Introduction

This document provides a structure for implementation of the right to rehabilitation for victims of torture at the national level in South Africa. For this purpose, (1) it explains what is torture, ill-treatment and victim in international law, (2) it clarifies the content and scope of torture victims’ right to rehabilitation as established in the UN Convention against Torture and in the ACHPR General Comment no.4 on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), and (3) presents a framework of indicators that can be used to measure the level of implementation of this right at the national level.

What is the consultation process?

The compilation of indicators presented here have been developed by Professor Nimisha Patel, International Centre for Health and Human Rights, as part of a global indicator framework for the right to rehabilitation. These indicators have been developed over many years, based on assessment methods evaluating the quality of rehabilitation services for torture victims and on research, including with victims of torture and consultation with experts in rehabilitation of torture victims and experts in human rights indicator development, including from the Office of the High Commissioner for Human Rights’ Research and Right to Development Team.

In order to be useful and effective, it is essential that the assessment of the implementation of the right to rehabilitation is based on contextually relevant indicators. Thus, the indicator framework is undergoing a series of consultations in South Africa to harness the expertise, experience and knowledge of stakeholders to ensure the indicators are meaningful in the South African national context. This has included:

Phase 1: Workshop with stakeholders (February 2018)
Phase 2: Workshop with experts providing rehabilitation for torture survivors (February 2018)
Phase 3: Current online consultation (April-May 2018)

What is torture and other cruel inhuman or degrading treatment or punishment (CIDT)?

One of the most recognised definitions of torture is from the United Nations Convention Against Torture and other cruel, inhuman or degrading treatment of punishment (UNCAT). The UNCAT defines four key features which must be present for an act to be considered to be torture (Box 1).
Box 1. Key features of torture

- Severe pain or suffering - physical or mental
- Intentionally inflicted
- For a purpose such as obtaining information, confession, punishment, intimidation, coercion or any reason based on discrimination.
- By a public official or other person acting in an official capacity (instigated by them, or with their consent or agreement)

There are a number of actions which do not amount to torture, but they are acts which may be considered to be other forms of cruel, inhuman and degrading treatment or punishment (CIDT). These acts are also prohibited under international law.

Some examples of torture and other forms of cruel, inhuman and degrading treatment or punishment (CIDT) are:

- Police beating a suspect in custody to make them confess
- Military forcing someone to watch while their family is harmed or threatened because they do not support the government
- Immigration officials raping asylum seekers in exchange for food in a refugee camp
- Depriving prisoners of sleep as punishment
- State security forces applying hot metal to burn someone while they question them.
- Being held without communication
- Being threatened during interrogation
- Being placed in uncomfortable positions (stress positions) for periods of time

This document uses the term torture to be more concise but it is important to stress that victims of other forms cruel, inhuman and degrading treatment have an equal right to rehabilitation.

Who can be a victim of torture?

All forms of torture have one thing in common: the notion that victims must be subdued, punished or threatened. The entity supposed to protect them – the State authority – is either behind those actions or allows them to happen.

While children as well as adults, religious as well as atheists, and all social classes alike can be targets of government-endorsed violence, torture is often practised in contexts of discrimination against particular groups, communities and populations, or in detriment to people living in poverty.

International law clearly establishes that victims can both be those that have been directly impacted torture and those that are indirectly impacted such as the victims’ families and communities. This understanding is supported by the experience of torture rehabilitation centres worldwide who support many indirect victims to overcome the consequences of torture inflicted on members of their families and communities.
What is the right to rehabilitation for torture victims?

The right to reparation for torture victims is firmly grounded in international law and consists of five elements: Rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition. This has been elaborated in various UN and regional instruments.¹

Article 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment specifically establishes the right to rehabilitation:

“1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation [...].”

The Committee against Torture’s General Comment no. 3 on implementation of Article 14 elaborates in detail on the substantive content of the right to rehabilitation.

The African Charter for Human and Peoples’ Rights (Article 5) prohibits torture, cruel, inhuman or degrading punishment and treatment and Part III of the Robben Island Guidelines², adopted by the African Commission in 2002, recognises the obligation on states to offer reparations to victims of torture, and calls on states to ensure that all victims of torture and their dependents are offered appropriate medical care; have access to appropriate social and medical rehabilitation and are provided with appropriate levels of compensation and support. In May 2017, the African Commission on Human and Peoples Rights (ACHPR) adopted its own General Comment no. 4 on Redress and Reparation adding region specific components to UNCAT’s global standards.

Box 2: Summary of the right to rehabilitation

- Specialist services for torture survivors
- Available, readily accessible, adequate, appropriate rehabilitation
- Holistic, including medical and/or psychological treatment, social, vocational and legal support
- Provided on the basis of a needs assessment and evaluation by qualified, independent health professionals
- Non-discriminatory and culture- and gender-sensitive
- Victim-centred: tailored to address the victim’s needs, preferences for rehabilitation service and their culture, personality, history and background
- Provided in a way that guarantees the safety and personal integrity of the victims and their families
- Provided without a requirement for the victim to pursue judicial remedies; and without reprisals or intimidation

² Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), adopted at the 32nd ordinary session of the African Commission, Banjul, The Gambia, October 2002
How can the standards for the right to rehabilitation be effectively implemented?

The standards established in international law for the right to rehabilitation for torture victims and their families are substantial. Indicators for these standards are a prerequisite for further advancement in the implementation of the right to rehabilitation at the national level. Without indicators, there is no objective measure of how States are performing in the implementation of their international and regional obligations towards torture victims.

What are indicators for the right to rehabilitation for torture victims?

Indicators for the right to rehabilitation capture the nature and scope of the right to rehabilitation for victims of torture.

Indicators can
- Anchor legal language and the standards for the right to rehabilitation in multidisciplinary rehabilitation practice
- Inform comprehensive assessments and provide a roadmap towards realisation of right to rehabilitation
- Inform implementation strategies at country level, including public policies and programmes
- Inform decisions on what information is recorded, where, how to measure the implementation of the right
- Monitor progress and overall outcomes – what difference have measures undertaken by the State made?

What are the different categories of indicators?

The compilation of indicators presented in this document are organised in three categories of indicators (Box 3).

<table>
<thead>
<tr>
<th>Box 3. Summary of Types of Human Rights Indicators</th>
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<tbody>
<tr>
<td><strong>Structural indicators</strong></td>
</tr>
<tr>
<td>Measure State <strong>commitment</strong> to its human rights obligations</td>
</tr>
</tbody>
</table>
| - Identify gaps in domestic law in relation to international human rights law and obligations of the state party to human rights treaties  
  - Identify gaps in public policy documentation on the right to rehabilitation  
  - Identify customary practices and domestic institutions relevant to the implementation of the right to rehabilitation |
| **Process indicators**                            |
| Measure State **efforts** made towards realising human rights obligations |
| - Contextually-relevant indicators which focus on administrative data and interventions for implementing human rights, based on global best practices |
| **Outcome indicators**                            |
| Measure the **outcomes (results)** of State efforts to implement human rights |
| - Identify attainments relevant to the implementation of the right to rehabilitation as reparation  
  - Identify attainments in relation to specific target population groups |

It is not essential that the indicators are strictly defined as structural, process or outcome indicators, as long as they capture relevant aspect(s) of the right to rehabilitation. Broadly the indicator framework presented here seeks to reflect the “commitment-effort-result aspects of the realisation of human rights” (OHCHR, 2012, p.86). The indicators presented are not intended to be exhaustive.
### Structural Indicators for the Right to Rehabilitation

**Structured Indicators measure State commitment to human rights obligations**

**Overall question: What legal and constitutional measures and safeguards has the South African State undertaken to implement the right to rehabilitation for victims of torture?**

<table>
<thead>
<tr>
<th>Indicators</th>
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<tbody>
<tr>
<td><strong>Laws</strong></td>
<td><strong>Policies</strong></td>
</tr>
<tr>
<td>Number of human rights treaties relevant to the prohibition of torture and reparation, including the right to rehabilitation, which are ratified by the South African State</td>
<td>Date of entry into force and scope of coverage of a national policy framework across health, social care, education and justice departments, with clear demarcation of responsibilities and duties to implement the right to rehabilitation, in keeping with contextually relevant norms for South Africa</td>
</tr>
<tr>
<td>Date of entry into force and scope of coverage of the (a) prohibition of torture and (b) the right to rehabilitation as reparation in the South African constitution</td>
<td>Date of entry into force and scope of coverage of provincial/local government policy frameworks across health, social care, education and justice departments, with clear demarcation of responsibilities and duties to implement the right to rehabilitation, in keeping with culturally sensitive norms for the country</td>
</tr>
<tr>
<td>Date of entry into force and scope of coverage of domestic laws for (a) prohibition of torture and for implementing (b) the right to rehabilitation as a form of reparation</td>
<td>Date of establishment and scope of mandate of national and local/provincial institutional structures and effective mechanisms across health, social care, education and justice departments, with clear demarcation of responsibilities and duties to implement the right to rehabilitation</td>
</tr>
</tbody>
</table>
### PROCESS INDICATORS FOR THE RIGHT TO REHABILITATION

Process indicators measure the State efforts made towards realising human rights obligations

#### Overall question: What efforts is the South African state making towards realising the right to rehabilitation for victims of torture?

#### Indicators

**Programmes and budget allocations**
- Share of government budgets spent on rehabilitation (across public health, social care, education and other relevant departments with responsibilities under the right to rehabilitation for victims of torture)
- Reparation programme established with rehabilitation component for victims of torture in transitional justice processes

**Awareness-raising**
- National mechanisms and a national awareness-raising programme specific to each government institution and department at the national and local/provincial levels, for increasing awareness and understanding of their obligations under the right to rehabilitation as reparation
- National programme for public awareness-raising on the
  - prohibition of torture;
  - right to rehabilitation for victims of torture;
  - availability of rehabilitation services, types of services and location of services

**Mechanisms**
- Effective mechanisms established with adequate mandates to monitor and assess the national implementation of the right to rehabilitation
  - National Human Rights Institution with a mandate to a) monitor implementation of torture victims’ right to rehabilitation and/or b) monitor outcomes of individual torture complaints including whether decisions specify specific remedies including rehabilitation.
  - National Prevention Mechanisms’ provision of information on and monitoring of implementation of the right to rehabilitation for torture victims in places of deprivation of liberty.
- National protocol(s) and mechanisms for the coordination, functions and responsibilities of every state or non-state institution which has contact with victims of torture
- Mechanisms and national guidance established for state and non-state institutions to ensure the identification, rehabilitation and follow-up of victims of torture, including those with special needs, in all settings (including safety sites, detention centres, health institutions, schools, community etc.)

**Ensuring availability of relevant skills**
- Number of specialist health and social care professionals (doctors, psychologists, psychiatrists, social workers) per capita
- Numbers of staff (disaggregated by profession) specialising in the rehabilitation of torture survivors in all rehabilitation services (state and non-state) nationally
- Numbers of government staff and relevant government officials (disaggregated by role/position and department) trained in their obligations under the right to rehabilitation for all victims of torture
- Numbers of staff (disaggregated by profession) (in state and non-state institutions) trained to increase their awareness and skills in providing rehabilitation to torture victims
- Number of established and operational rehabilitation services available nationally for victims of torture (including those who are also perpetrators), by
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- Type of institution (state and non-state)
- Geographical location within the country

**Monitoring and evaluation systems**
- State system established for effective monitoring and reporting of state and non-state rehabilitation services, on:
  - Absence of particular types of rehabilitation services (e.g. physical health and psychological health rehabilitation, social care rehabilitation, educational rehabilitation for minors, vocational and legal rehabilitation)
  - The national implementation of recommendations on improving rehabilitation service availability, quality and gaps in rehabilitation services (including, health, social care, education, vocational and legal rehabilitation);
  - Structural barriers to the implementation of the right to rehabilitation as reparation;
  - The time frame of judicial and/or reparation programmes and reparation processes
  - The related structural and procedural barriers in reparation processes which may adversely impact on the rehabilitation of victims of torture or cause harm to victims
- Steps taken by the state to address the structural and procedural barriers

**Jurisprudence**
- Number of judicial decisions in cases of torture which specify rehabilitation as reparation
- Proportion of judicial decisions specifying rehabilitation as reparation which are implemented
- Number of formal complaints (from state and non-state institutions) on the right to rehabilitation investigated and adjudicated by the national human rights institution, human rights ombudsman or other mechanisms and the proportion of these responded to effectively by the Government.
- Proportion of recommendations from national reparation programmes or processes, specifying rehabilitation, which are implemented

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**OUTCOME INDICATORS FOR THE RIGHT TO REHABILITATION**
Outcome indicators measure the outcomes (quality of services) of the state’s efforts to implement the right to rehabilitation

Overall question: Do the services available for victims/survivors of torture (nationals and non-nationals) meet the standards for rehabilitation established in international law?

<table>
<thead>
<tr>
<th>Standard</th>
<th>Attributes of the standard</th>
<th>Sample indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Safety and personal integrity of clients and staff in services</td>
<td>Survivors do not suffer from threats, harm, intimidation or other reprisals whilst or as a result of attending/using rehabilitation services or giving feedback/complaints on rehabilitation services accessed</td>
<td>• Service has established mechanisms to monitor threats, harm, intimidation or other reprisals against survivors and their family members as a result of attending the service&lt;br&gt;• Absence/ no. of incidents of threats, harm, intimidation or other reprisals towards survivors or their family members whilst or as a result of attending services&lt;br&gt;• Absence/no. of incidents of threats, harm, intimidation or other reprisals from the service provider towards survivors or their family members&lt;br&gt;• No. of complaints/ negative feedback from survivors on rehabilitation services accessed&lt;br&gt;• No. of complaints from survivors who have suffered intimidation, threats, reprisals or other sanctions for choosing to not attend state rehabilitation services</td>
</tr>
<tr>
<td>Services have effective mechanisms to protect survivors from harm</td>
<td></td>
<td>• Service policies on safety and safeguarding survivors using the service, including vulnerable adults and children exist&lt;br&gt;• No. of incidents of attempted/actual suicide (rates)</td>
</tr>
</tbody>
</table>
| Services have effective mechanisms to protect confidentiality and security of personal rehabilitation records (written and electronic); and to address breaches | • Service policies on ensuring confidentiality and data protection of client data of survivors exist  
• Service mechanisms established to monitor, record and address breaches of confidentiality are in place  
• No. of breaches of confidentiality (not related to breaches in keeping with ethical obligation to protect survivors or others from harm) |
| Services can work safely without intimidation, harassment, threats, violence or abuse from State/non-state or private actors | • Services have established mechanisms in place to protect staff from harm, intimidation, threats and other abuse  
• No. of staff-reported incidents of safety breaches |
| Services tailored to meet the range of immediate and long-term needs of each survivor | • Services have protocols and established mechanisms to develop tailored plans to meet the range of immediate and long term needs of survivors and their family members  
• No. of survivors (individuals and family members) provided immediate assistance  
• No. of survivors (individuals and family members) provided long-term support |
| Services offered are specialist and offered by qualified specialists in addressing needs of torture survivors | • Services are specialised in meeting needs of torture survivors  
• No. of specialist staff in service (breakdown by discipline, level of qualifications, no. of years’ experience working with torture survivors) |
| Services are appropriate in that they are designed to meet the specific needs of torture survivors within the client population, addressing their experiences of torture, strengths, resources and range of needs (medical, psychological, social, welfare, legal etc.) | • Services have established mechanisms to ensure they can meet specific and a range of needs of survivors  
• No., range, nature and focus of specialist services provided  
• No. and range of survivors’ needs addressed by service (disaggregated by age, gender, ethnicity, country, nature/types of torture, psychological, medical, social, welfare and legal needs)  
• Overall profile and types of services available fit (match) with the overall profile of identified needs of survivors in the country context |
| Services are appropriate in being consistent with survivors' gender, age and cultural, linguistic, religious, ethnic backgrounds | • Services mechanisms to monitor the fit (match) of services offered in relation to overall needs of survivors attending services  
• Proportion of survivors in rehabilitation who are provided services which are appropriate and consistent with the overall profile of survivors’ gender, age, cultural, linguistic and ethnic backgrounds  
• Proportion of survivors requiring interpreters who are provided with professional, qualified interpreters |
### Services are culturally-appropriate and culturally-competent
- All rehabilitation services and service components are culturally-appropriate
- Services use models and methods which are culturally-appropriate and culturally-valid
- Services meet cultural competencies established in health and social care fields
- No. survivors (disaggregated by age, gender, cultural/ethnic background) and their feedback on (a) the cultural appropriateness of services (models and methods) they received and (b) cultural competency of staff involved in their rehabilitation

### Services offered are interdisciplinary, providing holistic care
- Range of interdisciplinary services provided (broken down by nature of service, staff working within the service)
- Services have established mechanisms to ensure interdisciplinary practice and holistic care for survivors

### Services appropriate in meeting needs according to priority, based on health social and legal protection needs
- Services have mechanisms to ensure prioritisation according to need
- No. of survivors identified as high priority (disaggregated by age, gender, ethnicity, country/demographic background and identified priority needs)

### Services are acceptable to survivors
- No. and outcome of consultations with prospective clients (survivors) and communities on what services are needed and deemed acceptable to them
- No. of survivors providing positive feedback (satisfaction) or negative feedback (dissatisfaction) on services received

### Services are offered in the relevant languages of survivors
- First/fluently spoken languages of survivors compared to (a) No. of rehabilitation staff who are native speakers of first language of survivors attending the service (b) No. of rehabilitation staff who are bilingual in languages spoken by survivors attending the service (c) Provision of professional interpreters in relevant languages of survivors attending the service

### Services have effective mechanisms to involve survivors in decision-making about the care and services they receive
- Service policy statement and procedures on survivor-involvement exist
- No.s of survivors involved in developing a joint rehabilitation care-plan (as % of overall client population)

### 3. Effective
**Services meet their specific service goals**
**Services contribute to positive changes in survivors’ lives**
**Services are effective in improving outcome in the range of needs of survivors and family members**
- Mechanisms established to monitor effectiveness:
  - Nature and extent to which specific service goals are met
  - % of survivors (disaggregated by age, gender, nationality, ethnicity) reporting positive changes as a result of rehabilitation interventions in (a) each key domain of health and social well-being (b) the identified areas of need
  - No. of survivors and family members with adequate levels of functioning (educational, vocational, social) following rehabilitation

### 4. Impact
**Services have intended and unintended positive benefits to survivors, their families, communities**
**Services have short/medium and long-term impact**
- Nature and extent of positive and negative impacts (intended and unintended; short, medium and long-term) of services or service activities/projects on (a) Survivors (b) Families (c) Communities (d) Other

**Services have national/regional/international impact**
- Nature and extent of positive impact of services or service activities/projects, nationally/regionally/internationally on
| **5. Coherence** | **Services are coherent and coordinated to deliver optimal, holistic care to survivors**  
Services have links with and effective referral pathways to other complementary, appropriate services/agencies, to enable holistic service provision | • Service mechanisms established to ensure coordinated, integrated and coherent care to survivors  
• No, and nature of other agencies offering complementary rehabilitation services  
• Clearly defined, coordinated and effective referral pathways to other agencies offering relevant rehabilitation services or complementary services to survivors |
| **6. Accessible** | **Services accessible to all survivors in country context**  
Services accessible according to needs of survivors and family members (not dependent on criminal prosecution or legal status) | • No. of survivors accessing services (disaggregated by age, gender, ethnicity, country background, language, geographical location, ability/disability, type of torture, whether in detention/not, identified needs) at each stage of contact with the service from  
  o Identification and initial assessment  
  o full holistic assessment  
  o rehabilitation interventions/activities/care  
• No, and % of survivors rejected/denied rehabilitation service on the basis of individual characteristics or background (disaggregated by age, gender, ethnicity, country background, language, transport costs, ability/disability, type of torture, whether in detention/not etc.)  
• Location of services is accessible to rehabilitation staff  
  o within reach  
  o physically accessible  
  o in a safe location  
  o transportation is affordable  
• Location of services is accessible to survivors  
  o within reach  
  o physically accessible  
  o culturally-appropriate and minimising stigma (e.g. community-based)  
  o in a safe location  
  o transportation is affordable  
  o transportation is available  
• No. of survivors who do not attend services and reasons why  
• No, and % of survivors unable to access the service on the basis of affordability  
• No, and % of survivors unable to access the service on basis of physical disability |
| **7. Fair** | **Services are equally available to all survivors regardless of age, gender, ethnicity, language or other background**  
Services provided are non-discriminatory  
Services are not subject to ability to pay by survivors | • As above  
• Survivor groups least represented (%) within services provided (disaggregated by age, gender, country background, ethnicity, language, geographical location, ability/disability, sexuality, type of torture, whether in detention/not, identified needs)  
• No. and % of survivors able to receive rehabilitation services on basis of ability to pay |
| **8. Time-sensitive** | **Services which conduct early identification of survivors**  
Services which offer prompt initial and full, interdisciplinary assessment of survivors | • Early identification service provided, by:  
  o type of service/institution (state/non-state)  
  o location of service/institution  
  o which frontline professionals (e.g. in primary health care, in hospitals etc.)  
• Average time (days and % of survivors, disaggregated by gender and age) between |
| Services which offer timely and early intervention to those survivors meeting the service inclusion criteria | (a) identification and initial assessment  
(b) initial assessment and full interdisciplinary, holistic assessment  
(c) identification and start of rehabilitative care  
(d) full assessment and referral to other relevant services (intra-agency and external agencies)  
(e) assessment finding of survivors deemed most vulnerable and at risk of harm and the commencement of protection service/intervention |
| Services which offer timely referral to other appropriate/relevant services (intra-agency referrals and external-agency referrals) where necessary | |
| Services which promptly attend to the needs (including protection needs) of survivors deemed most vulnerable | |

### 9. Resourced and cost-efficient

| Services adequately resourced with available budgets | • Budget allocated for all rehabilitation service components (e.g. psychological and physical care, social care, vocational support, legal support), (overall and % per each service component and other activities/programmes, staff costs, overheads)  
• Cost per service/rehabilitation activity or component (annual and average per day)  
• Proportion of budget spent on direct rehabilitation service provision for survivors, their families and communities |
| Resources available adequately utilised to achieve service goals | |
| Services cost-efficient | |

### 10. Sustainable

| Services are sustainable (financially viable, secure; free from threat) | • Service funding for quality rehabilitation is secure  
• Services are free from internal/external threats  
• Impact of services can be sustained (e.g. beyond 1 year), on survivors  
• Percentage of survivors who were still in rehabilitation when a service/project-based service is terminated, who are then able to access other rehabilitation services |
| Service-related positive impact/benefits sustainable for survivors, referrers, policy, practice | |

## Next steps

We would welcome your comments on the indicators provided in this document. Please complete the form [https://www.surveymonkey.com/r/F6KRRWT](https://www.surveymonkey.com/r/F6KRRWT) by 31st May 2018.

Following this consultation, a network of those institutions and individuals interested in monitoring the implementation of the right to rehabilitation will be established. One of the tasks of this network will be to agree key indicators to monitor nationally.

Thank you for your interest.

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