sections below.

5. Findings and Discussion

5.1. Setting the scene for the findings

South Africa is regarded as one of the primary destinations for African non-nationals fleeing civil wars, political instability and economic hardship in their home countries. Despite the South African government's progressive asylum and refugee legislation, non-nationals are subjected to all kinds of discriminatory practices and negative attitudes. The 2008 xenophobic violence was a clear example of how South African communities (particularly township residents) feel about non-nationals. They accuse them of causing all social ills, such as violent crime, spreading diseases and taking their jobs and women (Hassim, Kupe & Worby, 2008). In terms of this study, it is evident that all these negative attitudes are not limited to communities but extend to law enforcement officials, who also tend to treat non-nationals unfairly and abusively through threats of deportation, extortion and exploitation. The patterns of these abusive practices are discussed in the sub-sections below, which contradict existing good policing practices that protect the rights of marginalised groups like non-nationals (Bruce, 2012). Clearly, law enforcement officials seem to be *producing* and *reproducing* xenophobic sentiments in their everyday policing of non-nationals, who are 'othered' and discriminated against (Hornberger, 2008).

The key themes in this report are threats of violence, deportation and verbal abuse of non-nationals by law enforcement officials; places (e.g., police stations, prisons) where these acts of ill-treatment and intimidation occur; hierarchies of riskiness in terms of one's nationality and gender; and the impact of experiences of abuse on the psychosocial and physical functioning of the participants in the study. Recommendations are provided at the end of this report regarding practical steps that could be taken to access non-nationals who are victims of law enforcement officials' abuse of power and to assist them in meeting their medical, legal and psychosocial needs. Other recommendations are offered on how the findings of this study can be used for lobbying and advocacy purposes to develop systems and policies to monitor and prosecute law enforcement officials who torture and mistreat non-nationals and other marginalised groups in South Africa.

5.2. Manhandling or threats and verbal abuse by law enforcement officials

Types of torture or CIDT by law enforcement officials

Some of the key questions asked in this study were whether the participants had ever been manhandled, roughed up, verbally abused or threatened by law enforcement officials. However, the level of force exerted was not excessive enough to meet the UNCAT definition of torture (later in the report, the researcher returns to this point to explore whether these acts by law enforcement officials qualify as torture or not). Some participants described their experiences of being beaten, manhandled and roughed up by law enforcement officials as follows:

Male Congolese Participant 1: Yeah, I remember, it's 2010. And soon here they [police] are just here in Yeoville and me I was in my office [owns a small Spaza shop]. I went somewhere and when I came back to my office I said let me go inside and I found the police they have **arrested too** many people inside the shop. I didn't see the police when I came in front. They know me, "hey you come here," so now [they] arrested me, **beat me in the face** and **started pushing me** on the ground.

Female Congolese Participant 1: I was walking with my son in Alberton and they [police] arrested for the paper, as I was supposed to go to Home Affairs but we were delayed for five days. Yeah, after that they arrested us and **starting pushing me and my son**. "Where are your papers? Where are your papers?" My son was crying. Don't know why they were pushing us because we were not fighting or anything.

Researcher: And let's go back a bit, when you say first when you were in Hillbrow he clapped you?

Male Zimbabwean Participant 1: Yeah!

Researcher: And you started bleeding?

Male Zimbabwean Participant 1: I started bleeding and other police officers joined and **started hitting me** and **pushing me on the ground**. And the other lady, the police officer, she took out the gun and she – like – ahh! You know!

Researcher: It must have been scary? I mean for her to point you with a gun?

Male Zimbabwean Participant 1: Yeah. **Scared!** It **scared me**. And I don't know what happened because I have not done anything. They just stopped me and that's when this one is **spraying my eyes** – you know that **pepper spray** – and **my eyes are like going inside**. That's when [he] dragged me and threw me in the van in the back and they drove [showed some marks/scars of the injuries he sustained during this process].

All these stories were excruciating as participants maintained that they had done nothing wrong to deserve being beaten or pushed by law enforcement officials (particularly the police). In the three extracts above, it is evident that police were abusing their positions of authority by harassing non-nationals for no reason. One participant asserted this view more aptly:

Male Congolese Participant 1: They [police] treat us **like the animals**. This is my first time to see these things here in South Africa, so they arrest us, we are going to the police station

Yeoville, no Hillbrow, and after two weeks, oh, one week then they send us to Sun City.⁸ **They are beating us like the animals** [at Hillbrow police station, but they were not beaten up at Sun City].

Interestingly, the majority of the participants mentioned Hillbrow police as notorious in mistreating and abusing non-nationals. The researcher returns to this point later in the report when discussing where incidents of torture or CIDT occur. All the participants in the study shared personal narratives of being verbally abused or threatened by law enforcement officials. In the extracts below, some of the participants gave vivid examples of how law enforcement officials verbally abused them:

Researcher: Were they shouting at you?

Male Congolese Participant 2: Yes, they were **shouting at me**. Saying you *Lekwerekwere*, you must go back to your country. You are now making our country to be **overpopulated and making it dirty**.

Male Congolese Participant 3: Yeah, sometimes when you are going on the street you see the police, "*Makwerekwere*, you must go back to your country, *makwerekwere*, you must go back to your country."

Female Congolese Participant 2: He said, "I am not abusing you foreigners, you are *kwerekwere*."

All the participants noted that law enforcement officials (mainly the police) often referred to them as *makwerekwere*, which is a derogatory term used to refer to 'black' foreign nationals. The term is so common that it is often taken for granted. In his analysis, Khanya (2008) tries to trace the origin of this term and its everyday meaning in the 'new' South Africa. He argues that "*Kwelakwela* is derived from the Zulu word *khwela*, meaning 'climb', and policemen used to say to people they had arrested (usually for infringing the pass laws) 'Kwelakwela', meaning 'Get in! Get in!'" The police's yellow vans were also known as *Kwela kwelas* in the township. Khanya contends that perhaps the term *kwerekwere* "has developed from that usage signifying illegal aliens being rounded up and arrested before being deported" to their home countries.

In terms of its everyday meaning, Harris (2002) and Matshinhe (2011) see the use of *makwerekwere* as a new form of racism in the new South Africa against 'black' foreign nationals, like the term *kaffir* was used to discriminate against black people under apartheid (Mngxitama, 2009). The term *makwerekwere*, as shown in the above narratives, is deployed by law enforcement officials to justify their ill-treatment of non-nationals as the 'other.' Members of the public, as shown in the extracts below, also seem to draw on similar discourses to discriminate against and mistreat non-nationals:

⁸ Johannesburg prison, which is popularly known as Sun City.

Male Congolese Participant 1: And then that guy start to swear us, “Hey you are *makwerekwere*, you must go back to your country, what are doing here in South Africa,” everything, everything, everything. Then we see the police [and] they are coming because they are patrolling the street ... We went to the police to say now we are going to open the case that you are swearing to us, you say we are *makwerekwere* and the guy said if you go there I will shoot you now and you must go back to your country. We went to the police to tell them that this guy is calling us *makwerekwere*. **They [police] started laughing at us and say, “Ah, you are *makwerekwere* and you must go back to your country.”** Ah, we say, “You, you are police, you are there for everybody if something is wrong we can come to you and you can assist us,” and they said, **“We don’t help *makwerekwere* and you must go back to your country.”**

Female Congolese Participant 1: And then when people see you being pulled to a van or dragged to a van – especially out there in Hillbrow – the people would just think, those are foreigners, *amakwerekwere*. **You know and they also learn that it is fine to abuse foreigners. Police must be role models to people.**

These extracts reveal that police are complicit in perpetuating xenophobic attitudes amongst members of the public as they also have negative attitudes towards non-nationals, which inform their daily policing practices. Is this ill-treatment of non-nationals only limited to the police? What about other law enforcement groups, such as metro police, prison warders or private security officials at detention centres such as Lindela and Musina repatriation centres?

5.3. Metro police officials as abusers of ‘poor’ hawkers/street vendors on the streets

Metro police as abusers of hawkers in the streets

The abuse and ill-treatment of non-nationals is not limited to the police. Participants accused metro police officials of treating non-nationals in the same manner, but their abuse was more common amongst non-nationals who sell goods on the streets. In the interviews, these participants also complained about metro police, who routinely confiscate their goods and verbally abuse them in the process:

Male Congolese Participant 3: That one that I sell, they take me, they say, **“This product you, you have commission from Congo, you take these things from Congo and bring them here.”** Things from Congo I can just take things like this one you just see small product. I just sell this product to survive and it’s not myself, look around all people they are selling but you don’t go catch them, **only us foreigners you come to catch us, why?**

Female Congolese Participant 2: Those metro police who are taking stuff for selling, I was the victim on 2011, 2011/10. We can’t sit at home, we have to do something, we have to pay

rent, and we have the children. So it was on Sunday, we want to sell afternoon and **the metro came and took our stock.**

Female Congolese Participant 3: I must say when we are selling we are not free, we are not just we are not free because every time you know **they can attack anytime and hurt any time**, you can even get the blood pressure because of some of the time metro come and take our stocks. I have got one friend, she used to sell down there at Sauer Street, now she is at home and she can't sell anything because metro took all her stock. She is sick and **she is not feeling well**. She has to feed the children, she has to pay rent, and she doesn't know what she can do.

Non-nationals seem to be self-reliant in starting their own small businesses by selling goods on the streets, which contradicts the dominant public discourse that foreign nationals are taking South African citizens' jobs. This allegation appears to be unfounded as many non-nationals are actively involved in an informal economy in the inner city of Johannesburg and surrounding neighbourhoods. Their major stumbling block is metro police officials who continuously confiscate their goods. Clearly, this makes it difficult for them to achieve any economic independence and support their families. Metro police officials also expect hawkers/street vendors to pay a fine once their goods have been confiscated:

Male Zimbabwean Participant 1: Like me, they give me R1,050 fine for goods worth R350. So other man was selling shoes, they give him for R2,000 fine. The stuff was for R600.

Female Congolese Participant 2: Metro took my stock and said I must pay a R3,000 fine.

All the interviewees asserted that it was common for metro police officials to confiscate their goods and demand that they pay fines afterwards, which many did not pay as the fines were exorbitant. This makes it difficult for many street vendors to continue selling their goods, as some have their goods confiscated at least twice, thrice or more times. All the participants also alleged that metro police officials were taking their goods for their own benefit rather than to maintain City Street Trading Laws.

In terms of the City Street Trading Laws, it is mentioned that hawkers/street vendors should only sell their goods in demarcated areas and stalls. For this, hawkers/street vendors need to apply for a permit from the municipality offices. All the participants in the study did not have this permit, and some spoke about their frustration that they have tried on many occasions to apply for this permit but the process has been too slow:

Female Congolese Participant 2: Many times we have been filling these forms to ask for a place in the market but there is no space.

Researcher: There is no space.

Female Congolese Participant 2: There is no space is what they are saying, the office told us there is no space, we have to wait. We can't sit at home, we have to do something, and we go and sell and metro come and take our stock.

It also emerged that metro police officials do not only harass hawkers/street vendors but also foreign motorists (mainly Somali nationals who own cars that they use to transport goods for their own small businesses). Similarly, Bruce (2012) found that metro police officials often target taxi drivers, as well as 'black' foreign nationals to solicit bribes. In this study, participants (mainly Somalis) shared stories of metro police coming to Mayfair (an area where many Somalis live in Johannesburg, which is currently known as the Little Mogadishu) and impounding their cars:

Male Somali Participant 1: Metro police ... **they took four cars.** And some of them have given bribe and they have taken back their cars. And some who never paid, **they are going to pay R2,400.**

Male Somali Participant 2: They tow the car, if you want to bribe, you bribe, and then they give you back. It's R2,000, maybe they take R500. They release your car. Sometimes they demand R1,000, because they will tell you, "For sure you need to pay R2,000, so better pay half." And instead of paying R2,000, they'll say, "Why you don't pay R1,000." So that is what normally happens. Okay. It is like every day – what I have is metro police – they are harassing us and threaten to cancel our driver licences if we don't pay bribes.

In his report *The Law for Sale*, Bruce (2012) demonstrates that paying *tjo-tjo* (a bribe) is not limited to foreign nationals. He shows that 86 percent of the South Africans in the Lead SA Survey (2008, cited in Bruce, 2012) reported that they paid a bribe to metro police officials. Corruption amongst metro police officials has reached a level where it is acceptable for motorists to carry *tjo-tjo* whenever they are stopped by a metro police car (Bruce, 2012). Two Somali interviewees shared accounts of metro police officials becoming violent and aggressive if they refused to pay bribes. As mentioned earlier, they often threatened to impound the participants' cars and cancel their driver's licences. Many Somalis narrated that they have no choice but to pay these bribes for their own economic survival. They spoke about feeling helpless and powerless in this situation, as the perpetrators are law enforcement officials who should be protecting rather than abusing them.

It has also emerged in the study that it is not only metro police officials who target Somalis but also the regular police. The participants narrated that police often come to Mayfair and demand that they pay bribes as they accuse them of selling stolen goods, despite the fact that this is not true:

Male Somali Participant 2: Normally what happens is – it's supposed to be metro police who are around. So if it's the police who came on the scene they just leave. So the other day the police are here and they see they are [bringing] tickets and whatever the metro – they just leave.

Researcher: So they take turns?

Male Somali Participant 2: They take turns. It's like that. So that's what I told you, when metro are here, police won't come. They always compete about who comes first to Mayfair, but sometimes they come together.

Similarly, Bruce (2012) found that metro police officials and members of SAPS collude with each other in committing acts of corruption. It is evident in this study that metro police officials and the police see bribery as the norm. This is worrying for our young democracy as these law enforcement officials are supposed to be enforcing the rule of the law rather than breaking it, as well as protecting the rights of marginalised groups, such as non-nationals. Hoffman (2011) describes corruption in South Africa as "cancerous." Bruce (2012) notes that "there is *now* an assumption that it is the norm and acceptable to pay a bribe" (p. 80). In this study, the participants also described paying bribes as a daily routine done for their own survival and in order not to be harassed or mistreated by law enforcement officials.

5.4. Where does the harassment or ill-treatment happen? Streets as dangerous spaces for non-nationals

Many participants reported that they were harassed and mistreated by law enforcement officials on the streets. As a result, streets could be described as dangerous places for non-nationals. Many participants spoke about their fears to walk freely on the streets as they always worry about being harassed by law enforcement officials:

Female Zimbabwean Participant 3: Hey, I'm even too scared to even walk around because police will be stopping you from corner to corner.

Male Zimbabwean Participant 2: Eish, you know I used to go to Turnfontein to look for piece jobs but you see you know can't walk freely because police keep on stopping you, and they arrested this other friend of mine. I'm too scared now to go around and look for piece jobs.

Male Nigerian Participant 2: Police always stop us and start searching us. They come here and see us standing here in the street and started searching. It is just harassment.

Interestingly, some participants were even scared to come to CSVR's offices for their interviews as they were worried about being stopped and asked questions by law enforcement officials (particularly the police). Apparently, it is common for police to stop non-nationals on the streets and ask them questions or to see their papers. Harris (2002) shows that law enforcement officials often rely on biocultural markers, such as accent, skin colour, attire and physical

appearance, to stop people they suspect of being non-nationals on the streets. It is evident that non-nationals are seen as easy targets to be abused and harassed on the streets.

Some participants asserted that they were severely beaten up by the police. In many of these cases, verbal abuse escalated into physical violence, especially when the survivor tried to reason with the police. Some were bundled into police vans and taken to a police station (mainly the Hillbrow one) where the beating continued:

Male Zimbabwean Participant 2: No, even when they arrived there [Hillbrow], they were beating me before in the street, they beating, **they beating and put me, and put me the boot in the car**, inside the car and then go there in Hillbrow police station. In Hillbrow they start beating me especially if you try and reason with them.

Jensen (2008) asserts that physical violence is often used when police feel their authority is being challenged. In this study, more than 6 participants (out of 16) reported that they were harassed at Hillbrow police station, which was described as notorious for the abuse of non-nationals:

Researcher: Is it Hillbrow police station where they took?

Male Zimbabwean Participant 1: Then when they were kicking it was like in Hillbrow police station. That's the **most notorious for abusing foreigners, for torturing foreigners** and so forth.

Male Zimbabwean Participant 2: Hillbrow police station. And I was // they were tying my hands – blood couldn't pass here. You see my hands they were like // they became like this.

Researcher: They were swollen?

Male Zimbabwean Participant 2: Yes, they were swollen. I couldn't touch anything. And at Hillbrow police station I was bleeding all over. They took me like // you see when you are in Hillbrow police station there is a big [gap] which is [down] and at the back. And they just left me there. They did their thing, talking, laughing there. And he was telling his friends that // you know. And that's when he came at around 4. He [drove] that van, he went with me down to Hillbrow hospital there. He drove there. He just said go inside. The moment I am walking going there into the hospital he drove away [speedily].

The above extracts confirm Reiss' (1968) argument that "the police station is more than just a series of cubicles. There are other rooms which are often hidden from the public view, and it is in these rooms that police harassment takes place" (p. 14). Many participants in the study narrated harrowing experiences of being severely beaten up at Hillbrow police station. One police officer in Reiss' (1968) study said that "on the street you can't beat them. But when you get to the station, you can instil some respect in them" (p. 14), which is what happened with some of the participants in the study. It was evident in many of the narratives that police were using violent means to instil fear in some of the participants:

Male Zimbabwean Participant 2: They said to me, “You think you are clever,” when I told them they don’t have a right to beat me up. Then they said, “Oh, you think you are clever, neh, and that is when they forced me to the van and started kicking me and took me to Hillbrow police station.

Male Zimbabwean Participant 1: They said, “We are arresting you, my man, you don’t have a paper. This is a fake, you are telling us lies.” And the other one said, “You think you are clever and you are not. What are you doing in Johannesburg? Go back to your place.” Those guys kicked me and beat me again. They said, “Now you are going to smell the jail. We are going to fix you because you think you are clever.” That is when they took me to Sun City. I stayed there for about more than four months.

With these two examples, the police wanted to demonstrate who was in charge. It seems that being defiant undermines the police officers’ sense of what they consider to be their authority, especially if a victim mentions anything about human rights. They interpret this as an act of defiance, with the victim undermining their intelligence, and violence is used to put the person who thinks he is “clever” back into his powerless position.

In one instance, the police subtly instructed other prisoners to physically abuse a non-national at a police station:

Male Congolese Participant 2: I hear that thing, and that time I never, I never know Tswana, but that thing I was right to put for my mind until I was getting there, eish, **there was beat me/there was beat me you** know I was never beaten [like this] since I born.

Researcher: Like beaten up by other prisoners?

Male Congolese Participant 2: Yeah, by other prisoners because he is the one who tell them to say you are supposed to beat this person, he is foreigner, he don’t know even Tswana. There was beat me, brother, when I come out there, I take two weeks, me I couldn’t even move.

In this study, the Hillbrow police station was mentioned as the main place of detention, where many participants were mistreated and beaten up. This is despite all the existing protocols and SAPS policies in which the police are expected to treat arrestees with respect and dignity. Interestingly, other places of detention such as prisons and repatriation centres were not listed as sites of torture and CIDT. This may be due to the small sample chosen for this study. It is therefore important that non-nationals who have been arrested in these places (e.g., prisons and repatriation centres) are also interviewed about their experiences of torture or CIDT within these institutions.

5.5. Hierarchies of riskiness in terms of one’s nationality and language

All non-nationals are at risk of being mistreated by law enforcement officials, but the extent seems to differ by nationality. Many participants said that this is due to existing stereotypes amongst law enforcement officials about certain groups of non-nationals. For example, Zimbabwean nationals in

the study complained bitterly about being seen as easy targets as compared to other non-nationals, such as Nigerians:

Male Zimbabwean Participant 3: People pay those police. Yeah, they know that Nigerians do not want to sleep in the cells. Those guys are afraid to sleep in the cells. They pay R1,000, they pay.

Researcher: They don't go to jail, the Nigerians?

Male Zimbabwean Participant 3: No, they don't them even if he is selling drugs there.

Researcher: What happens?

Male Zimbabwean Participant 3: Cops know that **they make money**. They don't go to arrest him that you are selling drugs, they will say, "Give money."

In his work, Altbeker (2005) shows that police treat non-nationals differently depending on their nationality. Similarly, Harris (2002) has found that certain nationalities appear to be at greater risk for apprehension, detention and abuse than others, solely by virtue of stereotypes about them. For example, there are stereotypes that Zimbabweans commit violent crimes and house breakings, Mozambicans commit bank robberies, Nigerians sell drugs, Somalis own Spaza shops, Congolese trade in the streets and so forth. All these stereotypes feed into how law enforcement officials treat and police non-nationals. However, this view was disputed by participants in the study:

Male Congolese Participant 2: I think South African police, as long as you are a **foreigner** they treat you the same. Because these things happened in phases! There are moments when it's more the **DRC** community is involved, there are moments where it's more **Zimbabweans**.

Male Zimbabwean Participant 2: It does not matter where you come from as long you are **foreigner**, police just harass you, but we **Zimbabweans are harassed by police more**.

Male Zimbabwean Participant 1: Police always target us **Zimbabweans**.

In analysing the above extracts, it is important to bear in mind that there are more Zimbabwean nationals living in South Africa than other non-national groups. As a result of their number, it is assumed that statistically many of them are more likely to be mistreated and harassed by law enforcement officials. Similarly, many Zimbabweans were attacked during the 2008 xenophobic violence (Hassim, Kupe & Worby, 2008). Largely, this is based on the perception that an influx of Zimbabwean nationals has entered South Africa, and many are accused of taking South African jobs because they are willing to work for lower wages. However, some researchers (Matshinhe, 2011) argue that Zimbabwean nationals are less vulnerable as compared to other non-national groups because many can easily speak local languages, particularly Zulu, which is closely

related to Ndebele. Many Zimbabweans can also speak English fluently and, as a result, it is easy for them to adjust and find job opportunities in the South African labour market.

Clearly, this is different to French-speaking nationals from DRC, Rwanda and other Francophone countries. The language barrier was mentioned as one of the major difficulties by non-nationals (particularly Congolese nationals). They asserted that law enforcement officials often speak with them in local languages despite the fact that they do not understand them:

Male Congolese Participant 2: They speak their language and tell me to speak in Pedi, so that they can help me. I'm going to help and said you I don't know English, police officer. I never hear this thing for some years, I never hear that.

Researcher: So they speak with you in Pedi?

Male Congolese Participant 2: They can't help you if you don't know Pedi.

This participant had gone to one of the police stations in the inner city of Johannesburg to report a case of theft but the police refused to help him as he was not able to speak with them in Sepedi or Zulu. He asserted that the police started harassing and calling him *kwerekwere*. Similar experiences were had by other Congolese nationals, with the police harassing or targeting them due to their inability to speak any of the local languages.

As has been found in other studies (Hassim, Kupe, & Worby, 2008; Harris, 2002), language was used as a marker to assess whether a person is South African or not. It was also evident that those who were unable to speak local languages were attacked during the 2008 xenophobic violence (Hassim, Kupe & Worby, 2008). Law enforcement officials (particularly the police) seem to be employing the same technique to discriminate against and harass non-nationals. Language was the main barrier for many Congolese nationals, as some were also struggling to express themselves in the interviews:

Female Congolese Participant 2: Maybe sometimes if you are // maybe people from DRC like us from DRC or us that we are not speaking English or we are speaking French, if I have a problem with maybe one guy from Zimbabwe or one guy from Malawi, because they speak the same language with the Zulu or your national language here, me I cannot speak Zulu or what, if the police they are coming and they come and say you are from Zimbabwe you can speak Zulu they are giving reasons, the police they say ah that one is not good, you are *makwerekwere*, you must go back to your country sometimes, yeah.

Researcher: So language is also a problem.

Female Congolese Participant 2: Yeah, language is also a problem, you understand.

Overall, it was asserted in the interviews that law enforcement officials generally target all non-nationals, although their level of vulnerability differs in terms of nationality, employment status and access to local languages. Gender also seems to play a role in this regard. In the next section, the

researcher discusses some of the factors that put female non-nationals at risk of torture and CIDT, particularly women who work as sex workers.

5.6. Gendered nature of ill-treatment and abuse by law enforcement officials

Of the women interviewed for the study, four were working as hawkers/street vendors. Their risk of harassment by metro police officials was very high. As discussed earlier, many female non-nationals shared painful stories of metro police officials confiscating their goods and demanding that they pay exorbitant fines. The abuse of female non-nationals was not limited to those working as street vendors but extended to those working as sex workers.

Of the women interviewees, two said they were working as sex workers in the inner city of Johannesburg. These women shared excruciating and traumatic stories of being harassed by police:

Researcher: And is it common for police to be **harassing you**?

Female Zimbabwean Participant 2: Yes. Long time ago it was difficult, but it is better now because we are working from the rooms. But that time I was working from President Street. So I used to get arrested by **police almost every Friday. I'd pay R300 every Friday.** It was in 2010, I was new in the streets. So people were running away and I didn't know where to run. The gate would get locked when the police came. If you were in you were in, and if you were out you were out. So the van came from this side and I was running the other side. There was a taxi parked and I hid next to it, but they saw me. One police man took out a **sjambok and hit me.**

Female Zimbabwean Participant 3: The police would come here and arrest us. Like, they would come to the rooms. They came to the room and found my roommate and I. They peeped through the keyhole and we refused to open. We eventually unlocked the door and they arrested us. They then took us to Faraday and then **we bribed with R200** each.

The participants here also complained about paying bribes to the police to avoid being arrested. They mentioned that abuse/harassment was not only limited to foreign sex workers but extended to all sex workers, including South Africans. All these women also reported that they were sexually abused by law enforcement officials (particularly the police):

Researcher: And in terms of abuse, **are there cases where police even sexually harass you sexually?**

Female Zimbabwean Participant 1: Yeah, some will say for you to be released a police officer would go and have sex with you if he [desires you]. **It has happened to me.**

Female Zimbabwean Participant 3: It happens a lot of times [having sex with police].

The recent report by Sex Workers Education and Advocacy Task [SWEAT] (2012) confirms that it is very common for law enforcement to sexually abuse sex workers. Of participants in that survey, 85 percent reported that they were sexually harassed by the police (SWEAT, 2012). Clearly, working as sex workers was putting these women at risk of harassment. Like the women in the SWEAT survey, the participants in this study also felt helpless and hopeless about getting any assistance as prostitution is illegal in South Africa and the police were taking an advantage of this:

Female Zimbabwean participant 2: Even some other girls end up dating those policemen so that they can get them out. If they are not the ones that just want to have a good time and then let you go. Some end up having relationships with them and you didn't even love him, so that he could get you out. Sleep your way out.

Researcher: Do you report all these incidents of being **sexually abused** by the police?

Female Zimbabwean participant 2: No, I don't because where will I go. I just become happy that I'm out of jail or I have not been **arrested**.

The participants narrated that they had sex with police for survival reasons, to avoid going to jail or paying a fine at the magistrate court. Some asserted that this experience was traumatic as they were forced to have sex to avoid an imprisonment. The participants were emotional when sharing some of these stories of abuse by the police.

Furthermore, they mentioned that their abuse was not limited to law enforcement officials. They complained about some of their clients harassing them:

Researcher: Clients also harass you?

Female Zimbabwean participant 1: Yes. Because you'd find that a person sleeps with you and **he threatens you demanding his money back**. You end up giving it back to him. He cannot finish in time and when you tell him to add money he refuses, saying you agreed on an amount. He tells you **he will shoot you**.

Researcher: So it's quite hard?

Female Zimbabwean participant 1: It is hard because you can't even go to the police and report this person [referring to a client] because police will just arrest you.

It is evident in all these extracts that sex workers are harassed by both law enforcement officials and their clients. It is possible that some clients take advantage of the fact that the participants will not report them to the police if they violate their rights. As a result, a march was organised early this year by Sisonke (an advocacy organisation for sex workers) to Hillbrow police station to demand that the police stop harassing sex workers. Some participants noted that the police are harassing them less since this public protest. Many participants asserted that prostitution should be legalised as this would solve many of their problems.

5.7. Impact of all these experiences on the physical and psychological functioning of non-nationals

Broadly, the participants spoke about the physical and psychological effects of their harassment, intimidation and physical abuse. The participants had no physical injuries, except one participant who complained about pain in the lower back (it was unclear whether this was a result of torture or another medical condition) and had scars from handcuffs on his wrists. This lack of major physical injuries may be attributed to the fact that law enforcement officials were not using specific sharp objects or sophisticated torture techniques (e.g., falanga, suspension, electric shocks, drowning) that could have resulted in such injuries. Nonetheless, participants spoke about the psychological impact of these experiences, such as living in fear:

Researcher: But then **emotionally**, do all these **experiences affect** you?

Male Zimbabwean Participant 1: Yeah, like **I'm restricted**. I'm still living **like a worm, you know**. You know what a [worms] **did, when there is moisture** that's when you see it happier...on the ground. When it's like burning, **the sun burns**.

Researcher: Then it gets underground.

Male Zimbabwean Participant 1: **Hiding!** We are playing hide and sick, because if you see the cops you can't easily approach them. We just try like hide.

Researcher: So **you are not free?**

Male Zimbabwean Participant 1: Not at all. **Like going out there**, you just feel like; you don't [want] to be this and that.

Female Congolese participant 2: We are too **scared** of police you know. You are not free to walk alone like you say what if they come again and **harass me**

The fear of law enforcement officials (particularly the police) was echoed by many participants in the study. Non-nationals are policing their movements to avoid police harassment and abuse. Their freedom to move freely is curtailed as they constantly worry about being arrested and deported to their home countries. The strategy here is to remain 'invisible' by not leaving their houses more often. The police were described as enemies:

Male Congolese Participant 3: When you see the police they're just like an enemy, they are **not your friends**. They are not // you know they are not like part of the community, they are just the police, they are those dogs, you know. They are **associated with abusing** you, making you feel bad, not protecting you. You see what I mean. Maybe I feel [ecstatic] because **they are not my police**; they are not in my country.

It was evident that some participants were angry at law enforcement officials and the manner in which they have been treated. This was the dominant feeling in many of the interviews – their rights were violated.

Researcher: Do you feel **angry** when you look at the police I mean do you sometimes feel angry of how they treat...

Male Somali Participant 1: Yeah sometimes, sometimes if you see it because they are the police which are working with the black yeah. If you are seeing them sometimes you are so angry because they like treat us like **animals like so**. Sometimes when I see them I remember how they **treated** me.

Seeing the police was the constant reminder of the pain that the participants have suffered in the hands of the police:

Male Congolese Participant 2: When I see the police and I don't want to greet and chat at the police, when I see the **police is greeting me I feel pain** but you know what, they is no way I can do, so pain if you look at this devil.

Male Congolese Participant 3: If I see the police, I remember now those things, I remember the first time when they want to **harass us** even we didn't do **anything wrong**.

All the above extracts indicate that the participants were psychologically negatively affected by these abusive experiences. However, it is only one participant who presented with symptoms which met post-traumatic stress disorder diagnosis (although there was no instrument/scale used to officially assess specific symptoms of each of these disorders). My sense as the researcher is that many participants were surprisingly still functioning well, despite having had violent encounters with law enforcement officials. This confirms Kaminer and Eagle's (2010) work that not all people who have been exposed to traumatic incidents go on to develop PTSD and other related mental disorders.

Interestingly, counselling was not mentioned as one of the key needs by the participants in this study. Firstly, it is possible that this may be attributed to lack of awareness about counselling services available for survivors of torture or what trauma counselling entails. Secondly, it is also possible that the participants had too many other worries, such as lack of accommodation, food and safety, to worry about their emotions. It is therefore important that the fact that counselling was not mentioned as a priority is understood within the context of context-specific and cultural differences on how people respond to torture and CIDT, showing some limitations of the PTSD model in explaining symptoms of torture for survivors in Sub-Saharan Africa (Eagle, 2002; Kaminer & Eagle, 2010; Reeler, 2009). It is important that the socioeconomic impact of torture is also assessed in order to help torture survivors to access contextually relevant psychosocial rehabilitation

programmes, including the right to legal assistance, which was mentioned as a key priority by many participants in the study.

5.8. Legal assistance as a priority

The participants were asked what kind of assistance they required. All the 16 participants mentioned legal assistance as a priority to provide them with protection and justice. The participants were feeling helpless because they lacked access to legal services to pursue their cases in court as part of seeking compensation and restitution:

Researcher: Do you feel **helpless** in this situation?

Male Congolese Participant 2: You **just angry**, but you can't do anything. You just get frustrated, and every time they arrest you, you just get angrier and angrier.

Researcher: And when you say you can't do anything, what do you by that?

Male Congolese Participant 2: I mean what can I do, I know you are above the law, and then you start abusing me, you say all sorts of things that you want to say to me, and they hurt me. But I can't do anything, I can't say anything back to you, I am scared you will do something to me. and I can't even // I can't do anything about it, I can't see to it that maybe next time you don't treat people like that.

Researcher: **What do you think needs to be done to deal with this situation?**

Male Congolese Participant 2: We need **lawyers to help us**. I want these police to **pay what they have done to me**.

Researcher: And what happened? Did you go and open a case?

Male Zimbabwean Participant 1: Yes. From there I went straight to the police station.

Researcher: Then when you went to the police station what happened?

Male Zimbabwean Participant 1: The time I arrived there I just talk – and for a while – because they saw me with those papers from the doctor; and they just said Spiderman! Spiderman! Spiderman! Ahh! They are laughing, those cops – they said what's wrong? We heard about you; you are Spiderman, we heard that you jumped on top of the van, and you know – you have been a problem with the police [the whole day]

Researcher: **And what happened? Did they investigate?**

Male Zimbabwean Participant 1: Yeah, one police officer was telling me; go back to Zimbabwe, this guy {the police officer who harassed this participant} is gonna kill you. He was saying that he is gonna kill you if he sees you again. I was afraid. And then as I go back there they even tell me; be very careful, [these guys] can kill you. I now feel I **need a lawyer to sue the police**. I think this what I need now.

It is important to mention that three participants tried to open cases of assault against the police but nothing was done about their cases. As a result, they spoke of a feeling of hopelessness and helplessness. Others were threatened by police officers when they tried to open cases of harassment against the police. Feeling helpless or hopeless was the dominant reaction in all the interviews. All the participants wished things were better in their home countries so that they could return, as they were tired of being treated “like animals” in South Africa. The participants were given

some information about free legal services if they wanted to pursue any criminal or civil case against the police, but none of the participants pursued a legal case at the time of the study as they were feeling hopeless about the South African criminal justice system in helping non-nationals. The researcher returns to this discussion later in the recommendations section, noting that it is important that survivors of torture and CIDT are provided with all the necessary legal assistance for compensation, reparation, rehabilitation and justice.

5.9. Do these acts qualify as torture or CIDT only?

As discussed in the literature review, it is difficult to distinguish between torture and CIDT. In terms of the existing literature, the definition of an act depends on the severity of the experience and the intention of the perpetrator. Looking at all the stories shared in this study, many incidents did not qualify as torture in terms of the UNCAT definition. Out of the 16 interviewees, only four told stories that were close to meeting the criteria of torture as defined in the existing literature. Similarly, Dissel, Jensen and Roberts (2009) analysed 483 cases of police violence against civilians and only 75 cases met the restrictive definition of torture. This study revealed no extreme torture cases, such as systematic beating, being denied food, seeing other people being killed, having cold water poured on the body, electric shocks, suspension and so forth.

The key finding of this study is that non-nationals are exposed to CIDT (rather than torture), including harassment, intimidation and verbal abuse, by law enforcement officials (particularly the police and metro police officials). Dissel et al. (2009) describe some of these incidents as social practices of violence that normally happen between law enforcement officials and civilians. Dissel et al. (2009) and Jensen (2008) argue that law enforcement officials often see the use violence as something legitimate in order to instil their authority.

Many acts of violence described in this study do not qualify as torture, which is often used as a political instrument to break the spirit of resistance and to cause suffering to the victim (Punamäki, Qouta & Sarraj, 2010). Rather, many of the incidents would be categorised as CIDT. Some researchers only regard physical acts that result in prolonged mental and physical impacts as torture, while other researchers consider CIDT (which does not involve any physical acts but intimidation and degrading treatments) as torture (Punamäki, Qouta & Sarraj, 2010). In this study, both physical acts and CIDT constitute torture. Similar to those of Punamäki, Qouta and Sarraj (2010), the findings in this study show that CIDT has an impact on the mental health of non-nationals, although the symptoms were not severe enough to warrant a PTSD diagnosis. Further research is needed in this regard to try and understand the shallow affect amongst participants in this study. It is important to explore coping strategies that non-nationals may be employing to deal with their violent experiences

of being harassed and abused by law enforcement officials on a daily basis. It is evident that non-nationals appear to live in a state of continuous violence.

Torture of non-nationals appears to be less physical but more psychological as it involves acts of harassment, verbal abuse and intimidation. In the existing literature, there are debates concerning whether physical torture and psychological torture are distinct in terms of mental health impact amongst torture survivors (Başoğlu, 2006, cited in Punamäki, Qouta & Sarraj, 2010). What was found in this study is that physical and psychological torture is equally distressing, although this also depends on the severity of the torture experience and its purpose (Punamäki, Qouta & Sarraj, 2010). The nature of torture plays a role in the symptoms of PTSD that survivors develop or experience.

Despite some of the technicalities around how to assess the excessiveness or proportionality of violence perpetrated against some of the survivors, it is clear that torture and CIDT are happening in the new South Africa. It is important that studies are conducted to explore and expose this phenomenon in more depth. These acts of abuse also happen to South African citizens, but being a non-national makes one more vulnerable to them.

5.10. Torture in the country of origin and second torture in South Africa

It is estimated that more than 80 percent of the clients who seek trauma counseling at CSVV's clinic have suffered torture in their countries of origin. Many of these clients also meet the criteria for PTSD and depression (Dix-Peek & Bandeira, 2010).

In this study, 67 percent of the participants mentioned that they were tortured in their countries of origin. The perpetrators were mainly state agents (e.g., the police), but in some cases they were rebel groups. These participants narrated that fear of persecution was the main reason they fled to South Africa to seek refuge. Some also shared narratives of how their family members were killed back at home.

The experience of being harassed and abused by law enforcement officials in South Africa was thus a second torture or secondary victimisation for most participants. It was a reminder of how they were harassed and mistreated by state agents back home. There was a sense of helplessness on the whole and that the world is a cruel place in which people do not care about their suffering and pain, including the South African citizens who attacked non-nationals during the 2008 xenophobic violence. Some participants also spoke about their frustration with the Department of Home Affairs in trying to renew their papers, as well as the lack of job opportunities, food, accommodation and a sense of safety in South Africa.

The participants spoke about their fear of being arrested and taken to Lindela repatriation centre for deportation. Apparently, this is very common, as it is estimated that there are more than 500 non-nationals currently at Lindela (Lawyers for Human Rights, 2011). The conditions at Lindela were described by some participants as poor, as the centre lacks medical care and has dirty rooms, inadequate meals and beatings by security officials – an issue that is worth investigating in future research studies. Some participants also alleged that many non-nationals are being deported without their status being verified or determined, as well as that they are being deported despite warranted fears of persecution in their countries of origin. For example, one participant in the study shared a painful story about her husband being taken to Lindela and not hearing anything from him for the past five years. It is alleged that her husband was deported back to the DRC, where it is possible that he was killed as he was wanted by state agents for his involvement in politics. The deportation of non-nationals to their countries of origin where they could face the death penalty or be tortured contravenes Article 3 of UNCAT. In terms of UNCAT, the South African government has a legal duty to protect non-nationals from torture and CIDT.

6. Concluding remarks and key recommendations

It is evident from this research report that abuse and ill-treatment of non-nationals by law enforcement officials is common in South Africa. Non-nationals live in a state of fear, as they are often seen as easy targets for harassment. Law enforcement officials rely heavily on stereotypes in their everyday policing of non-nationals, in which the use of violence is seen as part and parcel of their job. Their policing practices are also characterised by xenophobic attitudes.

It is against this backdrop that specific recommendations are provided on how the issue of harassment and ill-treatment of non-nationals could be addressed. These recommendations are based on the key findings of the study. This includes the need to raise awareness about torture and CIDT of non-nationals 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 influence existing legislation in South Africa, particularly the anti-torture bill currently in parliament.

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

Today, many people in South Africa think of torture as a thing of the past, where police officers used to abuse political activists who were opposed to the apartheid government (Jensen & Langa, 2012). However, it is evident from the literature, including this report, that torture of marginalised groups is a major human rights problem in the new South Africa (Dissel et al., 2009; Langa & Merafe, 2011). Many people seem to believe that it is acceptable for law enforcement officials 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 law enforcement officials to legitimise and justify violence against suspected criminals and other marginalised groups, such as non-nationals (Jensen & Langa, 2012). It is therefore important that public campaigns (through the media and community meetings) are organised to raise awareness about torture and CIDT in the new South Africa. Some of the recommendations below are already being implemented in CSV’s community work through the action group formed by non-nationals to raise awareness about their ill-treatment by law enforcement officials. It is hoped that this group will join other human rights groups and participate in collective struggles to seek justice and advocate for the needs and interests of torture survivors.

6.2. Access to psychosocial, medical and legal services for torture survivors

➤ Counselling services

Currently, the right to rehabilitation for torture survivors is not a priority for the South African government. It is therefore important that comprehensive rehabilitation programmes are implemented to meet the diverse psychosocial, medical and legal needs of torture survivors. Here, we recommend the psychosocial, medical and legal programme based on the work of Agger et al., (2008), in which psychological, socioeconomic, medical and legal needs are served. It is important that ethnicity, culture, inequality and class are also taken into account. 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, some of these recommendations are being implemented in CSVr's community work, as we are in the process of recruiting frontline workers (e.g., priests and lay counsellors within the non-national community) to train them in basic trauma counselling with torture survivors.

➤ Medical services

Many torture survivors have specific medical needs, and it is the duty of the state to provide such services. Higson-Smith and Flemming (2007), however, have found that many medical professionals in South Africa tend to neglect the medical needs of torture survivors. They attribute this to lack of training and knowledge about torture and its effects upon survivors' health. Against this backdrop, it capacity building of medical service providers on the unique features of torture and its treatment is recommended. CSVr has started networking with medical personnel (e.g., doctors, physiotherapists, psychiatrists) to whom we refer torture survivors for medical care and assistance. More work is needed in this regard to recruit more health professionals to offer medical assistance to torture survivors.

➤ Legal services

Currently, many survivors of torture and CIDT do not have access to specialised legal services to pursue civil or criminal cases against law enforcement officials once their rights have been violated. Seeking legal assistance was mentioned as a priority by participants in the study, but many people did not know about legal processes to follow in laying complains against law enforcement officials. Due to this lack of knowledge, some are discouraged from pursuing their cases and also fear intimidation from those in the position of authority.

Legal cases of this nature are normally expensive and many non-nationals may not be able to afford the legal fees of private lawyers to help pursue cases against law enforcement officials. It is important that torture survivors are provided with legal assistance. It is also important that partnerships are formed with various legal entities to offer legal services to torture survivors. CSVR has managed to form partnerships with Wits Law Clinic, Probono, Lawyers for Human Rights and Black Sash, who are helping some torture survivors learn about steps they may take if they are being harassed by law enforcement officials. It is also important that the resources of the Legal Aid Board are mobilised to provide legal services to torture survivors.

Currently, the major stumbling block is the fact that torture is not criminalised in South Africa. Changes must be made to the existing legislation to criminalise torture and punish law enforcement officials who use it against anyone, including suspected criminals and non-nationals.

6.3. Advocacy and lobbying

➤ Criminalisation of torture

The South African government has enacted the UNCAT but it has not yet signed the Prevention and Combating of Torture of Persons Bill into law. It is important for the South African government to criminalise torture by enacting this bill. Because torture is not criminalised, courts treat torture cases simply as assault or grievous bodily harm, thus not recognising the heinous nature of the crime (Mogapi, 2012). The law needs to make clear that torture is a crime, and those found guilty of perpetrating torture should be prosecuted. As part of its advocacy and lobbying strategy, CSVR has made a submission to parliament about the torture bill, raising a number of concerns. One of the key gaps is that the bill in its current form does not hold the state accountable for torture perpetrated by state agents. Another major gap is that the bill does not take the interests of survivors into account, including the right to make a complaint, the state's duty to investigate and the right to rehabilitation and compensation (Mogapi, 2012). It is argued that the state must award adequate and appropriate forms of reparation. CSVR will continue to advocate for the interests and rights of torture survivors once the hearings are held in parliament. Clearly, criminalising torture will help survivors to seek recourse through court processes.

➤ Monitoring places of detention

In terms of the research findings, it seems police holding cells are sites where torture and CIDT happen. Most police officers know that torture is illegal, but many feel that they have no option except to use torture, in which they contravene Section 35 of the Bill of Rights. It is important that

awareness-raising workshops are held with law enforcement officials on alternative methods of dealing with crime, without resorting to violent strategies.

It is also important that places such as prisons, Lindela repatriation centre and other places of safety are monitored closely. 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 and CIDT in police stations and other detention centres, such as prisons and mental health institutions. OPCAT (which the South African government has not yet ratified) states that some of these allegations could be monitored and investigated in detention places such as prisons, psychiatric hospitals, repatriation centres, places of safety and so forth. OPCAT “aims to prevent torture and improve conditions of detention and treatment of detainees through regular visits by an international body (the Sub Committee for the Prevention of Torture) and national bodies (known as National Preventive Mechanisms)” (Streater, 2008, p. 1).

➤ Independent Police Investigative Directorate (IPID)

So far many survivors of torture still are not keen to report their cases to the IPID because of its poor record in implementing its findings. It is highly recommended that organisations such as CSV support institutions such as the IPID in its transformation endeavours and efforts to be more independent and effective in dealing with cases of torture and misconduct by police. It is also important that IPIDT investigates all cases of torture committed by police in or out of police stations, including allegations of torture against miners in Marikana.

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9. Appendix

9.1. Advert letter about the study



CSVr

The Centre for the Study of
Violence and Reconciliation

Abuse of foreign nationals by police, metro police etc in South Africa

As a foreigner, HAVE YOU EVER BEEN TREATED BADLY, INSULTED OR SWORN AT, HARASSED AND ILL-TREATED BY THE POLICE, METRO POLICE OR SOLDIERS ETC. in South Africa in the last three years from 2009 to present ? If yes, I'm looking for migrants who are willing to talk to me as part of RESEARCH about their experiences of being harassed or tortured by law enforcement officials in South Africa.

Should you WISH TO PARTICIPATE IN THE STUDY OR KNOW SOMEONE WHO may interested, please feel free to contact me at (011) 717-4536/073 504 9890.

Should you have any further questions you can contact me on the number above or my manager, Megan Bantjes on (011) 403 5102. All interviews and information collected will be confidential.

We also offer FREE COUNSELING SERVICES to people who have BEEN BADLY TREATED OR ABUSED by law enforcement officials. Please call this number 011 403-5102 for any information about counselling services.

Yours faithfully,

Malose Langa

9.2. Interview schedule

DEMOGRAPHIC INFORMATION:

1. Age _____
2. Nationality _____
3. Immigration status _____
4. Gender Male Female
5. What is the highest level of education you have completed? _____
6. Employed (as what) _____ Unemployed (how long) _____
7. How long have you been in SA? _____
8. How long have you been in Johannesburg _____
9. Where do you currently live _____

10. Marital Status

(1) Never married	(2) Currently married	(3) Separated	(4) Divorced
(5) Widowed			

9.3. Checklist on Types of Torture and CIDT⁹

Event	Yes	No	If yes, by who?	How many times has this happened in the last three years (number)?	Where did this happen?
1. Have you ever been beaten by a law enforcing officer (e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
2. Have you ever been threatened by a law enforcing officer(e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
3. Have you ever been manhandled by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
4. Have you ever been roughed up by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
5. Have you ever been verbally			SAPS		Police station

⁹ These questions were adapted from the Harvard Trauma Questionnaire. Some questions were also adapted from the study conducted by Dissel, Steffen and Roberts (2009) on monitoring the reporting of torture in the South African media.

Event	Yes	No	If yes, by who?	How many times has this happened in the last three years (number)?	Where did this happen?
abused by a law enforcing officer (e.g. police, metro police or prison warder)?			Metro Police Prison Warder		Prison Other places (specify)
6. Have you ever been forced to write or make a confession(s) by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
7. Have you ever been forced to stand or stay in one position for a long period of time by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
8. Have you ever been exposed to rain, body immersion, cold by a law enforcing officer(e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
9. Have you ever been placed in a sack, box, or very small space by a law enforcing officer(e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
10. Have you ever been drowned and my head was submersed in water by a law enforcing officer (e.g. police,			SAPS Metro Police Prison Warder		Police station Prison Other places

Event	Yes	No	If yes, by who?	How many times has this happened in the last three years (number)?	Where did this happen?
metro police or prison warder)?					(specify)
11. Have you ever been suffocated by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
12. Have you ever been exposed to unhygienic conditions conducive to infections or other diseases (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
13. Have you ever been blindfolded by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
14. Have you ever been made to witness or hear others being tortured(e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
15. Have you ever been denied food and water by a law enforcing officer(e.g. police, metro police or prison warder)			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)

Event	Yes	No	If yes, by who?	How many times has this happened in the last three years (number)?	Where did this happen?
16. Have you ever been shocked repeatedly by electric instrument by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
17. Have you ever been denied the opportunity to sleep by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
18. Have you ever been drugged by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
19. Have you ever been threatened with a firearm by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
20. Have you ever been sexually exploited or forced to or asked to perform indecent sexual acts, engage in sexual activities by a law enforcing officer (e.g. police, metro police or prison warder)?			SAPS Metro Police Prison Warder		Police station Prison Other places (specify)
21. Other (specify)			SAPS		Police station

Event	Yes	No	If yes, by who?	How many times has this happened in the last three years (number)?	Where did this happen?
			Metro Police Prison Warder		Prison Other places (specify)
22. Has any of these experiences of torture and CIDT happened to you back at home? Which one (specify)? _____			Police Military Prison warder		Police station Prison Other places (specify)

Detailed narratives on torture and CIDT

1. In terms of all the experiences of harassment or ill-treatment you had with law enforcement officials, I would like to ask you which of the above experience (s) was/were most difficult for you? Tell me more about what happened?
2. Who was involved?
3. Where this happen?
4. How did this/these experience (s) affect you physically? (Short or long-term)
5. How did this/these experience (s) affect you emotionally, sexually and psychologically? (Short or long-term)
6. How did this/these experience (s) affect you socially and a sense of safety? (Short or long-term)
7. Did you get any psychosocial assistance following this/these experience (s)? Where? What was the quality of the service?
8. Did you get any medical assistance following this experience (s)? Where? What was the quality of the service?

9. Did you get any legal assistance following this/these experience (s)? Where? What was the quality of the service?

Advocacy related questions on torture and CIDT of non-nationals

1. Are there any things that you think should be done to deal with harassment, intimidation and ill-treatment of non-nationals by law enforcing officers (e.g police, metro police, prison warders etc) in South Africa?
2. Are there any things that you think should be done to help non-nationals who are survivors of law enforcing officers' harassment, intimidation and ill-treatment in South Africa?
3. Is there anything else you would like to add?

Thank very much for time to do this interview with me. Information about legal, psychosocial and medical services will also be given to the participants at the end of each interview.

9.4. Information sheet for the organisations



Dear Sir/Madam

My name is Malose Langa. I am a researcher from the Centre for the Study of Violence and Reconciliation (CSVr), which has been working with victims of apartheid torture and more recently tortured migrants from other African countries. We have become more and more aware of reported incidents of torture against migrants in South Africa by law enforcement officials, such as the police, metro police, military officers and so forth. Before developing any intervention strategies to raise awareness about this problem and help tortured migrants, we would like to conduct a study on the experiences of torture amongst non-nationals that have happened in South Africa over the last three years (2009 to 2011). The main aim of this study is to understand how law enforcement officials are treating non-nationals in this country and to use findings of this research to lobby and advocate for the rights and needs of non-nationals.

We would like to invite your organisation to help us recruit potential participants that we may interview for this study. This could be done directly by you or by putting posters in your offices advertising the study.

The individuals that we would like to recruit for the purpose of this study should have been tortured or ill-treated by law enforcement officials in South Africa in the last three years. The information that is collected through all the interviews will be treated confidentially and the identity of these individuals will be protected. We will also refer participants for counselling or legal assistance they may need related to their torture.

Should you wish to assist me and would like to meet or would like to refer possibly participants for this study immediately, please feel to contact me at (011) 717-4536 or 073 504 9890. Should you need further information about this project or any other questions you can contact me on the numbers above or my manager Megan Bantjes on (011) 403-5650.

Thank-you

Yours sincerely

Malose Langa

9.5. Information sheet for potential participants



Dear Sir/Madam

My name is Malose Langa. I am a researcher from the Centre for the Study of Violence and Reconciliation (CSVr). We would like to invite you to participate in a research study. This study is aimed at understanding acts of abuse and harassment that might have happened to you as a non-national by police officers, metro police, prison warders and military officers in the last three years (between 2009 and 2011). The main aim of this study is to understand how law enforcement officials treat non-nationals in this country. Do law enforcement officials treat non-nationals with respect or do they harass/ill-treat them? Have you ever been tortured, ill-treated or harassed by law enforcement officers? If yes, we would like to invite you to come and participate in this study.

Your participation in this study is voluntary and you can withdraw at any time. The interview may take about one hour or more. This interview will be audio recorded with your permission and your name will not be used anywhere in the report.

Your interview with the researcher will be treated confidentially and your identity will remain anonymous. You do not have to answer any questions that you do not feel comfortable with during the interview process. However, your honest answers to our questions will help us better understand if ill-treatment and harassment of non-nationals by law enforcing officers is happening in South Africa. We greatly appreciate your willingness to participate in this important study. The

information collected out of this study will help CSVR as a human rights organisation (see our website www.csvr.org.za) to better understand types of treatment that you have experienced, their impact and the assistance you received as a result of your experience of being ill-treated and harassed by the law enforcing officers in South Africa. Furthermore, the information will also be used to understand the nature of the problem better, and influence intervention and advocacy initiatives in dealing with torture, harassment and ill-treatment of non-nationals in South Africa.

Should you wish to participate in the study or refer someone who may be interested, please feel free to contact the researcher at (011) 717-4536. Should you have any further questions you can contact me on the number above or my manager, Megan Bantjes on (011) 403 5102.

Thank-you

Yours sincerely

Malose Langa

9.6. Consent form for the participants



I have read the information sheet for participation in the research entitled: Exploring torture and CIDT among non-nationals and understood what this research involves and what is expected of me.

I understand that:

- I may refuse to answer any questions that I feel uncomfortable answering.
- I may withdraw from the study at any time and it will not be held against me in any way.
- Participation for this interview is entirely voluntary and no information that may identify me will be included in the research report.
- I also understand that the researcher can make use of direct quotes but that my name will not be associated with these quotes.

I hereby consent to participate in this research project. I also give the Centre for the Study of Violence and Reconciliation permission for my results to be used in the write up of this study.

Name: _____

Date: _____

Signature: _____

9.7. Consent form for tape recording

I grant permission for this interview to be audio recorded. I understand that the contents of the tapes will be transcribed for the purpose of further analysis and that my identity will be protected, access to tapes will be restricted and the tapes will be stored in a secure location.

Signed:

Date: