



ANALYSIS OF EXISTING DATA ON TORTURE IN SOUTH AFRICA

with specific focus on annual reports
published by IPID and JICS



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LIST OF ABBREVIATIONS

CIDT	-	Cruel, Inhumane and Degrading Treatment
CSV	-	Centre for the Study of Violence and Reconciliation
DCS	-	Department of Correctional Services
JICS	-	Judicial Inspectorate of Correctional Services
ICCPR	-	International Covenant on Civil and Political Rights
ICD	-	Independent Complaints Directorate
IPID	-	Independent Police Investigative Directorate
OPCAT	-	Optional Protocol to the Convention Against Torture
SAPS	-	South African Police Services
TB	-	Tuberculosis
UNDR	-	Universal Declaration of Human Rights
UNCAT	-	United Nations Convention Against Torture
UN	-	United Nations



EXECUTIVE SUMMARY

The practice of torture and cruel, inhumane and degrading treatment (CIDT) remains a major human rights violation in post-apartheid South Africa. This is despite the South African Constitution prohibiting torture and CIDT, the country's ratification of the United Nations Convention Against Torture (UNCAT) and its signing of the Optional Protocol to the Convention Against Torture (OPCAT) and other international instruments outlawing torture (Dissel, Jensen & Roberts, 2009).

Currently, there is little information on patterns and trends of torture in South Africa. This research report seeks to fill this gap, analysing data collected and annual reports released by two government oversight bodies, namely, the Judicial Inspectorate of Correctional Services (JICS) and the Independent Police Investigative Directorate (IPID), over a period of five years (2007 to 2011) to try to understand patterns of torture and CIDT.

Key findings of this study show that acts of torture in the annual reports were classified as assault, assault with intent to cause grievous bodily harm, attempted murder or murder due to a lack of law criminalizing torture at the time this research was being conducted. JICS' annual reports show that more than 200 inmates died in South African prisons from 2007 to 2011 as a result of unnatural causes, including suicide and assault on the inmate by other inmates or by staff members. Furthermore, the annual reports show that assault by prison officials is one of the most common complaints received from prisoners, with more than 6,000 cases of such assault reported to JICS over the period under study. Similarly, IPID annual reports show that 1,778 cases of assault and 89 cases of torture were reported against police from 2007 to 2011. These figures show that torture remains a major human rights violation in the new South Africa.

The report provides key recommendations for both JICS and IPID in dealing with the problem of torture and CIDT. Some of the recommendations include that JICS be made independent (similar to IPID), that reporting of torture be mandatory for JICS and IPID. Furthermore, it is recommended that South African government ratify OPCAT prevent torture and CIDT in places of detention, such as correctional centres, police cells, psychiatric facilities, repatriation centres and places of safety for children and juveniles through regular visits.

1. INTRODUCTION

Over the last few years, a number of reports have been written about torture and cruel, inhumane and degrading treatment (CIDT) in post-apartheid South Africa (see, for example, Dissel, Jensen & Roberts, 2009; Higson-Smith, Mulder & Masitha, 2006; Muntingh, 2008, 2011; Streater, 2008). These reports range from empirical studies to media analysis and policy assessments of existing legislations, conventions, charters and so forth. On the whole, they have revealed the persistence of torture in the new South Africa, despite the fact that there is no national prevalence data on torture and CIDT. The paucity of data on this topic is attributed to the fact that torture in South Africa is mainly associated with the brutal regime of the apartheid government. However, with increasing reports in the media on this topic, torture is slowly being seen as an endemic problem in the new democratic South Africa, and not as something only associated with the apartheid regime.

It is therefore important that empirical studies are conducted in this regard. The aim of the current study was to look at the available data on torture and CIDT in South Africa by reviewing and analysing annual reports published from 2007 to 2011 by IPID, which is an independent body responsible for investigating police abuse of power, including allegations of torture and CIDT, and JICS, another independent body responsible for monitoring conditions in correctional centres, including torture and ill-treatment or punishment of inmates. Other studies have found that marginalized groups, such as suspected criminals and inmates, are at a high risk of torture and CIDT (Dissel, Jensen & Roberts, 2009; Muntingh, 2008, 2011). This was the main reason the researcher in this study chose to analyse annual reports published by both IPID and JICS, as these two institutions play a significant role in protecting the rights of suspected criminals in police custody and inmates in correctional centres.



In addition to reviewing and analysing the reports, individual interviews and group interviews were conducted with key officials in IPID and JICS to determine their views on torture and CIDT in the new South Africa, with a specific focus on “those less fortunate in society—the suspected criminals, and the inmates” (Dissel et al., 2009:1). The study shows that torture is still happening in the new South Africa, which indicates the need to reform our policies and legislations. The South African government has signed various treaties, conventions and charters against torture and CIDT, but there was no specific law that criminalized torture until recently, when parliament promulgated the Prevention and Combating of Torture of Persons Act, which will protect and promote the needs and rights of torture survivors. The new Act will also make it compulsory for institutions such as IPID and JICS to report cases of torture in their annual reports, which was pointed out by all officials interviewed in the study as a major limitation, as there was no law that criminalized torture before this Act.

Furthermore, it is argued in the study that the government should ratify OPCAT, which will help prevent torture and CIDT in places of detention, such as correctional centres, police cells, psychiatric facilities, repatriation centres and places of safety for children and juveniles through regular visits.

1.1 Key aims of the study

In summary, the key aims of the study were as follows:

- 1 To look at cases of torture and CIDT based on the available information in the reports published by IPID and JICS over the last five years (2007 to 2011).
- 2 To assess and review IPID's and JICS' present reporting mechanisms of torture and CIDT.
- 3 To conduct interviews with key individuals within these institutions to get more information on patterns and trends of torture and CIDT and how these cases are recorded and classified.

2. UNITED NATIONS CHARTERS AND CONVENTIONS ON TORTURE

Following World War I and II, the United Nations (UN) developed and adopted various human rights charters and conventions to bring peace and stability in the world. This included the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1984 United Nations Convention Against Torture (UNCAT). These charters and conventions show that the prohibition and prevention of torture is something that has always been important in terms of the international law.

Today, UNCAT has one of the most accepted definitions of torture worldwide:

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.

Even the current South African Prevention and Combating of Torture of Persons Act uses the UNCAT definition of torture. The new South African government has showed some commitment



to preventing and eradicating torture by signing and ratifying various UN treaties, such as ICCPR and UNCAT. It has also supported many other African instruments and charters against torture and CIDT, such as the African Charter on Human and People's Rights and the Robben Island Guidelines. Despite this, torture is still a problem in South Africa, but the difference is that the victims are no longer political activists but marginalized groups, such as criminal suspects and prisoners. 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" (45).

The South African government signed OPCAT in 2006, but has not yet ratified it. As a result, there are no independent national prevention bodies as required by OPCAT to monitor places of detention, such as prisons and police cells. Torture most often happens in places of detention, and it is therefore important that these places are closely monitored to prevent torture from occurring. Regular visits to such places have been found to have a deterrent effect (Streater, 2008). South Africa is expected to establish independent National Preventive Mechanisms (NPMs) once it has ratified OPCAT. These NPMs will function independently from the state to ensure their effectiveness. They will make recommendations to the state on how to improve conditions in places of detention in order to prevent torture and CIDT.

So far, South Africa has two state-funded oversight bodies to monitor correctional centres and police, namely, JICS and IPID, which are the main focus of this research report.

3. OVERSIGHT BODIES IN SOUTH AFRICA

Following the end of apartheid, a priority was that places of detention be transformed to comply with the new values and norms of our democracy as enshrined in the Constitution. Under apartheid, correctional centres and police stations were notorious places where political activists were kept and tortured. Post-1994, new policies and legislations were enacted that led to the formation of JICS and IPID (formerly known as the Independent Complaints Directorate {ICD})

3.1 Monitoring correctional centres: Judicial Inspectorate of Correctional Services

JICS was established through the Correctional Services Amendment Act 102 of 1997 (as amended by Correctional Services Act 111 of 1998). Its purpose is to inspect prisons to ensure that prisoners are treated in a humane manner and their rights are respected and preserved, including that their living conditions meet a certain standards as enshrined in Section 35 of the Bill of Rights. JICS is also empowered to investigate cases of death in prisons (natural or unnatural), solitary confinement, the use of force (whether it was justified or not) and the use of mechanical restraints.

JICS is an independent office under the control of an inspecting judge, who is appointed by the national president for a period of four years. Inspecting judges are usually retired judges of the Supreme Court of Appeal or High Court. An active judge may also be seconded to this position. The current inspecting judge is Vusi Tshabalala. Inspectors and other support staff members are appointed to work in the office of JICS. Currently, JICS has 59 staff members, excluding independent correctional centres visitors (ICCVs). These staff members assist the inspecting judge in inspecting conditions in correctional centres and treatment of inmates in order to write reports and submit them to the minister of correctional services and parliament, particularly the Portfolio Committee on Correctional Services. JICS is also responsible for investigating complaints it receives from prisoners about conditions in correctional centres.

ICCVs (previously known as independent prison visitors) are appointed by the office of the inspecting judge in consultation with community organizations to regularly visit correctional centres, interview inmates in private, record their complaints and make follow-ups to see



whether inmates' complaints have been dealt with once they have been submitted to the head of correctional centre, who is responsible for assisting ICCVs in fulfilling their duties and functions. Each ICCV is expected to submit a quarterly report to the office of the inspecting judge that includes the duration of visits, the number and nature of complaints dealt with and the number and nature of complaints referred to the head of correctional centre. Inmates may also complain directly to JICS offices by telephone or letter.

As mentioned earlier, the office of the inspecting judge submits quarterly and annual reports to the minister of correctional services, parliament and the president. These reports include information on the number of deaths in correctional centres, all cases of segregation and all cases where force or mechanical restraints were used. The reports also include details of steps taken to deal with some of the complaints received from inmates and specific recommendations that need to be implemented by the Department of Correctional Services (DCS) to ensure humane treatment of prisoners. In the findings section below, the researcher will discuss whether torture or CIDT is a problem in correctional centres based on the available data published in JICS' annual reports.

3.2 Policing police: Independent Police Investigative Directorate

IPID (formerly known as the Independent Complaints Directorate, or ICD) was established by the South African Police Service Act 68 of 1995. Due to problems such as lack of independence and powers, ICD was replaced by IPID through the Independent Police Investigative Directorate Act of 2011. In terms of this Act, Section 28(l)(a) to (f), IPID's purpose is to investigate cases of death in police custody, death as a result of police actions, any complaint relating to the discharge of an official firearm by any police officer, rape of any person while in police custody and any complaint of torture or assault against a police officer in the execution of his or her duties.

Under apartheid, many South Africans were tortured by police officials. In an effort to overcome this legacy, the new South African government established ICD (now IPID). The South African Police Services (SAPS), as part of transforming its image, also adopted a policy on the prevention of torture. In terms of this policy,

No member of police may torture any person, permit anyone else to do so, or tolerate torture of another by anyone. No exception will serve as justification for torture- there an simply be no justification, ever, for torture. Any order by a superior or any other authority that a person be tortured is therefore unlawful and may not be obeyed. (Muntingh, 2011: 13)

Despite this policy, torture in the hands of police remains a problem (Dissel, Jensen & Roberts, 2009; Langa & Merafe, 2011; Muntingh, 2011).

In terms of Section 29 of the IPID Act, the station commander, and any member of SAPS or the municipal police service, must within 24 hours of becoming aware of any matters referred to in Section 28(l)(a) to (f) submit a written report to IPID. Police must provide their full cooperation to IPID, including but not limited to: the arrangement of an identification parade within 48 hours of the request being made by IPID; the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control that has a bearing on the matter being investigated; and any other information or documentation required for investigation purposes. Members of the public or victims of police actions as identified in Section 28 of the Act may approach IPID offices by telephone or letter/email to report their case, including allegations of torture or CIDT against police. IPID may also initiate its own investigation without waiting for a formal complaint to be made.

Once IPID's investigation is done, recommendations are made and submitted to the police management for disciplinary proceedings and the National Prosecuting Authority (NPA) for criminal prosecution purposes.

IPID submits annual reports to the minister of police and parliament (Portfolio Committee on Police). Annual reports include audited financial statements and a detailed report on cases that IPID investigated and how they were dealt with during the course of the year. Below, the researcher analyses all the annual reports published by IPID from 2007 to 2011 to assess cases of torture and CIDT reported to IPID and they were addressed.



4. METHODOLOGY

4.1 Data collection

The data collection process for this study was divided into two phases. The first phase entailed reading and rereading available annual reports published by JICS and IPID from 2007 to 2011. In total, 10 annual reports were analysed (five for IPID and five for JICS). The focus for IPID annual reports was the following key issues:

- Deaths of persons in police custody
- Deaths as a result of police actions
- Cases of assault against the police
- Cases of torture and CIDT against the police

The focus for JICS annual reports was the following key issues:

- Deaths in correctional centres (natural or unnatural)
- Homicides by inmates or officials
- All cases of solitary confinement
- Unlawful use of force by correctional officials or inmates
- Inhumane treatment of inmates
- Reported cases of torture and CIDT

Using the annual reports to collect data was not an easy task, as some of the reports only provide statistics/figures but with no explanation whatsoever. This made it difficult to assess whether an incident or event amounted to torture. Streater (2008) attributes this problem to the fact that at the time when these annual reports were being written there was no law that specifically criminalized torture in South Africa. Many cases that meet the criteria for torture were not classified as such but only as assaults with intent to grievous bodily harm.

4.2. Data analysis

The process of data analysis involved reading and rereading the annual reports to assess patterns and trends of torture and CIDT. On the whole, the current study provides some rich insights. For detailed data analysis, these were the steps followed:

- First, total figures of certain events, such as murder, assault, death in custody or correctional centres as a result of police or correctional officials' actions and so forth, were analysed in the annual reports, and some comparisons were made from year to

year to look at the changing patterns of torture or CIDT from 2007 to 2011. Following this, some critical comments and inferences were made, as the reports do not say much about these figures/statistics.

- Second, specific themes were developed based on the analysis of all these figures. These themes were then summarized and connections also made for further analysis and discussion.
- Third, events in which details were provided were read and reread to assess whether the event met the criteria for torture. All these events were categorized and classified accordingly and critical comments were provided about their severity as torture or CIDT.

The process of analysing the figures and classifying, categorizing and re-categorizing the themes in the reports was aimed at assessing patterns and trends of torture and CIDT with a focus on JICS and IPID.



5. FINDINGS AND DISCUSSION

5.1. South African correctional centres as places of torture and ill-treatment

Currently, South Africa has 236 correctional centres.¹ It is reported that many of these centres are overcrowded. For example, the prison population increased from a total number of 165,230 in 2008 to 183,404 in 2012 (an increase of 20 to 30 percent that has led to overcrowding in some correctional centres).² It is important to note that these figures do not include individuals held in police cells. In these statistics, the majority of inmates³ are male. As a result of overcrowding, many inmates are subjected to gang violence, are sodomized, become infected with HIV/AIDS and have no access to education or rehabilitation services (Fagan, 2005; Gear & Ngubeni, 2002). According to Langa (2007), correctional centres often do more harm than good. Langa argues that while correctional services are supposed to rehabilitate, they often do the opposite, perpetuating the destructive and unhealthy behaviour that led to the offender's incarceration in the first place due to lack of rehabilitation programmes in correctional centres. Dissel (1997) shows that gangsterism, sexual violence and drug trafficking are prevalent in South African prisons. Sexual violence is also rife in the country's correctional centres, which puts many inmates at high risk of HIV/AIDS infection (Gear & Ngubeni, 2002). The occurrence of forced, coerced and consensual sodomy is a common reality of prison life, and is considerably increased by gang activities (Gear & Ngubeni, 2002).

In terms of Section 1 of the Correctional Service Act, JICS, as discussed above, is mandated to inspect the conditions and treatment of inmates in correctional centres. It is against this backdrop JICS' reports were reviewed and analysed in an attempt to understand whether torture or CIDT is happening among inmates. In the section below, key findings of the study are discussed in terms of the number of deaths, reported cases of solitary confinement, unlawful use of force, assault and inhumane treatment in correctional centres.

1 The term "correctional centre" is used interchangeably with the term "prison" in this report to comply with all changes in the Correctional Services Act.

2 Please note that these figures include awaiting-trial prisoners. The significant increase in the number of inmates is attributed to the rapid growth of unsentenced inmates, many of whom are unable to afford bail.

3 Please note that term "inmate" is used interchangeably with the term "prisoner" in the report. The researcher is aware of all these changes of terms in the Correctional Services Act of 1998.

Table 1. Deaths in correctional centres

Deaths	2007	2008	2009	2010	2011
Natural deaths	1,056	992	*	900	804
Unnatural deaths	80	66	55	48	47
Total	1,136	1,058	*	948	851

* Figures for natural deaths were not provided for this period as a result of administrative difficulties the office of the inspecting judge experienced in collecting the data.

It is clear in the table above that more than 800 inmates die each year in South African prisons. Many of these deaths were attributed to natural causes. In all the annual reports, TB was found to be the leading cause of natural deaths in many South African prisons (Hopkins, 2012). However, the main question is whether these deaths are really natural if it is reported that they occur as a result of poor living conditions in prisons, such as overcrowding and poor ventilation, which easily contribute to the spread of all kinds of illnesses, including TB infections. Inmates quoted by Raphaely (2011) and Hopkins (2011) note that the spread of illnesses, particularly TB, is very common in South African prisons:

One person gets ill, and then the whole cell gets ill, then the whole section. Some people come in healthy. After years here there is nothing of that person left because they are suffering from infectious disease. There are also terminally-ill people here. They die in front of you like dogs.

People get ill here and nothing happens. I saw so many guys coughing and coughing and some end up dying as a result.

The above quotes confirm that some prisoners may be dying due to the spread of illnesses, such as TB, and lack of good medical care within the prison system. JICS has found that some prisons do not have proper hospital facilities. It is reported that “South Africa’s overcrowded prisons are massive TB breeding grounds but there is little political will to prioritise TB interventions” (Bateman, 2012: 1). So, the question is whether DCS may be held legally liable for some of these deaths that occur as a result of TB. For example, Dudley



Lee, a former inmate who contracted TB while in Pollsmoor prison sued DCS for being negligent in controlling the spread of TB. Initially, his case was dismissed by the Supreme Court of Appeal on the basis that Mr Leewas not able to “prove where and how he had contracted the bacteria” (Hopkins, 2012: 2). However, on appeal, the Constitutional Court ruled in his favour, stating that DCS has a duty to arrest prisoners under humane conditions and provide them with adequate health services (Keehn, Nyembe & Sukhija, 2013). JICS has found in its investigations that conditions under which prisoners are arrested are very poor. According to its annual reports, the poor conditions in prisons clearly violate Section 35(3) and (4) of the South African Constitution that prisoners should be arrested under reasonable and humane living conditions.

Although poor living conditions do not amount to torture in terms of the UNCAT definition, one may argue that these conditions amount to inhumane treatment, which is prohibited by Article 16 of UNCAT and Sections 12 and 35 of the South African Constitution. In terms of these provisions, the state is obliged to undertake a number of measures to prevent acts of inhumane treatment against prisoners even if these acts do not meet the strict definition of torture (Streater, 2008). Clearly, this shows the need to have more other independent bodies (to support JICS) as required by OPCAT (which the South African government has not yet ratified) to monitor conditions under which prisoners are arrested in South African correctional centres. It is evident, as indicated earlier, that many natural deaths that occur in correctional centres are a result of poor living conditions and lack of proper medical care. Clearly, all these deaths amount to inhumane and ill treatment of prisoners in terms of international conventions.

Another major concern in this study was causes of unnatural deaths in correctional centres, some of which occurred as a result of injuries sustained during assault by either fellow inmates or prison officials. Some of these incidents amount to torture in terms of the UNCAT definition, although they were not classified as such in JICS’ annual reports due to the fact that torture was not yet criminalized when they were written. The section below provides a detailed discussion of these cases.

5.2. Causes of unnatural deaths in prisons

A total of 296 unnatural deaths in prison were recorded between 2007 and 2011. Of this figure, many deaths occurred as a result of suicide and homicide.

Table 2. Unnatural deaths in correctional centres			
Causes of unnatural deaths	2009	2010	2011
Suicide	30	30	20
Homicide	19	13	11
Unknown	6	11	16
Total	55	48	47

It is clear in the above table that suicide was the leading cause of unnatural deaths among inmates, followed by homicide. Suicide cases often involved inmates hanging themselves, setting their cells alight, electrocuting themselves or overdosing on drugs. For example, JICS in 2009 and 2010 reported 60 cases of suicide:

- *The deceased hanged himself in isolation cell with a sheet. History of suicide attempts was noted.*
- *The deceased hanged himself with shoe-laces in a single cell. No previous history of suicidal attempts.*
- *The deceased hanged himself by electrical cord in toilet area of communal cell.*
- *The deceased set his single cell alight and died.*
- *The deceased allegedly took overdose of ARV and epileptic medication.*

In reviewing these reports, the main question is why the rate of suicide among prisoners is so high? According to Langa (2007), it may be due to the prevalence of mental health problems among prisoners, such as depression, post-traumatic stress disorder and anxiety. Moreover, the South African prison environment does not provide effective rehabilitation services as a result of overcrowding (Fagan, 2005; van Zyl, 2010). A prison cell that is designed to hold only 38 prisoners holds more than 100 prisoners (van Zyl, 2010). As a result, many prisoners leave prison without any rehabilitation, which increases their risks



of re-offending. Due to the lack of rehabilitation programmes, some prisoners join violent prison gangs that contribute to the increasing number of homicide cases reported by JICS.

For example, JICS reported 13 cases of homicide in 2010. Out of 13, nine cases of homicide were committed by prison officials, with prisoners being severely assaulted until some died. Here are some of these cases recorded in the 2010 JICS annual report:

- *The deceased stabbed fellow inmates in gang-related fight. Prison officials intervened and assaulted the deceased. Post-mortem records show cause of death as blunt force head injury.*
- *The deceased stabbed a fellow inmate causing pandemonium amongst inmates. Officials intervened and assaulted the deceased in a seated position with excessive force. With visible injuries the deceased was detained in isolation cell. Intervention by an official resulted in medical treatment and referral to the hospital where this inmate died.*
- *The deceased struck fellow inmate with padlock. Six officials severely assaulted this inmate. Instruments used included tonfas. Implicated officials refused to submit statements. Post-mortem report records cause of death as head injury.*
- *The deceased stabbed five inmates. Officials intervened and severely assaulted the inmate. He was referred to the hospital where he died. Post-mortem cause of death was intracranial bleeding following blunt force head injury.*

In terms Section 32 of the Correctional Service Act, every correctional official is authorized to use a minimum degree of force, but the force must be proportionate to the objective. A correctional official may not use force against an inmate except when it is necessary for self-defence, preventing an inmate from escaping or the protection of property. However, all the cases reviewed above show that the force used by prison officials exceeded the minimum degree of force as stipulated in the Act. JICS found that some prisoners died as a result of the injuries sustained during assault because they were denied proper medical attention. JICS also found these prisoners' deaths were "incorrectly" recorded by prison

officials as “natural,” while some died as a result of assault. It seems there was an intention in some cases by prison officials to hide the cause of the prisoners’ deaths. Below are some examples in the 2010 JICS annual report in which the cause of death was incorrectly recorded as “natural”:

- *The deceased involved in rival gang fight. It appeared that excessive force was used in disarming deceased of weapon, but prison officials recorded this prisoner’s death as natural. The Regional Commissioner ordered a new investigation and the post-mortem records showed that the deceased died as a result of head injuries.*
- *The deceased stabbed fellow inmates in gang-related fight. Prison officials intervened and assaulted the deceased. Post-mortem records cause of death as blunt force head injury but this was incorrectly recorded as natural.*
- *The deceased stabbed fellow inmate on forehead. Officials assaulted the unarmed deceased with tonfas. The prisoner was transferred to the hospital where he died days later, but the cause of death incorrectly reported as natural.*

It is on this basis that JICS recommends that “all deaths in correctional centers, regardless of whether or not they are certified as ‘natural or unnatural’, should be subjected to a post mortem examination.” JICS annual reports show that assault by prison officials is one of the most common complaints reported by prisoners.

Table 3. Common complaints received from inmates

	2007	2008	2009	2010
Assault (official on inmate)	1,004	2,010	2,189	2,276

The table above shows that it is common for prisoners to be severely assaulted by prison officials. Below are horrific examples of such incidents of assault, described by Raphaely (2012a, b):



*Bradley McCallum, a 32 year-old prisoner at St Albans was severely beaten and a baton inserted in his anus by a warder. He asserted that 50 prison officials got into their cell and starting assaulting all prisoners with batons in retribution for the murder of fellow-prison official. McCallum said, "A warder shoved a baton up my anus and said: 'Where's your knife? You can put it in your bank account, we'll take it out with interest. . . . He hit me on the head. All the time, he was shouting . . . grabbing my shirt and kicking me. We were forced to run naked down the corridor through a tunnel of warders who hit us while we were running and sprayed us with water. They were swearing and screaming: 'Today you're going to die!' Then they forced us to lie on the wet floor in a long human chain—about 70 prisoners from my section. People were terrified. The warders beat us with batons, shock-boards, broomsticks, pool-cues and pick-axe handles. As a result of the electric-shock shields and the terror, the prisoners were p*** and s*** on themselves and on each other. Blood was literally running down those prison walls." After the beatings, McCallum had a dislocated jaw, head wounds, a damaged arm and lost his teeth (Raphaely, 2012, a).*

John Banda, a 37 year old prisoner at Rooigrand prison was severely beaten by prison officials. John and his fellow prisoners were locked in a cell and prison officials started beating them after one prisoner tried to set his cell alight. "I tried to tell the warder that I wasn't involved with the burning but he would not listen and threw teargas under the door. I was beaten, assaulted and kicked. Then they took us where the CCTV cameras can't see you, tied our hands behind our backs, sprayed us fire extinguishers and started kicking us again (Raphaely, 2012, b).

Sbu Mntambo, a prisoner who was released in March from KwaZulu-Natal's Eshowe prison, says the most common torture method was using tonfas to beat inmates on the soles of their feet: "The warders knew you wouldn't be able to move for a week or two afterwards. Even so, the strip searches were the very worst thing that happened to me. The warders made us strip naked and lie on the wet concrete floor in a long chain. You were forced to have someone's head in your arse and your head in someone else's arse. It was disgusting. You weren't allowed to move and if you didn't co-operate, they'd beat you on your bum and back. If you raised your head, they'd hit you with a tonfas (Raphaely, 2012, b)

Raphaely (2012, a, b) notes these incidents of torture of prisoners by prison officials are very common in South African prisons, although they are not reported as torture in the JICS annual reports as they were not yet criminalized. According to Raphaely, this makes it difficult to assess the prevalence of torture in South African prisons.

Currently, there is no reliable data on the prevalence of torture in South African prisons. JICS annual reports simply state that an assault on a prisoner by a prison official occurred, but in many cases details are not provided to determine whether the incident met the criteria for torture in terms of the UNCAT definition. Many cases of torture are dealt with in terms of the common law of assault or assault with intent to cause grievous bodily harm. However, in terms of JICS annual reports, it is not clear how many prison officials have been charged and prosecuted for assaulting and torturing prisoners over the five years under review. According to Muntingh and Ballard, “There had not been a single criminal prosecution of a DCS official implicated in the death of a prisoner from 2009 to 2012” (2012: 8). The dominant view is that prison officials are acting with impunity, as recommendations by JICS for criminal prosecutions or disciplinary hearings are often ignored by DCS. This is because JICS recommendations to DCS are not legally binding. As a result, a key recommendation in this report is that JICS should be more legally independent from DCS so that its recommendations can be more legally binding and enforceable, similar to IPID. Independence is a “vitaly important aspect of any oversight mechanism from the institution or organization it intends to assess impartially” (Muntingh & Ballard, 2012:7).

5.3. Cases of segregation

Torture remains a major problem in South African prisons, despite the lack of exact figures about its prevalence. In reviewing JICS annual reports, it became evident that prison officials use not only physical methods of torture (for example, assault with batons, electric shocks, walking sticks) but also psychological methods, such as segregation, in which a prisoner is kept in a single cell over a long period as a form of punishment or torture. Segregation was one of the most common complaints received from prisoners by JICS over the period under review.



Table 4. Cases of segregation

2007	2008	2009	2010	2011
1,528	6,022	5,558	8,155	8,585

In terms of the Correctional Services Act, segregation of a prisoner for a period of time, which may be for part of or a whole day and which may include detention in a single cell, other than normal accommodation in a single cell, is permissible

- a) Upon the written request of a prisoner;
- b) If such detention is prescribed by a medical practitioner on medical grounds;
- c) When a prisoner has been recaptured after escape and there is a reasonable suspicion that such prisoner will again escape or attempt to escape; and
- d) When a prisoner displays violence or is threatened with violence.

While the Act allows prison officials to segregate a prisoner in a single cell, the period must not exceed seven days, except if the head of correctional centre or a medical practitioner or psychologist believes it is necessary to extend the period of segregation to a period not exceeding 30 days. All instances of segregation and extended segregation must be reported immediately by the head of the correctional centre to the office of the inspecting judge. It is important in terms of this Act that segregation must be for the minimum period. However, it has emerged in this research that the use of segregation has been on the increase over the last few years. For example, 8,155 and 8,585 prisoners were segregated in 2010 and 2011, respectively. It became evident in the review of the JICS annual reports that prison officials were often using segregation as a form of punishment, particularly against prisoners seen as too difficult to handle.

It is evident that segregation is now being used as a form of psychological torture because a prisoner who is kept in isolation over a long period of time is more likely to experience emotional stress and pain. The JICS annual reports show that many prisoners who committed suicide were often placed in single cells. One may infer that these prisoners may have been depressed as a result of being isolated from other prisoners until they

decided to take their own lives. Clearly, this is in contravention of Section 30(9) of the Correctional Service Act, which states that segregation may never be ordered as a form of punishment. However, this seems to be something common in many cases investigated by JICS. In many of these cases, prisoners were kept in single cells by prison officials over a long period without informing the office of the inspecting judge as required by the Act.

On the whole, this report so far has focused on acts of torture and assault against prisoners by prison officials. Another aim of the research was to investigate cases of torture and CIDT in the hands of police. This was done through a review of IPID annual reports from 2007 to 2011 and interviews with IPID officials. The key findings of this aspect of the research process are discussed in the next section.



6. POLICING IN THE NEW SOUTH AFRICA: IS THIS A SOUTH AFRICAN POLICE SERVICE OR FORCE?

High crime levels are a major concern in South Africa. Crime statistics reveal that roughly 2.5 million people have been victims of different forms of crime over the past six years (Crime Statistics, 2012). Due to the increasing levels of crime, there is a dominant public discourse that the police are too “soft” on criminals, which may be resulting in the police resorting to violent means of dealing with alleged suspected criminals (see, for example, Dissel, Jensen & Roberts, 2009). Recent rhetoric by high level police officers, such as “shoot to kill” or “police must meet fire with fire,” also seem to have created a discourse in which violence or torture against alleged criminals is implicitly (if not explicitly) condoned. The use of violence or torture is a major concern as it violates the rights of suspected criminals enshrined in Section 35 of the South African Constitution.

As mentioned earlier, IPID is responsible for collecting information about acts of violence (including torture) that involve police officials and the municipal police service. It is against this backdrop that its annual reports were reviewed and analysed in order to determine whether torture or CIDT was happening at the hands of police. Key findings regarding the number of deaths in police custody, use of excessive force, assault and torture of suspected criminals by the police are discussed below.

Table 5. Deaths in police custody

	2007	2008	2009	2010	2011
Natural deaths	121	117	93	*	*
Suicide	75	108	112	*	*
Injuries sustained in custody	28	27	97	*	*
Injuries sustained prior to detention	71	48	104	*	*
Total	295	300	406	1,237*	932*

* Please note that overall figures for deaths in 2010 and 2011 were given but there was no breakdown in terms of the cause of death and whether it was a result of suicide or injuries sustained in custody or prior to detention.

Death in police custody is defined as a death that takes place in police custody but is not attributable to police actions. This includes death as a result of natural cause or suicide. However, some deaths in police cells may indirectly or directly be attributed to police actions. For example, it is reported that 97 criminal suspects died in 2009 due to injuries sustained in police cells. The IPID annual report for that year (2009) describes the following cases:

In Skukuza, the police alleged assaulted Mr. Walter Mhlanga, who had been arrested for housebreaking and theft, had died in the cells. The ICD [now IPID] took over the investigation and the post-mortem revealed that the deceased had been assaulted prior to his death and died in the police cell.

In September 2009, Mr. Nandos Lamono was arrested by the Blinkpan police for murder and attempted murder. Upon investigation, the ICD [now IPID] uncovered that the deceased had been assaulted by having his head smashed against the wall and against the steel door of the holding cells and died in the police custody.

It is alleged that Mr. Mahlangu was arrested at his home at midnight. He was then allegedly assaulted by unknown policemen. The suspect was then placed on the back of an open police bakkie and the police drove off with him. He was found dead at the Diepsloot police station.

It is alleged a member of the public was kicked and hit by police in Khayelitsha. He was then taken to Khayelitsha police station where he was assaulted again in full view of other police officers. The victim later died in hospital. Blood was found by ICD [now IPID] in the police vehicle that transported the deceased to the police station.

The IPID annual reports show that cases of this nature are very common, with police officials assaulting suspects until some die as a result of severe injuries sustained during the course of being arrested or in police cells. Other deaths occur as a result of the police's use of lethal force outside police stations. According to Bruce (2000), cited in the 2009 ICD annual report, the use of lethal force is the major cause of police action deaths, despite all stipulations in Section 49 of the Criminal Procedure Act, which determines circumstances under which police may use lethal force:



- a) That the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;*
- b) That there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or*
- c) That the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.*

However, it has been found by Bruce (2000) that police often abused Section 49 in its earlier form. They were willing just to shoot at any fleeing suspect even if the grounds to do so were not reasonable and justifiable enough for them to use maximum force. This prompted the state to amend Section 49 so that it could be in line with the constitutional guarantee of right to life. Despite this amendment, cases of police use of lethal force resulting in deaths are still on the increase. For example, 213 and 257 suspects were shot dead during the course of arrest in 2008 and 2009, respectively, while 129 and 124 suspects were shot dead during the course of committing a crime in the same two years. In total, this means 723 suspects died as a result of police action in the period in 2008 and 2009. Amnesty International (2011) has raised some concerns about the alarming increase of criminal suspects dying as a result of excessive force by the police. The former national commissioner of police, General Bheki Cele, was quoted in the media discussing the need for police to be “tough” in dealing with violent criminals. Cases of police being shot dead by suspected criminals are used as a justification for police to use maximum force. Cele also advocated for a change in the ranking of police officers as colonels or generals, which represents a return to the militarization of the police like it was under the apartheid regime.

The dominant discourse among citizens is that police are not doing enough to deal with violent crime or criminals. It seems that in response to this public pressure, some police leaders have been advocating for the use of lethal force against suspected violent criminals. This has resulted in police using deadly force against suspects. Section 49 of the Criminal Procedure , as discussed earlier, has been used to justify some of these killings.

However, as noted in the 2009 and 2011 annual reports, IPID also investigated a number of cases in which police used deadly force against innocent civilians, even if they did not pose any threat to law enforcement officials. This raises questions about the police's justification for using lethal force:

Vuyolwethu Jiya was shot by police in 2009. It was alleged that the police were looking for someone else and the deceased was changing his car tyre when he saw the police. After being shot, the victim was allegedly assaulted the whole day at the police station and only taken to hospital at 12:00 midnight. The victim was discharged from hospital, and after two weeks his condition deteriorated. He was taken to another hospital where he died. It is alleged that at the time of his death, his body and private parts were swollen (ICD, 2009).

In 2009, the police killed a three-year old baby (Atlegang Aphane) because they mistook a metal pipe he was holding for a gun but no weapon was found at the scene (ICD, 2009)..

In 2009, Olga Kekana was killed when police allegedly mistook the car she and three friends were travelling in for a hijacked vehicle. The young hairdresser was shot through the head while in the back seat of the grey Toyota Conquest. One of her friends, Andre Singo, was shot in the hand and thigh, while another, Sofie Kgagara, was hit in the chest (ICD, 2009).

In 2009, Kgothatso Ndobe was shot dead moments after Atteridgeville police and Pretoria Flying Squad members stopped outside an Atteridgeville house where Kgothatso and a group of friends were drinking beer. When questioned by police officers and ordered into the back of a police van, Kgothatso, who was polishing a pair of shoes, jumped up and ran away. A police officer who was waiting behind the house where the friends were sitting allegedly shot Kgothatso at point-blank range as he ran past him. Kgothatso died hours after being shot (ICD, 2009).

It is evident in all the cases listed above that police use of excessive force was not only directed at violent suspected criminals but also at innocent civilians who did not resist arrest or pose any threat to law enforcement officials. So it is not true that police only use lethal force when faced with dangerous criminals. It is clear in the cases above that the government's military approach towards armed criminals is causing many human rights



violations in the country. This military approach is also evident in how police have dealt with service delivery protests, as discussed in a study conducted by the Centre for the Study of Violence and Reconciliation in collaboration with Society, Work and Development Institute (von Holdt et al., 2011), in which many protestors were assaulted and tortured by the police:

In 2007, Sbu Zikode and Philani Zungu from Abahlali baseMjondolo [shack dwellers' social movement in Durban] were arrested and assaulted by police for organizing a service delivery protest against lack of housing and sanitation in their squatter camps.

In 2011, Ayanda Kota, the chairperson of the Unemployed People's Movement in Grahamstown, was arrested and assaulted in Grahamstown police station for organizing a march in the town against high rate of unemployment in the area.

In 2011, two protestors were killed by the police and many others subjected to assault and torture in Ermelo. Dumisane Mahaye, a community leader in Ermelo was also assaulted and harassed by law enforcement officials.

In 2011, Mr. Maya, a father of a protest leader in Balfour, was also assaulted by police who came to his house at night looking for his son.

In 2011, Andries Tatane, a community leader in Ficksburg, was beaten with batons and shot with rubber bullets at close range and died at the scene.

In 2012, the police shot and killed 34 miners at Lonmin Marikana Platinum mine. Other miners were arrested and allegedly assaulted while in custody.

On the whole, there is growing concern about police assaulting political activists and protestors in communities. It is important to note that many cases of assault are not reported to IPID due to people not knowing where to go if they have been assaulted by police or IPID as "toothless" state institution in dealing with their complaints (Langa & Merafe, 2011). The table below provides statistics of assault cases reported in IPID annual reports.

Table 6. Assault cases in IPID annual reports

	2007	2008	2009	2010	2011
Assault	251	301	378	422	421

Source: Bruce (2012)

The figures in the table above need to be read with caution because so many incidents of assault are not reported to IPID. It is possible that IPID figures may contribute to underestimating the nature and extent of the problem, but the figures nonetheless provide some useful data about the changing patterns of assault. They show that assault cases have been steadily increasing over the years, particularly when one looks at the statistics for 2010 and 2011. It is also possible that the increase shows that assaults at the hands of the police are on the rise, which is a major concern for many human rights and civil society organizations.

Table 7. Torture cases in IPID annual reports

	2007	2008	2009	2010	2011
Torture	23	20	* (data missing)	5	41

Source: Bruce (2012)

The statistics above also need to be read with caution because at the time these annual reports were being written there was no law that criminalized torture in South Africa. Many cases of torture were classified as assault or assault with intent to cause grievous bodily harm, attempted murder and murder. As argued earlier, the existing statistics about torture in South Africa need to be treated with caution as it is possible that the figures may be underestimating the nature of the problem. Despite this caveat, IPID annual reports highlight that there are cases in which police have used torture methods, which in some cases have resulted in death. The next section provides some brief description of cases where there were allegations of torture or death as a result of torture from 2007 to 2011. These cases were chosen on the basis that they met the criteria for torture as defined by UNCAT, which highlights that torture remains a major problem in post-apartheid South Africa.



6.1. Selected cases of torture in IPID annual reports from 2007 to 2011

Case 1: Johannesburg Central

The complainants allege that on 10/06/2009 they had given Constable Ximba of the Organized Crime Unit information that led to the arrest of the suspects who had hijacked a vehicle belonging to an MEC in Gauteng. The complainants allege that they had been promised a reward of about three hundred thousand rand (R300 000) once the positive suspects had been arrested. The complainants were allegedly given three thousand rand (R3 000) to follow up on the whereabouts of the hijacked vehicle, which was believed to be in Swaziland. They then reported to Constable Ximba that they could not find the said vehicle. On the afternoon of 15/06/2009, the complainants were called to the offices of the Organized Crime Unit at the Old Johannesburg Stock Exchange Building in Johannesburg. The complainants allege that they were accused of having knowledge about the whereabouts of the missing vehicle. They were interrogated, stripped naked, and their hands were tightly handcuffed to their backs. Plastic bags were put over their heads. After being tied with a rope, the complainants were kicked until they fell to the ground. The suffocation allegedly continued until they passed out. In the process, they had soiled themselves. After they had cleaned up, a person who identified himself as a superior of the officers who had assaulted the complainants arrived. The ICD [now IPID] took over the investigation and referred the case to the DPP [director of public prosecutions]. The DPP decided to prosecute on charges of assault with the intent to cause grievous bodily harm.

Case 2: Giyani

In November 2009, the complainant alleged that her son had come home, alleging that two police officials had assaulted him and left him in the bush in Giyani. The victim of the assault apparently died from his injuries at Giyani Hospital after being taken there by his family—he was certified dead on arrival. A case of murder was opened against the two SAPS members involved, and they were arrested and charged with murder.

Case 3: Lydenburg

Mr. Oupa Malebe was allegedly told to come to the police station as he was sought for an armed robbery case. He was severely assaulted, and he had to be operated on and his testicles were removed due to the injuries sustained while he was being tortured. The ICD [now IPID] investigated the case and arrested the 5 members involved. Recommendations were made that the five members be prosecuted.

Case 4: Klerksdorp

The complainant was assaulted by six Inspectors at Klerksdorp Vaal Maseru offices. The complainant was allegedly assaulted with clenched fists and booted feet. He alleged that the inner tube of a wheel and a black plastic bag were used over his head and face to suffocate him while he was tied to a chair. It is further alleged that he was also electrocuted by these officers.

Case 5: Mmabatho

The complainant alleges that he was picked up from his place of employment by a Detective on 04/02/2009 in the morning and taken in a police vehicle to a building in Mmabatho, where he was left in an office for two hours. The complainant alleges that he was then relocated to another office where there were five other police officers. He was asked about a bank robbery that had taken place at ABSA Bank on 30/01/2009. The complainant alleges that after he had told the police officers that he knew nothing about the bank robbery, his shirt was taken off and that he was bound to a chair. His face was covered with a plastic bag and he was assaulted. In addition, the victim was allegedly electrocuted with a device unknown to him. The ICD [now IPID] investigated the complaint and made recommendations to the DPP that the police officers be prosecuted.

Case 6: Klerksdorp

The complainant was arrested on 21/01/2010 on a charge of theft by members of the Klerksdorp Organized Crime Unit. The complainant was assaulted in the presence of the Station Commander. During the assault, the victim was allegedly tied to a chair with adhesive tape and plastic bags were pulled over his head with a rope tightened around his neck to suffocate him. It is further alleged that electric wires were attached



to various parts of the victim's body, including his genitals, while electrical shocks were administered. According to the complainant, the electric shocks were so severe that his shin was deeply scorched. The complainant further was denied his right to consult a legal representative. The ICD [now IPID] investigated the case and arrested 6 members of the Klerksdorp Organized Crime Unit. The suspects have since been released on bail after appearing at the Klerksdorp Magistrate's Court. They will face charges of assault with intent to cause grievous bodily harm.

Case 7: Rustenburg

The deceased was arrested in connection with a robbery at TEBA Bank. He was taken for questioning and it was alleged that the deceased complained about the heat and then asked to be put on the floor. The deceased was later taken to Fern Crest for medical attention, where he was certified dead. The ICD's [now IPID] investigation revealed that the deceased died as a result of torture.

Case 8: Harburg

It was alleged that suspects were in the police cells of Harburg Police station. Police who were conducting cell visits detected that the detainees had been smoking so they searched the cells. The police officers wanted to find out who had smuggled the tobacco so they starting assaulting the detainees in an office where it is alleged that the officers used a plastic bag to suffocate the detainees to extract information. One of the detainees died.

Case 9: Khayelitsha

It is alleged a member of the public was kicked and hit by police. He was then taken to Khayelitsha police station where he was assaulted again in full view of other police officers. The victim later died in hospital. Blood was found by ICD [now IPID] in the police vehicle that transported the deceased to the police station. ICD arrested the eight SAPS members and later granted bail.

Case 10: Knysna

It is alleged that on 27/02/2010, an SAPS member from Knysna police station arrested a member of the public at Rheenendal, Knysna. The police officer allegedly assaulted

the person during the arrest because the person stabbed him in the arm. The assault victim was then transported to the Knysna police station. At the police station, the officer was joined by two other SAPS members in kicking the victim while he was on the ground. After the assault, a police officer allegedly dragged the deceased into the police holding cells, leaving a trail of blood on the ground. The victim was placed in a police cell, and transported to the hospital three days later where he died. The post-mortem shows that the deceased had died of blunt trauma injuries, including broken ribs. ICD [now IPID] arrested three SAPS members and later granted bail.

Case 11: Gugulethu

It is alleged that members of SAPS arrived at a tavern in Gugulethu. It is further alleged that the victim uttered some words towards the SAPS members. Apparently, one of the SAPS members hit the victim on the right cheek with a hand and the deceased fell backwards, hitting his head on the pavement. It is alleged that the two SAPS members loaded the victim into the back of the van. According to witnesses, the deceased was bleeding from his mouth and nose whilst in the back of the police van. The deceased was transferred to the Gugulethu Day Hospital where he died. The post-mortem indicated that the deceased had a head injury/fractured skull. The deceased also had bruising to his right cheek indicating that he received blunt trauma to the cheek. ICD opened a murder docket.

6.2. Brief analysis and discussion of torture cases

The selected cases above show that torture still happens in the new South Africa. In all the cases, it is evident that the victims died as a result of severe injuries sustained while being tortured. The police have a legal duty to arrest people who break the law as well as to protect those they have arrested while in custody. However, the cases described above show the opposite of this duty to protect criminal suspects from any form of violence, including torture. In these cases, suspects were severely tortured until they lost their lives. In terms of the information provided, it is clear that the victims were not fleeing, resisting arrest or posing any threat to the police. The police's actions were evidently disproportionate.

The majority of people noted in the annual reports who died in police custody as a result of police actions were males between the ages of 18 and 40. In terms of race, the majority



were black. For example, in 2008, 91 percent of victims who died in police custody as a result of police action were black. These were followed by coloured (7 percent) and white (3 percent) victims. It is evident that gender, class and race play a role in who becomes a victim of torture. Evidently, black males who are poor or unemployed are more likely to become victims of torture (ICD annual report, 2007, 2008; Langa & Merafe, 2011). Similarly, Jensen (2008), in his ethnographic work on gangs and violence in Hiedeveld, Cape Town, also found that skollies were at a high risk of being tortured by the police. Jensen (2009) describes a skollie as “a young coloured male who refuses to work for a living and more often is involved in criminal activities. He has tattoos and more often untidy as he is always high on drugs” (5-6). It can be argued based on Jensen’s work that being “young, male and black” puts one at risk of police torture. It seems that police also rely on stereotypes of race, gender and class to categorize all young black males in townships or squatter camps as being hypersexual, sexist, aggressive, unruly and violent (Jensen, 2008). To put it more aptly, one station commander was quoted in Jensen’s study as saying: Your average law-abiding citizen lives in specific middle-class areas, whereas the problematic groups lived in the townships; you can say most people in the townships are gangsters. (2008: 128). Jensen argues that policing of low-income communities is characterized by violence and antagonistic attitudes towards suspected criminals. Police see their use of torture methods as a means of instilling disciplining among suspected criminals or individuals who disrespect them, as in the Gugulethu case (11) described above.

The IPID annual reports show that many suspects were tortured on the streets and also in police cells. It is on street corners that many young black men spend most of their leisure time due to unemployment (Langa & Merafe, 2011). According to Salisbury and Jackson (1996), gathering in groups on street corners gives young men the much-needed audience to display and confirm their masculinity, which at times involves engaging in risk-taking behaviours, such as drug use and violent criminal activities. This is because group loyalty and male bonding rank high on the list of masculine values. A sense of brotherhood and oneness also exists when males are in a group where they can spend time talking about sex, cars and sport (Langa, 2012). These are the kinds of values and behaviours associated with and lived out in a street corner identity (Langa, 2012). As a result, police often choose black males on street corners as potential targets of torture (Langa & Merafe, 2011). Quoting the work of van Maanen, Jensen (2008) defines this

form of torture as part of “street justice,” in which police often use violent methods (including torture) to discipline and assert their power over young black men who seem to be challenging their authority. In his seminal work, van Maanen (1978) argues that police officers refer to young black males who defy or challenge their authority as “assholes.” He contends that “assholes” are more likely to be the recipients of what police call “street justice”—a physical attack designed to rectify what police take as a personal insult or challenge to their authority, as described in Cases 8 (Harburg), 9 (Khayelitsha), 10 (Knysna) and 11 (Gugulethu) above. Furthermore, van Maanen argues that “assholes” are the group most vulnerable to street justice or torture, “since they, as their title implies, are not granted status as worthy human beings” (1978: 10)

The IPID annual reports show that many victims were also tortured in police stations, either in the cells or in the charge office in full view of other officials, as in Cases 3 (Lydenburg), 5 (Mmabatho), 8 (Harburg) and 10 (Knysna). This confirms Reiss’ (1968) suggestion 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” (14). One police officer in Reiss’ study is quoted as saying that “on the street you can’t beat them. But when you get to the station, you can instill some respect in them” (14). It is clear from this quote that violence is used by police to instil subjection to authority or to show who is in charge. For example, in Case 8 (Harburg), suspects were assaulted for smoking in a prison cell to the point that one prisoner died. In this example, police appear to have wanted to demonstrate who was in charge. Jensen (2008) reports that police often use torture as a way of obtaining cooperation, as well as to assert their authority. In Jensen’s study, a police officer was quoted as saying, “You have to be violent to do this job. Believe me, I hate myself for having to act in that violent manner but if you don’t, you will not (be) able to do the job” (135).

Interestingly, many incidents of torture in some of the cases described above took place in full view of other police officers at various police stations. It seems that police officers were colluding with one another as some were even taking turns in torturing suspects (see Cases 3, 6, 8, 9 and 10). This collusion among police also happens when investigations



are conducted by IPID officials in that they try to protect each other by refusing to be witnesses or hiding crucial evidence. Faul (2010) sees this strong sense of group loyalty as a subculture that exists among police officers. This is despite the existing IPID Act, which dictates that

members of SAPS must immediately after becoming aware of any deaths as a result of police actions, rape by a police or any complaint of torture notify IPID within 24 hours and submit a written report. In terms of the Act, members of SAPS must provide their full cooperation to IPID, including but not limited to arrangement of an identification parade within 48 hours of the request made by IPID, the availability of members for the taking of an affidavit or any other information or documentation required for investigation purposes.

In the interviews with IPID officials, a lack of cooperation from the police was cited as a major problem in investigating cases of torture by police or deaths as a result of their actions. Interviewees noted that in some cases police do not notify IPID within 24 hours as required by law. The delay often compromises the quality of the investigation conducted by IPID officials. One IPID official stated,

You see with torture cases, evidence is crucial for prosecution purposes. So it is important that investigators are there at scene of torture on time to collect all the evidence, but the delay of course damages our investigations in some cases.

Currently, there are nine IPID provincial offices and six satellite offices. Of course, the number of satellite offices needs to be increased, particularly in the townships, where it is common for police to use torture methods against suspected criminals (Dissel, Jensen & Roberts, 2009; Langa & Merafe, 2011). One IPID official said, “Ideally it is important to have IPID offices in each and every district so that we can be everywhere to investigate cases.” It is evident that more financial support is needed for this office. Detailed recommendations will be given later in the report.

6.3. Decisions taken against police officials accused of assault and torture

Once the investigation is complete, IPID makes recommendations to SAPS management.

This is a major limitation as many of the recommendations are not legally binding. The table below gives the statistics about the decisions taken against police officials accused of assault and torture.

Table 8. Decisions against police in the IPID 2010/2011 annual report

Decision	Offence	Number of police officers charged
Final written warning	Assault	5
	Assault with intent to cause grievous bodily harm	7
Not guilty and discharged	Assault	5
	Assault with intent to cause grievous bodily harm	3
R4,000 to R15,000 fine conditionally suspended for four years	Assault	0
	Assault with intent to cause grievous bodily harm	2
R1,000 to R10,000 fine or option of imprisonment from three months to five years	Assault	2
	Assault with intent to cause grievous bodily harm	7
One to five years' imprisonment wholly suspended	Assault	0
	Assault with intent to cause grievous bodily harm	1
Imprisonment for one to five years	Assault	0
	Assault with intent to cause grievous bodily harm	1

In 2010/2011, IPID made 2,261 recommendations to SAPS and 501 to the DPP for various offences, but the focus in this report is on cases of assault and assault with intent to cause grievous bodily harm (some of which may meet the criteria for torture, although they were not classified as such in the annual report). The table above describes decisions taken against police accused of assault in 2010/2011. It is a matter of concern that for many



cases of assault and assault with intent to cause grievous bodily harm the decisions taken were written warnings or not guilty verdicts. Other decisions taken were fines of merely R4,000 to R15,000 conditionally suspended for four years or R1,000 to R10,000 fine or option of imprisonment from three months to five years. Of all these cases, only one police officer was imprisoned for three years for assault with intent to cause grievous bodily harm. It is important to mention that the details of these cases are not provided in the annual reports, which makes it difficult to assess objectively whether the decisions taken were fair or not. Nonetheless, the decisions taken raise serious questions about addressing cases of torture under common law, which may not reflect the gravity of the crime committed and therefore may fail to punish perpetrators adequately. Overall, the decisions appeared to be too lenient, as many perpetrators noted in the annual report were given written warnings or a fine of less than R1,000. This may be conveying the message that torture is not seen as a serious crime against humanity. It is possible that the lenient decisions may have been due to the lack of a law criminalizing torture at that time. Recently, the South African parliament passed the Prevention and Combating of Torture of Persons Act, which officially criminalizes torture. In terms of Article 4 of the Act, the state shall make acts of torture punishable with appropriate penalties that take into account the crime’s grave nature.

6.4. Civil claims against the police

Table 9. Liabilities against police

		Liabilities incurred during the year			
	Year	2007	2008	2009	2010
Nature of liability	Assault	R51,132	R141,338	R186,589	R203,012
	Shooting incidents	R108,685	R170,661	R235,983	R438,965
	Police actions	R860,312	R1,937,756	R1,707,373	R2,666,245
	Total	R1,020,129	R2,249,755	R2,129,945	R3,308,222

Source: Bruce (2012) and SAPS annual reports

It is important to note that the figures in the table above merely reflect all claims received with claim amount as per letter of demand, which may or may not be settled in the future.

It is evident that civil claims received against police increased from 2007 to 2010 and were at an estimated total of R8 billion for the period. In a year, it is estimated that police are sued for over R2 billion, and this figure seems to be increasing each year as the number of incidents of police violence increase. For example, in 2010, police were sued for over R3 billion, which is an increase of R1 billion from 2009. For all these cases, police actions (which are not clearly explained in the annual reports) seem to be the major source of civil claims, followed by shooting incidents and assault. Bruce (2012) speculates that police actions may also include unlawful arrest, which is very common in South Africa. It is not clear in these statistics whether they are torture-related civil claims, but it is possible that such cases may have been recorded as assault due to the lack of a law criminalizing torture at that time. The table below reflects the amount in civil claims paid by the police from 2007 to 2010.

Table 10. Liabilities paid by the police

		Liabilities paid during the year			
	Year	2007	2008	2009	2010
Nature of liability	Assault	2,971	R1,788	2,538	6,065
	Shooting incidents	12,990	R6,130	5,383	9,956
	Police actions	12,406	R36,169	51,986	52,740
	Total	28,367	44,087	59,908	68,761

Source: Bruce (2012) and SAPS annual reports

It is important to note that civil claim cases typically take a number of years to be completed in a court of law. The table above only reflects civil claims paid over a period of four years, which are estimated to have totalled more than R200 million. While it is possible that many claims are not yet resolved, it is also evident that civil claims paid out so far have increased from roughly R28 million in 2007 to R68 million in 2010. All these civil claims suggest



that it is common for police to be sued for unlawful arrest, assault and shooting incidents, which is a worrying trend as police are expected to respect the human rights of suspected criminals.

6.5. Summary of key findings

On the whole, the findings for both JICS and IPID show that torture and CIDT remain a major problem in the new South Africa. Below is a summary of the key findings of the study:

- For both JICS and IPID, it is evident that many deaths occur in prisons and police cells as a result of prison and police officials' actions (see Tables 1 and 5). Many of these deaths are a result of assault with intent to cause grievous bodily harm and torture (also see Tables 3 and 7).
- It is evident in the annual reports that prison and police officials were using torture methods, which in some cases have directly or indirectly resulted in deaths (see all the cases discussed in the report).
- In many of the cases, officials tried to hide information about the cause of death.
- All interviewees at both JICS and IPID asserted that this is because there was no law that criminalized torture when the annual reports were written. As a result, many cases of torture were classified as either assault or assault with intent to cause grievous bodily harm.
- For both JICS and IPID, there was a lack of cooperation from DCS and SAPS respectively in terms of investigating cases of torture and CIDT and complying with all recommendations made.
- Staff shortages and lack of resources were cited by JICS and IPID officials as major stumbling blocks in investigating cases of torture in prisons and police stations.
- Lack of independence was raised as a major concern by all JICS officials interviewed in the study.

It is on the basis of these findings that key recommendations for how things could be improved are made in the next section.

7. KEY RECOMMENDATIONS AND CONCLUDING REMARKS

7.1. Key recommendations for JICS

7.1.1. Independence of JICS

Currently, JICS receives its budget from DCS. It has emerged in many studies (see, for example, Dissel, et al, 2009 Keehn, Nyembe & Sukhija, 2013; Streater, 2008) that there is a need for JICS to be financially and administratively independent from DCS. Clearly, this may help to improve the effectiveness of the institution. It is therefore recommended that relevant legislation (similar to the IPID Act) be passed to help this office to function independently on the financial, administrative and legal levels.

7.1.2. Improve JICS' information management system

The annual reports published by JICS lack many of the necessary details. Statistics are provided without details about the underlying causes of deaths in prisons. It is therefore recommended that JICS improve its data management system to ensure that the information collected is up to date, reliable and detailed enough for research and comparison purposes on the changing patterns and trends of treatment of prisoners over the years. Since 2012, JICS has been submitting quarterly reports to the parliament Portfolio Committee on Correctional Services. These reports provide detailed data, but more information is needed on cases of torture and sexual abuse (Keehn, Nyembe & Sukhija, 2013). Recently, parliament enacted the Prevention and Combating of Torture of Persons Act, which will help in reporting and dealing with cases of torture in prisons.

7.1.3. Recommendations by JICS need to be mandatory

Currently, JICS investigates all cases of human rights violations in prisons and makes recommendations to DCS. It is reported that more often DCS ignores JICS' recommendations because it is not legally bound to implement them, which is the main weakness of JICS in its current legislative form (Keehn, Nyembe & Sukhija, 2013; Streater, 2008). It is important that recommendations made by JICS to DCS become mandatory and legally binding. One way of making these recommendations mandatory is through change of law, similar to the IPID Act, which would grant JICS some judicial powers to refer cases to the National Prosecuting Authority and to



legally demand to be updated on DCS' implementation of its recommendations and on disciplinary actions taken against officials found guilty of violating prisoners' rights, including through torture (Keehn, Nyembe & Sukkhija, 2013).

The annual reports reviewed in this study were not clear on how many prison officials have been arrested and prosecuted for the thousands of cases of assault, use of excessive force, use of mechanical restraints, segregation and torture reported. It is therefore recommended that punitive measures be taken against prison officials found guilty of assaulting and torturing prisoners. Such punitive measures may serve as a deterrent as currently it seems that prison officials are acting with impunity in violating the rights of prisoners.

7.1.4. Build JICS' investigative capacity

It is evident in the annual reports analysed in the study that the number of natural and unnatural deaths is on the rise in correctional centres. It is therefore recommended that JICS is supported in investigating all these cases. It is important that pathological services are improved within the prison system to record the cause of death for each prisoner and underlying causes. The key recommendation is that each death be subjected to a thorough medico-legal investigation because it has emerged in the study that some deaths were recorded as natural when the cause of death was assault or torture. As argued earlier, it is important to give JICS greater investigative powers, as well as judicial powers to refer matters to NPA, particularly in cases where it is evident that prison officials have acted negligently or abused their positions of authority in causing inmates' deaths (Keehn, Nyembe & Sukkhija, 2013).

7.1.5. Improve medical health services in correctional centres

It was clear from the annual reports that many inmates were dying from TB as a result of overcrowding, poor ventilation and lack of medical services in correctional centres. It is therefore recommended that health facilities in correctional centres be improved to deal with the spread of TB infections. The problem of overcrowding also needs to be dealt with, as the study shows it is responsible for the spread of illnesses, such as TB.

7.1.6. Improve provision of mental health services in correctional centres

It is clear that suicide is a major cause of death in prisons due to mental health problems that prisoners are experiencing. It is therefore recommended that DCS recruit mental health practitioners such as psychologists, psychiatrists and social workers, ideally to provide counselling services to all prisoners.

7.2. Key recommendations for IPID

7.2.1. Awareness raising among police about IPID's mandate

It was evident in the interviews with IPID officials that some SAPS officials do not clearly understand the role of IPID and its mandate. They see IPID officials as spies or informers who just come and harass them. It is recommended that awareness raising campaigns are held within SAPS to clarify IPID's role and its mandate as stipulated in the IPID Act. This awareness may help in dealing with some of the problems discussed in the report, such as police tampering with evidence at crime scenes or refusing to cooperate with IPID officials during their investigations. It is important that police officers begin to see IPID as an ally in dealing with the increasing problem of the police's use of excessive force and torture methods against suspected criminals.

7.2.3. Promote human rights culture among police

It was evident in the study that the use of excessive force and torture methods is responsible for many deaths in and outside police custody. It is therefore important that police are trained within the human rights framework to respect the rights of criminal suspects as enshrined in the Constitution and SAPS policies. It is important that SAPS' policy on the prevention of torture is included in the training of police.

Some detailed discussions about the interpretation of Section 49 of the amended Criminal Procedure Act also need to be held with police officials to take into account all the circumstances under which the police may or may not use force. Continuous conversations around these acts and policies may help to reduce the increasing number of deaths due to police actions, including assault and torture.



7.2.3. Proactive police leadership in condemning acts of assault, torture and use of excessive force by police

Some media statements made by police leaders seem to be creating confusion among police about the use of violent methods. It is therefore important for the police leadership to become more proactive in encouraging police officials not to resort to violent methods in dealing with suspected criminals. Those police officials who are found guilty of such acts should be subjected to internal disciplinary actions, and their cases should be referred to the NPA for criminal prosecution. On the whole, it is important for the police leadership to promote values and norms that encourage police to treat criminal suspects with respect and dignity, while still effecting the law.

7.2.4. Improve public access to IPID

Currently, there are nine IPID provincial offices and six satellite offices. Many people still do not know much about IPID, but this is slowly changing due to the increasing media coverage of IPID and its good work in arresting and successfully prosecuting police officials accused of assault, rape, torture and use of excessive force. Many awareness raising campaigns are still needed in communities about the work that IPID does in protecting members of the public against abuse of power by the police. It is important that IPID is given additional financial support to open satellite offices in all major districts and to hire more staff members, so that its services can be accessible to all people in the country, including in remote rural areas.

7.2.5. Specialized training for IPID investigators

In terms of the IPID Act, the office is responsible for investigating deaths in police custody, deaths as a result of police actions, any complaint relating to the discharge of an official firearm by a police officer, rape of any person while in police custody and any complaint of torture or assault against a police officer in the execution of his or her duties. Given this mandate, it is important that IPID investigators receive specialized training in investigating cases of assault, rape and torture by police.

7.2.6. Improve IPID's information management system

As with JICS, the annual reports published by IPID lack necessary details, although some of the annual reports, particularly the 2009/2010 one, do provide some details about causes of deaths as a result of police actions. It is recommended that IPID improve its data management system to ensure that information collected is up to date, reliable and detailed enough for research and comparison purposes on the changing patterns and trends of deaths, rape, torture and assault as a result of police actions.

Many cases of torture in the IPID annual reports were classified as either assault or assault with intent to cause grievous bodily harm. It is therefore important that IPID use South Africa's recently enacted Torture Act to classify cases of torture as a torture (and not as assault). Such information will help in assessing changing patterns and trends of torture in South Africa. Currently, there is no reliable available data in this regard.

7.3. Overlapping key recommendations for JICS and IPID

7.3.1. Ratification of OPCAT

The South African government has signed OPCAT but has not yet ratified it. It is highly recommended that the government ratifies this convention, as this would lead to the formation of National Prevention Mechanisms, which would play a positive role in monitoring places of detention to ensure the rights of inmates and suspected criminals are not violated. This is the role that JICS is playing with regards to correctional



centres and IPID is playing with regards to police custody/stations, but there is a need for JICS to be more independent in terms of its judicial and investigative powers, like IPID (Keehn, Nyembe & Sukhija, 2013). Also, there is a need to support the capacity of these two institutions through extensive training to thoroughly investigate all cases of torture and CIDT.

Furthermore, the ratification of OPCAT would help in expanding the focus of oversight bodies to institutions beyond correctional centres and police stations. Currently, there is no oversight body for a place such as Lindela Repatriation Centre, despite widespread allegations of torture and ill-treatment of non-nationals at this facility. Ratifying OPCAT would make this requirement for National Prevention Mechanisms mandatory, including for detention places for children, juvenile offenders and psychiatric patients who are also at risk of being ill-treated and tortured.

7.3.2. Strengthening the role of civil society organizations in supporting oversight bodies

It is important that civil society organizations continue to support JICS and IPID in fulfilling their mandate to protect and promote the rights of inmates and suspected criminals. The partnership between these two oversight bodies and civil society organizations must be strengthened and solidified. It is also important for civil society organizations to improve their working relationships and cooperation with other key institutions, such as the NPA, the South African Human Rights Commission, the Public Protector, SAPS and DCS, in protecting the rights of all vulnerable groups in our society, including inmates and suspected criminals.

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