

# Torture in South Africa

The primary aim of law enforcement officials in South Africa is to enforce the law. With this responsibility, comes the inherent duty to do so lawfully and within their constitutional mandate. When law enforcement officials torture someone, they undermine our democracy.

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



3%

According to the *Independent Police Investigative Directorate Report 2021/2022*, deaths in police custody (223 cases) increased by 3 percent from 2020/2021.

## What is Torture?

Torture can be perpetrated against a person for the purposes of:

- Obtaining information from them or a third party;
- Punishing them for an act they have done, is suspected of having done, or that someone else has done or suspected to have done;
- Intimidating or forcing them or another person to do, or refrain from doing anything; or
- any reason based on discrimination of any kind.

*Torture is an intentional act causing severe pain and suffering to the victim. This suffering can be either physical and/or mental. It must be committed by a public official or a person acting on behalf of a public official.*



### PREVENTION AND COMBATING OF TORTURE OF PERSONS ACT 13 OF 2013

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

It is a recognised crime in South Africa and perpetrators of this specific crime can be charged, tried and prosecuted under the Prevention and Combating of Torture of Persons Act 13 of 2013 ("The Anti-torture Act").



### UNITED NATIONS CONVENTION AGAINST TORTURE (CAT)

South Africa enacted anti-torture legislation on 25 July 2013 almost 15 years after ratifying the United Nations Convention against Torture (CAT) and ratified the Optional Protocol on the Convention against Torture (OPCAT) in March 2019.

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

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

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

**Torture victims can suffer from a number of symptoms as a result of torture inflicted on them, including:**

## Physical Symptoms

ALL PHYSICAL INJURIES WHICH VICTIMS SUSTAIN INCLUDING, AMONGST OTHERS, HEAD INJURIES, SPINAL CORD INJURIES, HEADACHES, CHRONIC PAINS AND ACHES, LOSS OF EYESIGHT, STIFFNESS IN LIMBS AND JOINTS, DISLOCATION OF JOINTS, MUSCLE DAMAGE, DAMAGE TO SEXUAL AND REPRODUCTIVE ORGANS, BONE FRACTURES, PAINFUL WOUNDS AND SCARS, PARALYSIS AND SKIN DAMAGE, FOR EXAMPLE, LACERATIONS, BRUISES AND BURNS

## Mental or Psychological Symptoms

SLEEP DISTURBANCE (TOO LITTLE SLEEP OR TOO MUCH SLEEP), SUICIDAL THOUGHTS, CONCENTRATION PROBLEMS, LACK OF ENERGY, SEXUAL DYSFUNCTION, ANGER OUTBURSTS, CONFUSION OR DISORIENTATION, MEMORY LOSS, FEELINGS OF SHAME, FEELINGS OF EXCESSIVE GUILT, MOOD SWINGS, EXTREME SADNESS, DEPRESSION, FEELINGS OF HOPELESSNESS, LOSS OF INTEREST IN LIFE, FLASHBACKS AND AVOIDANCE OR NUMBING.

## Social Symptoms

BREAKDOWN IN INTER-PERSONAL AND SOCIAL RELATIONSHIPS, LOSS OF CAPACITY FOR ENGAGING IN INTIMATE RELATIONSHIPS, ISOLATION AND WITHDRAWAL, AGGRESSION, SUBSTANCE ABUSE- ESPECIALLY MIND-ALTERING DRUGS, LOSS OF COMMUNITY AND SPIRITUAL CONNECTION, COMPROMISED RELATIONSHIP SKILLS, COMPROMISED PARENTAL SKILLS AND COMPROMISED OCCUPATIONAL SKILLS.

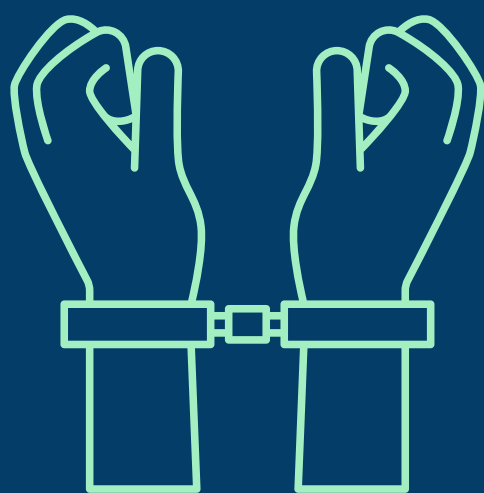
### WHO CAN BE FOUND GUILTY OF TORTURE?

- A PUBLIC OFFICIAL WHO EITHER COMMITS OR TRIES TO COMMIT TORTURE, OR FORCES SOMEONE ELSE TO COMMIT TORTURE.
- ANY PERSON WHO PARTICIPATES IN TORTURE OR CONSPIRES WITH A PUBLIC OFFICIAL TO HELP HIM/HER COMMIT TORTURE.
- A PUBLIC OFFICIAL WHO OBEYS AN ORDER TO COMMIT TORTURE.

### WHAT IS THE PUNISHMENT IF FOUND GUILTY OF TORTURE?

SINCE TORTURE IS A SERIOUS CRIME, IT CARRIES A PUNISHMENT OF IMPRISONMENT, INCLUDING LIFE IMPRISONMENT.

THIS LAW ALSO STATES THAT WHEN A PERSON IS GUILTY OF TORTURE THEY CANNOT JUST PAY A FINE OR BE GIVEN A SUSPENDED SENTENCE.



The right to dignity is a founding value of our democratic state in section 1 of the Constitution; it calls for the autonomy of each human being and the right of everyone not to be devalued as a human being or treated in a humiliating manner.

This is an inalienable right which gives rise to freedom and security of the person, specifically the right not to be tortured in any way, and the right not to be treated or punished in a cruel, inhuman or degrading way.

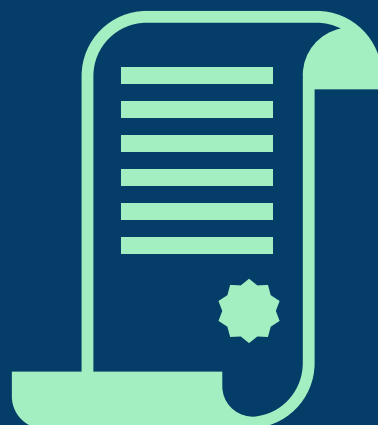
Therefore, the Department of Correctional Services has a positive duty to ensure that inmates are detained in a secure and humane environment.

LAWYERS FOR  
**HUMAN RIGHTS**

## What are the rights of detained persons?

Under the Bill of Rights, Chapter 2 of the Constitution, all detained persons have the right:

- To equality
- Not to be tortured
- Not to be punished in a cruel, inhuman or degrading way
- To dignity
- To exercise
- To adequate (satisfactory) accommodation
- To adequate nutrition
- To adequate medical treatment



The basic rights of all arrested and detained persons in South Africa are primarily based on four sections in the Constitution, namely Sections 10, 11, 12 and 35.

## What assistance or remedy is available for victims of torture?

Torture is a distinguished form of violence because it can only be committed by or with the help of a public official. Torture is a very serious crime that has severe physical and psychological effects.

The Prevention of Torture Act allows for a criminal case to be opened. The Independent Police Investigative Directorate (IPID) and the Judicial Inspectorate for Correctional Services (JICS) are the respective authorities who will investigate any crime that law enforcement officials have committed. Victims of torture can open a civil case against the relevant authority.

According to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), a victim of torture is entitled to 'as complete a rehabilitation as possible'. However, this right is often not understood, practised, accessed, resourced or enforced.

### WHAT DOES REHABILITATION ENTAIL?

Rehabilitation is the process which allows you to heal, to have improved functioning in your day-to-day life and to recover from your experiences of torture.

This includes the right to fair and adequate compensation which covers your rehabilitation costs; the right to full rehabilitation, which is to be provided by the state or through funded service providers. Full rehabilitation includes physical, medical, psychological, legal, social and community assistance.

### WHAT ROLE DOES THE SOUTH AFRICAN GOVERNMENT PLAY?

The South African government is responsible for:

- Educating the public through education and information campaigns about the law against torture.
- Educating all public officials who are involved in custody, interrogation or treatment of arrested, imprisoned or detained persons about the crime of torture.
- Assisting and advising victims who want to lodge a complaint.
- Training public officials on the prevention and combatting of torture.

LAWYERS FOR  
**HUMAN RIGHTS**

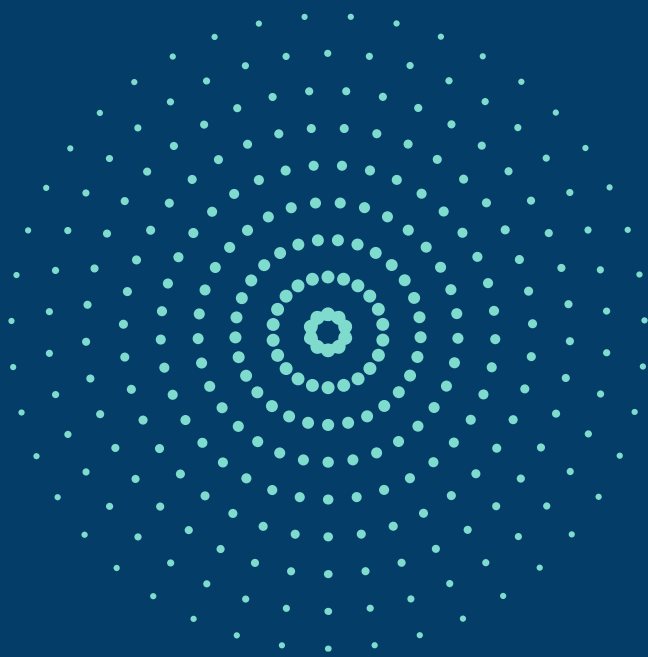
# Need legal assistance?

**Lawyers for Human Rights**

Penal Reform Programme

4TH FLOOR SOUTHPOINT CORNER BUILDING  
87 DE KORTE STREET  
BRAAMFONTEIN

TEL: (011) 339 1960



Or contact:

1. The Independent Police Investigative Directorate (IPID)
2. The Judicial Inspectorate for Correctional Services (JICS)
3. The South African Human Rights Commission