Combating Torture and CIDT: Police Practice and Police Transformation in South Africa

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Since the fall of apartheid, the South African government has made a point out of signing and ratifying international conventions. Because of its legacy, it is argued, South Africa has a special obligation to abide to international human rights standards. Consequently, institutions and policies have been transformed in order to change the violent practices of the past. However, questions remain as to the success of the transformation, as recent reports suggest that the South African police still employ torture.[1] In this paper, I explore violent police practices in the light of the convention against torture and cruel, inhuman and degrading treatment (CIDT) in post-apartheid South Africa, as well as consider how such practices relate to the transformation of the police. I show that whereas perceptions suggest that torture was a thing of the (apartheid) past it is very much part of everyday policing in South Africa. After briefly introducing transformational efforts within the police, I discuss the extent to which the transformational efforts resonate with the reality experienced by police officers. I conclude that the dissonance must be explained partly in impunity, partly in failure to link the abstract conventions with everyday practices, and partly in a deliberate disagreement with human rights on the part of the police. I suggest that it is necessary to engage in different kinds of transformational practices, which take as their point of departure the reality of policing South Africa if we are serious in reducing torture.

Torture and CIDT in South Africa through the lens of the media

In 1998 police officer and former member of the apartheid anti-terror squad, Jeffrey Benzien illustrated his method of torture at the amnesty hearings of the South African Truth and Reconciliation Commission. Sitting on the small of his handcuffed 'victim's' back, he slipped a wet bag over the head and dragged it backwards. A gasp went through the hall at such blatant display of what everyone had already known – the apartheid state was a torturing state, but which the state had until that point

[1] In Mail and Guardian "ICD probes torture complaints against Belville cops", accessed May 30, 2011 at mg.co.za/article/2010-08-16-icd-probes-torture-complaints-against-belville-cops.

denied. In the hearings, Benzien boasted that he could make anyone confess within thirty seconds. Incidents like this, exposed during Jeffrey Benzien's hearing and the testimony of multiple activists who retold their experiences of torture during the struggle against apartheid, prompted the ANC government to become an ardent proponent of a world free of torture. In the years after apartheid the South African government would ratify a number of international conventions and treaties, like the UN Convention Against Torture (UNCAT) and other human rights treaties. In a way, Jeffrey Benzien's case staged the archetypical South African drama where a white, boorish police officer abused and tortured a black political activist. This, we suggest, is what torture in South Africa is often reduced to in public and political imagination. However, contrary to these perceptions, torture and cruel, inhuman and degrading treatment (CIDT) still occur in present day South Africa.

In order to assess the nature of torture and CIDT in South Africa, RCT and CSVR in South Africa carried out a media review on torture and CIDT published in 30 Afrikaans and English speaking newspapers in 2006.i Accessing reports about torture and CIDT is notoriously difficult for a number of reasons. First of all, torture and CIDT are practices that are shrouded in secrecy and indifference. Journalists prioritize news with clear sensation, identification, conflict, actuality, news worthiness and exclusivity.ii Although torture and CIDT do live up to these news criteria, the practices are sometimes difficult to access. Furthermore, and perhaps not surprising, the reports seldom frame the allegations within a human rights paradigm. In fact, of the reports which we judged to be cases of torture only 30% mentioned human rights. Finally, in most cases, the articles were written soon after the alleged event, or during a trial, and featured mostly accusations. Only rarely did the news report a final verdict or finding of an allegation of torture or ill-treatment. Despite these shortcomings, news reports provide one of the few avenues into understanding the nature of torture and CIDT in South Africa. Through the reports we access a variety of testimonies and stories that are not normally seen as torture and CIDT on a much broader geographical and social level than for instance Amnesty International reporting. Unlike oversight institutions like the ICD and the Judicial Inspectorate of Correctional Services (JICS), media reports cover a broader spectrum of cases and allow more voices, including those of victims, to be heard. Through the news reports we are able to create an admittedly partial archive of the nature of torture and CIDT. The picture that emerges from these analyses illustrates that torture and CIDT still continue to be perpetrated. Sometimes it takes spectacular forms where those committing the offenses must know that they are torturing, while in other cases the violence is much more banal and mundane.

So what was in the archive? While media reporting can tell us nothing of the numbers of incidents (quantitative) it might tell us something about what kinds of torture and CIDT (qualitative) exist

in South Africa – with due consideration for the methodological challenges outlined above. Through an extensive key word search we identified 4,457 articles published in 2006 that might include articles of torture and CIDT. Through a screening process involving three layers of quality control, this number was reduced to 483 articles where the occurrences described fell under the purview of the Convention.[iii] Assessing the incidents in each article individually on the basis of the four criteria set out above, we found that the incidents described in 75 articles amounted to torture according to our reading of the UNCAT definition. Two hundred and ninety three articles described incidents that could be categorised as CIDT. In 133 cases, falling within the parameters of the UNCAT, we were unable to distinguish whether what was detailed was torture or CIDT. This means that approximately 60 percent of the sample reports dealt with CIDT, while 15 percent dealt with torture. Evidently, these figures say nothing of the quantitative distribution between of torture and CIDT.

In the analysis we identified incidents of torture and CIDT in a number of different contexts. These included police interrogation, crowd control, police shooting, police assault, police detention, police crime, prison conditions, children, the "war on terror" in South Africa, and harassment, arrest and deportations of migrants. By far the most media attention was given to a few high-profile cases, where the police were under considerable pressure to produce results. It was also in these cases that some of the more blatant forms of torture were perpetrated. Most of these cases were captured under the heading of police interrogation. One such case was the 'Airport Heist'.

The airport heist case began as a crime story about a daring robbery out of a plane in Oliver Tambo International Airport in Johannesburg, followed by an equally daring robbery of the recovered money out of a police safe in Benoni Police Station, east of Johannesburg. Quickly, however, the case pointed to the involvement of police officers as perpetrators and colluders in the robberies. During the investigation two civilian witnesses, Frank Mampane and Solly Hangwane, died under mysterious circumstances after relatives alleged they had been tortured. Mampane had allegedly been doused with boiling water by police officers in his home immediately prior to his fatal arrest. Three police officers, Khomani Mashele, Paul Kgoedi and Serious Mthembi, were also interrogated during the investigation in ways that qualify as torture, including electric shocks. In a rather remarkable statement, during a bail application, to the investigating police officers Judge Schutte warned the police not to harm the prisoners and not to interrogate them without their legal defence being present: 'Dit moet end kry (This must cease)'.[iv]

These allegations clearly fell within the Convention as torture, as it included boiling water thrown on suspects, threats to life, electrocution, beatings and finally murder. It also attracted much

attention during 2006. The articles also covered police transgression of the Convention in respect of crowd control, where especially the excessive use of force arguably constituted CIDT (but not torture). We also identified cases involving unlawful police shooting as falling under the purview of the Convention, as well as several cases of police assault. Several cases dealt with crimes allegedly committed by the police, including domestic violence. Not all acts of police criminality might fall within the purview of the Convention in terms of purpose, as it is often committed for simple enrichment or other criminal motives. Similarly, in most cases the police were not acting as 'state actors'. These acts might fall under the Convention where the police use their state authority to rob, steal or rape. In any case, the media was replete with stories of police crime.

The media also reported frequently on situations of police detention or imprisonment. Imprisonment and detention are of particular concern because these are situations in which the state has absolute control over the victim. Hence, it is where Professor Nowak's expansive definition applies. Several cases were reported in 2006 regarding deaths in custody, rape, suicide, abuse and other forms of violence. However, detention, especially imprisonment, is notoriously difficult to access for the public and the media. In 2006, a significant part of the incidents making it to the news dealt with the Jali Commission of Inquiry[v] or came through NGO reports. For instance, the Treatment Action Campaign waged a highly successful media campaign about prisoners' right to Anti-Retroviral HIV medication in a Durban prison, which saw several reports making it into the news.

There were also a number of cases in which the state failed to protect the inmates in its charge in ways that fell under the purview of the Convention – often harmed by their fellow inmates. For instance Percy Teke was brutally killed in 2004 by six of his cell mates in the privately run Mangaung Correctional Centre in Bloemfontein. Teke was apparently tied to his bed, stabbed, and then thrown from the third to the first floor of the cell block where his intestines were then cut from his body with shards from a broken toilet bowl. The six prisoners were later charged with his murder, and the court case was heard in 2006. During the trial, one of the accused alleged that Teke had been killed as an expression of their unhappiness with prison conditions.[vi] As Teke's murder probably did not occur with the acquiescence of the State, it would not be construed as torture within our definition, though it certainly qualifies under a more colloquial understanding. It would, however, constitute a failure on the part of the State to safeguard against violence and torture, and could thus amount to acquiescence to cruel and inhuman and degrading treatment or punishment.

A significant part of the reporting of torture and CIDT concerned children. Again, the power differential between children and state officials means that many cases arguably fall under the

Convention. Cases involving children are quite visible because of general levels of violence against children in South Africa including high levels of infanticide and child rape. Stories abounded in the news regarding caning, rape and severe maltreatment of children at the hands of teachers, police officers, welfare officers and other state officials. Most of these incidents would never be considered within the purview of the Convention against Torture, but some of them, including the caning of children in school, might constitute CIDT. For instance in one case, an executive management member of a children's home in Chatsworth allegedly assaulted a 15-year old girl after she had removed keys from a safe. The manager clearly saw his actions as disciplining the girl. However, such disciplining brings him into conflict with the prohibition of torture and CIDT. It is a further complication that many children's homes are run privately. However, the Children's Act, as well as the Convention, would hold the State accountable and responsible for ensuring proper conditions for children as well as exercising oversight.

Finally, a few media reports concerned South Africa's participation in the war of terror[vii] and the maltreatment of migrants, including harassment and arrest, and treatment at the Lindela Repatriation Camp. Some of these cases would qualify as torture but most of them constituted CIDT. There were surprisingly few of these cases, presumably because most of the abuse takes place outside the public eye in prisons, closed camps and under-cover. The articles and grey paper literature describing abuses in Lindela and Musina Detention Facility provide illustrations of the problem of reporting. One article suggests that 'photographs *could* reveal truth about brutality at Lindela' (emphasis added).[viii] We just do not know because access is difficult.

The picture that emerges from the media reporting during 2006 is one in which the majority of cases falling under the purview of the Convention Against Torture are perpetrated by the police. Police conduct their operations largely in the public realm, and they are responsible for stop and searches, arrests, investigations and detention on large numbers of people. Detention facilities, places of safety and prisons constitute other areas of concern. These points correlate to general knowledge about torture and CIDT as occurring primarily in detention.[ix] However, if we read the media reports against other analyses of state violence some areas seem underrepresented in our sample. Except for one media report, private security and non-state justice did not feature in our sample. This article was excluded because of lack of state involvement. However, observers[x] have shown the often complicit nature of state acquiescence and consent in privatized policing and punishment. Another example of underreporting relates to the policing of the township under the guise of the war on gangs and on crime. In our sample of articles, only one article related to the often dramatic confrontations between the police and township youth, especially street gangs. The article described a shoot-out between police and

a gang on the Cape Flats in which an innocent woman was caught in the crossfire.[xi] This one incident in no way is reflective of the violent engagements between the police, charged with strong public demands to wage a war on crime and zero tolerance policing, and the young men of the townships in major urban centres, especially Cape Town and Johannesburg.[xii] These encounters often lead to state violence in blatant disregard of the Convention like when police officers perform mock executions of disrespectful youth.[xiii] Finally, there are no reports from the military or from mental health institutions, despite the fact that such institutions are known to perpetrate torture and CIDT.[xiv]

Understanding the persistence of torture and CIDT in South Africa

The question is how we understand the persistence of torture and CIDT in South Africa. I would like to suggest that we might identify three related explanations for the continued practice of illegitimate state violence in South Africa. The first explanation relates to the ambiguity of the legal norms and the difficulties of unambiguously distributing individual cases inside or outside the convention. The second explanation comprises both issues of impunity, or the lack of punishment for transgression of the legal codes, and the everydayness of state violence. The third and final explanation relates to what, from the police officers' perspective, is the inappropriateness of the legal conventions in relation to them carrying out their job of keeping South Africans safe. This is something they share with the majority of the South African population.

The ambiguity of norms

The Convention Against Torture and CIDT is one of the strongest conventions within international law. It is widely ratified and is institutionalized in a number of international and national forums. Without going into legal details, the Convention prohibits absolutely torture and cruel, inhuman and degrading treatment and punishment. A case is defined inside the purview of the convention when 1) there is state involvement, consent or acquiescence, 2) where the treatment is severe, 3) where there is intent, and 4) where there is purpose to obtain information, confessions or to punish an individual or third person. In many ways, this definition seems rather unambiguous and most people would be able to describe a situation that would fall within the convention. Jeffrey Benzien's treatment of political detainees clearly qualify. Some cases within our sample seem unambiguous in relation to the Convention. For example, the airport heist, summarized above includes incidents of electrocution, beating, threats to life, boiling water and murder. During the court case, the presiding judge calls for a stop to the abuse, and it seems likely that the officers in charge of the investigation knew that they were committing torture. In this way,

this is the incident during 2006 reported in the media that looks most like the Jeffrey Benzien case from the TRC. However, torture and CIDT assumed much more complex and ambiguous forms in 2006. Take the case of Portia Adams from Ruyterwacht in Cape Town.

Portia Adams from Ruyterwacht on the Cape Flats went to the police station to report an assault but she herself ended up in police custody, as the police officer suspected that she had information about where her boyfriend was. The police officer put Portia Adams into a male detention cell, and she was made to share the cell with her alleged attacker. Afterwards, she was handcuffed in the charge office for hours while the police officer dealt with other complaints.[xv] This kind of practice is clearly in contravention of the Convention that prohibits the practice of maltreating people to gain information about third persons. The apparently unlawful arrest and subsequent imprisonment with males, among them her attacker, would, given the frequent rapes in custody, be an extreme form of sexual harassment and threat to body and life, and could cause significant mental or psychological suffering. It is also in violation of international principles regarding the separation of female from male prisoners and from police rules regarding detention of suspects.[xvi] Finally, Portia was made to stand handcuffed for hours in full view in the charge office, which constitutes degrading treatment. In terms of the Convention, all criteria are met: there is the purpose of eliciting information of a third person; there is purpose in the act; it is potentially very severe and it is a state agent acting in an official capacity. We do not know the duration or circumstances of this unlawful and dangerous detention and it is thus difficult to categorise it as torture, rather than as CIDT. In the final instance, we decided to categorize her imprisonment as torture and the humiliating detention in the charge office as CIDT. The torture decision was made because Portia, at the moment of her stepping into the cell did not know how long time she would spend there, and which would have exposed her to mental suffering. Furthermore, following Nowak, we might say that in detention a torture decision is made on the basis of the purposefulness of the act and the powerlessness of the victim. On both counts, Portia's case fall within the ambit of UNCAT.

It remains a question whether the police officer who put Portia into the cell realized that he was committing acts that might fall under the purview of the Convention, although he must have known that his actions were against standard procedure. If he did not realize this, it might relate to the invisibility of torture on the one hand that we explored above, and to the banality and mundane-ness of torture and CIDT that we will explore below. These discussions all illustrate the difficulty of determining whether a case constitute torture, CIDT or is just part of what the South African police do on any normal day. In any case, the experiences of Portia Adams are a far cry from how we intuitively understand torture and CIDT,

especially in a South Africa that is preoccupied with the ravages of crime and where torture is often associated to the past.

Impunity and everyday state violence

The forms of torture and ill-treatment captured in our archive range from the more sustained and systematic torture of suspects in high-profile cases; to the callous treatment of the homeless or the vulnerable; to the use of excessive force while arresting suspects or in volatile crowd situations; to the dehumanising and degrading treatment in detention or in prison. But what also emerges from this study is how the use and abuse of force seems to have permeated the very culture and operation of the law enforcement agencies, such as the police, prison officials and the military, to the extent that it filters through to relationships with the officials' own family members, colleagues and friends. Torture and CIDT have become everyday to the point of being banal.

What is striking is the often total disregard for those especially the police must serve and an almost absolute certainty of being in the right. In one case, a the Bolebedu Captain Crime Stop (a police officer appointed to do public outreach and crime prevention work with children) was asked to drive two young girls home after participating in a radio interview. Along the way, the policeman, accompanied by a police reservist, dragged the elder 13-year old girl from the police van, raped her, and then proceeded to drive the two girls home, before returning to the station.[xvii] This case suggests either absolute impunity or a belief on the part of the police officers that their actions were somehow legitimate. The following case illustrates a similar disregard for life and body of people, this time a Congolese migrant.[xviii]

> As Jonas, a Congolese national, was on his way home from his job in Salt River, Cape Town, he was stopped by a car and ordered to come along. As he refused and pushed the woman away, she drew a gun and identified herself as a police officer. The officers took Jonas along to the Woodstock police station where the two female police officers beat him, while the men watched. After a while, they demanded that he stripped and sprayed his entire body with pepper spray, notably the genitals. He was subsequently thrown into jail, where he spent another fifteen hours, most of the time naked. The officers did not bother to ask his name, charge him or to take down an affidavit. He was simply released.

In both these cases it is arguable that the victims were in a manner of speaking 'victimizable'. Women are often considered as mere objects of sexual gratification in the virulently patriarchal South African society,[xix] and migrants, often termed 'ATMs' because money might be extorted from them, are the habitual victims of street violence by police officers and population alike.[xx]

These stories were common-place in 2006. However, there were also positive elements to the stories. In the rape case, the policeman was later dismissed and charged with the rape.[xxi] In Jonas' case, as he was released, another police officer from the same station noticed his bruising and helped him lay a charge against his police colleagues. This suggests that in spite of the impunity and internalization of violence within for example the police, there are parts of the criminal justice system that acted in accordance with the rules and conventions.

Negotiating the convention: everyday policing in South Africa

The final explanation I would like to discuss is the tacit disagreement that many police officers have with the bill of rights and the human rights regime, including the Convention against Torture. The argument that I would like to propose is that police officers negotiate between their own political norms, that of the surrounding society and the international legal regime through what we with Michel de Certeau could call the everyday practices of the police. Throughout all my engagements with the police they have expressed considerable ambiguity towards human rights. One officer noted to me,

> The Constitution that we have is a beautiful document. Everyone says that it is the best Constitution in the world. But maybe South Africa is not ready for it yet. Because it allows the criminals to walk free and we can do nothing about it. So yes, I would say that it is too early for South Africa with all these rights.

The argument is that the constitution makes policing impossible. However, once we look closer it is clear that the police officers not only lament the impotence but that they actively circumvent and bent the rules. As I have explored elsewhere,xxii this might take the form of dividing up cases according to criteria around notions of relevance, dodging cases and most importantly in relation to violence. Most police officers were adamant that violence was a necessary element in policing the townships. On one occasion, in an attempt to explain this need for violence to me, a police officer asked if I could hear muffled cries from the cells. I listened, and said that I could. 'It's a boy who stole some money from the neighbour. They found the money in his school backpack. She [the mother] had problems with him before. He won't listen. So now she took him here, so we could give him a beating.' I asked, somewhat taken aback, whether this was normal practice. He affirmed that it was. Later, the mother and the child came out. He was about 8 years old, and she looked positively happy. Later I asked a sergeant, who confirmed: 'I don't like doing it, and I will never do it in front of the father. If the father is there he must do it so I don't take the authority away from him. But if they want me to, I will do it.' What was striking about the incident was that nobody seemed to listen to the beating or react to it in any way. As I looked around, nobody was paying attention; they were attending to their normal routines. This suggests that

the way to allow for the co-existence between the human rights norms and the 'need' for violence is to silence and ignore the violence. As long as everybody could pretend it wasn't happening, the vision of a new form of policing could be maintained. Indeed, as the mother herself had wanted it, and as many South Africans would subscribe to the point of view that violence is a normal and necessary part of dealing with misbehaving children and youth, the officers were vindicated in their violent practices. Only when the practices are rendered visible do the contradictions emerge. This is what happened in a case, reported by the local media, when seven boys were taken to the police station by their school principal to be set straight. The police officers there told the principal to leave and let them handle the boys. In the following hours, the seven boys were severely beaten and ridiculed. After this incident, the parents of the children went to the police to complain about the maltreatment of their children. The station commander 'confirmed the incident', and assured the parents that 'we will look into internal disciplinary action once the investigation has been completed'.[xxiii]

In this way, there are two distinct registers at stake in these cases: human rights on the one hand and a sense that violence is necessary and legitimate on the other, as is evidenced by the approval and participation of the mother in the disciplining of her son. A case from our archive serves to illustrates this. A young boy from northern KwaZulu-Natal was reportedly severely beaten and strangled by a school principal, a senior police officer and a member of the community policing forum, leading to his hospitalisation. This was done to discipline him after he was accused of stealing other pupils' lunch boxes. His mother later complained about the treatment of her son.[xxiv] In this case, all the requirements and criteria for the case to constitute torture are present. State agents (police officer, principal and community policing forum member) severely maltreated the child with a purpose and intent to punish him. The fact that it is a child and the power differential therefore is greater only aggravates the matter, placing it squarely within the Convention Against Torture as well as the Convention on the Rights of the Child. However, it is reasonable to believe that although the three men of the rural elite knew they were legally wrong, nothing would suggest that they saw themselves as torturing the child. Neither the journalist nor the mother invoked human rights. The beating of the child arguably was seen by them as at best necessary, and at worst an excessive use of force. This kind of violence as a form of discipline is accepted as necessary and beneficial by many South Africans.[xxv] It is part of bringing up children and correcting errand youth.

Elsewhere[xxvi] I have invoked the distinction between an enchanted (human rights) vision of the police versus a practical (everyday) vision of the police where vision refers both to the sensual and the imaginary to explain how police officers negotiate their own sense of necessity and the demands of the

public with the human rights imperatives of the New South Africa. In order to uphold the vision of a transformed police force, they fail to 'see' the transgressions of the legal codes. This is illustrated in the following case from Nkomazi in the rural hinterlands of Mpumalanga. A band of robbers had waylaid traffic over several weekends. In the end, residents of the village had caught the gang and brought them to their own form of justice. Residents had also organized a demonstration to demand that the police take action. I asked the police officers to comment on the demonstrations: "What demonstration?" he asked. "The one with 5000 people the other day", I helped him. "Oh that one – no, I wasn't working that day so I didn't know about it". Somewhat taken aback by his refusal to acknowledge the event, I asked why they hadn't arrested someone. He deliberated, almost with himself, back and forth on the issue of police intervention:

> We don't fold our hands. We attend complaints and open dockets. We arrest people from the community if we have to. To me, crime is crime and nobody is above the law. If there is a crime, there are procedures to be followed. These people took the law into their own hands and we investigated it. If it ever transpires that one, two, three were involved, we have no choice but to open a case. But we must understand that people are fed up with crime and violence. For me, it was the right thing they did. It was a good thing. But law is law.

He did not know about it because he did not 'see' it as a police officer, and as nobody had reported the incident they did not need to react. The point here is that there are different ways of seeing. Only when one wears the uniform or is on duty does one, to paraphrase James Scott (1998), have to see like a state. At the same time, he invokes the vision of transformed policing, which he is able to maintain because the violent practices and police knowledge of it were invisibilized, serving to legitimize him as a police officer within his own community, while satisfying the other (national and global) audience. Hence, police officers find it har to live up to the standards of human rights' informed policing because it makes little sense to them and their compatriots in rural and urban areas who are preoccupied by crime.

Eradicating torture and CIDT in the police

In January 2001, the Director of the Human Rights Unit within the SAPS, Pieter Cronjé, explained to a group of international human rights organizations how the South African police had worked towards an eradication of torture within the SAPS. The policy had been formulated over a four-year period as a joint project between the SAPS, local and international NGOs, academics and other state institutions. The development of the policy was based, Cronjé explained, on South Africa's signing of the international convention against torture and the Bill of Rights, both stating that torture was impermissible. The

eradication of torture still, Cronjé asserted, had a long way to go in South Africa. Several needs assessments through the 1990s had also shown a shockingly low level of human rights knowledge among police officers on the ground, and a fundamental need of (human rights) training was identified by NGOs and the police leadership. The needs assessments prompted training sessions on all levels within the police on a number of different human rights topics, but many of these projects took place in an incremental and uncoordinated fashion. However, as time passed, most of these projects had come under the umbrella of one, standardized policy for the implementation of human rights training. The training program materialized in a training package including a presenter's guide with a detailed manual of how to conduct the training sessions; a workbook/ photo story/ information booklet on human rights and policing, and a package containing a training video, posters, the Constitution, a book on human rights standards for law enforcement officials, a booklet called "You and the Constitution", the SAPS code of conduct and United Nations High Commissioner for Refugees guidelines for the policing of refugees. The program was implemented from 1999 through the creation of a "train the trainer programme" as a first step in training a daunting number of 90 000 police officers nation-wide. The aim would be to train 1 000 trainers by July 2001, who would subsequently be responsible for three-day workshops. Cronjé estimated that by the end of 2002 all police officers have attended a human rights workshop.[xxvii]

Cronjé's account amount to what, paraphrasing Stanley Cavell, we might term the 'standing language' of human rights police reform. The police is construed as unknowing, in need of enlightenment and change, and the international human rights community able to provide just that through standardized training manuals, train the trainer programs, workshops and policies. Judged on the archive that I presented above, the success might not be compelling. However, this has rarely meant that human rights programs have been reconsidered or reconceptualized. As Julia Hornberger suggests, scholars faithful to the paradigm rarely questions human rights police reforms. Instead they focus on the failure of implementation, and "end with an ideal type of human rights policing that is beyond scrutiny".[xxviii] Hornberger's own account of what happened to the human rights policy introduced by Cronjé is instructive.

The human rights training that was to happen around the policy was general seen as a failure by the international community that had backed the implementation of it. There was no institutional commitment, prejudices against human rights, no willingness to see the benefits, no institutional status, no trainers, logistical constraints and short comings in the program itself. Doubtless, there was less commitment politically and within the police, as crime became one of the overarching concerns of South

Africans, giving a new role to the police as the defenders of human rights (against the criminal onslaught) rather than thuman rights perpetrators. However, one thing did emerge unscathed from the evaluation. That was the internationally sponsored manual, which was seen by the evaluators as particularly useful also outside South Africa. Subsequently, Cronjè, as the author of the manual was airlifted out of South Africa to join the international human rights industry. Hence, the ideal of human rights policing is vindicated; only its implementation is at fault. However, it is still useful to look what happened to the training to understand how human rights were translated and appropriated inside the police. Hornberger asserts that human rights went through its first translation in the hands of the trainers. As in relation to most other issues in South Africa, human rights were seen through the lens of race. In one of the sessions that Hornberger managed to attend, the trainer dismissed the class once he noticed that there were no white police officers. Furthermore, human rights were basically translated into religious, moral discourse. As Hornberger notes, "A new vernacular, borrowing strongly from Christian transcendental reasoning, was created to speak about policing and human rights". Finally, Hornberger convincingly argues that human rights policing is infused with class and institutional culture, as it privileges the written and intellectual above the physical and action oriented. In this way, human rights policing is thoroughly racialised, gendered and classed.[xxix]

By way of conclusion: revisiting human rights intervention

As Hornberger suggests, there is an ideal model of human rights policing to the extent that she can quote David Bailey, one of the doyen of policing transformation, "that democratic police reform is no longer problematic". We know what it is, what it contains and what must be done. Now it is just doing it. However, as Hornberger correctly notes, there is nothing unambiguous about combining human rights with policing and postulating their mutual complementarity. Only through a number of fictions can the ideal form be maintained: constructing police officers as someone who do not know but are willing objects of transformation; constructing police officers simultaneously as perpetrator, human rights agent, targets of reform, objects and enemies of intervention, and constructing human rights and the human rights industry as universal, apolitical entities. In this paper, I have tried to show that none of these fictions stand the test of empirical evidence. The question then is then how do we address the very real abuses that are chronicled in my archive of torture and CIDT? I end this paper with a few suggestions for ways forward.

If the police do know and are not only epistemologically, empty containers in need of (human rights) knowledge then the question is what and how do they know. My archive suggests that they do

know certain things but also that they either do not realize what they do or do not care. However, rather than approaching this through legal protection and training only, it might be better to approach the police officers differently, not introducing legal norms and convention but begin with their everyday life policing the mean streets of city and country-side. This includes realizing that there are multiple audiences and multiple moral standards competing with conventions and laws. This is not to abandon human rights standards but it is crucial to make laws and conventions real in police officers lives and not only something that constrain them.

It might also include realizing the inherent partiality of the human rights industry. Not only is it mostly middleclass, it is also on the political left or liberal side. Police officers in South Africa and elsewhere do simply not buy the idea that violence is not productive in disciplining children and they do not buy either that young people under the age of 18 are not adults not knowing the difference between right and wrong. If they are not strong, criminals will abuse and humiliate them and 'real' victims will loose their rights on the alter of human rights victims, e.g. criminals and bad people. This point of view is not unique to the police either. It might be that universality and rights ethics create the impression of impartiality but it does not create many friends; it just ends communication. Furthermore, as a number of scholars have indicated,[xxx] human rights agencies are not unproblematic related to the beneficiaries. NGO's and other human rights persons often belong to an alien and alienating culture. Hence, human rights agencies must work hard to form alliances with police officers. One way forward, attempted in some instances in South Africa, is to advocate on the side of the police for better conditions.[xxxi]

One possible way out of this is to use what the political philosopher Chantal Mouffe terms the agonistic model.[xxxii] The agonistic model stands in opposition to antagonistic politics, where the opponents' points of view, their rationalities and choices, are rendered illegitimate through the creation of unambiguous, ethical fault-lines. This is the dominant model of human rights intervention where the notion of rights becomes non-negotiable (enshrined as they are in natural law, conventions, constitutions and other legal documents), and questioning them or their implementation becomes tantamount to heresy. Mouffe proposes agonistic politics as an alternative. The idea is not to silence dialogue but to promote it in a process of mutual agonisation, taking seriously the threats to identity, the dilemmas and contradictions and precariousness of working lives at the heart of the state. Agonising with state officials might allow reformers to hook their practices onto the internal contradictions inherent in the practices of violent state officials, granting interventions a greater degree of face validity in the eyes of subjects of reform and an unprecedented sense of integrity. And who knows, state officials might even end up listening to human rights reformers.

[i] The research project was part of a larger attempt to 'Profiling Torture in South Africa, under taken by the Rehabilitation and Research Center (RCT) in Denmark and the Centre for the Study of Violence and Reconciliation (CSVR) in Johannesburg. See Amanda Dissel, Steffen jensen and Sandra Roberts

[ii] Johan Galtung and Mari Holmboe Ruge, *The Structure of Foreign News: The Presentation of the Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers*. JOURNAL OF PEACE RESEARCH 2(1): 64-90. (1965).
Ida Schultz, *The journalistic gut feeling*, JOURNALISM PRACTICE, 1:2, 190 – 207. (2007)

[iii] For a full account of the methodology, see Amanda Dissel, Steffen Jensen and Sandra Roberts (2009).

[iv] *Witness's death mystery deepens*, Saturday Star, 24 June 2006. *Polisiekluis: Landdros looi gesloer*, Beeld, 9 June 2006. For additional reporting see for example: *Fear as another airport heist suspect is slain*, THE STAR, 22 June 2006; *Death after police-safe robbery still baffle*, SATURDAY STAR, 1 July 2006; *Must it take a thief to catch a thief*, SATURDAY STAR, 17 June, 2006.

[v] *Pollsmoor 'best of a bad bunch'*, CAPE ARGUS, 8 November 2006.
How gangsters, staff screwed jail system, SUNDAY TRIBUNE, 29 October 2006.

[vi] *Gevangenis met belt in toom gehou*, DIE BEELD, 7 June 2006.
Beskuldigdes was 'uiters ongtervrede', VOLKSBLAD, 7 June 2006.

[vii] *War of terror waged in SA?*, SATURDAY STAR, 4 March 2006.
Rashid deportation tramples on the law and constitution, CAPE TIMES, 28 June 2006.

[viii] *Leaked photographs could reveal truth of brutality at Lindela*, THE STAR, 25 August 2006.
Notorious detention facility closes, PRETORIA NEWS, 22 November 2008.

[ix] United Nations Committee against Torture (CAT), *Conclusions and recommendations of the Committee against Torture: Morocco*, CAT/C/CR/31/2. 05-02-2004.

[x] Lars Buur, *The Sovereign Outsourced: Local Justice and Violence in Port Elizabeth*, In HANSEN, T. AND STEPPUTAT, F. (ED.): 'Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World'. Princeton: Princeton University Press. (2005).
Rita Abrahamsen and Michael C Williams, *Security Beyond the State: Security Privatization and International Politics*. Cambridge, Cambridge University Press. (2010).
Bruce Baker, *Security in Post-Conflict Africa: The Role of Nonstate Policing*. Boca Raton: CRC Press. (2009).

[xi] *Vrou kry R16.600 by polisie ná skietery*, DIE BURGER, 27 May 2006.

[xii] Anthony Altbeker, The dirty work of democracy : a year on the streets with the SAPS. Jeppestown: Jonathan Ball Publishers. (2005).
Steffen Jensen, *The Security and Development Nexus in Cape Town: War on Gangs Counterinsurgency and Citizenship*. SECURITY DIALOGUE 41(1), February 2010.

[xiii] Steffen Jensen, *Gangs, Politics and Dignity in Cape Town*. Chicago: University of Chicago Press and James Currey.

[xiv] For the military see: Bronwen Manby. *Unequal Protection: The State Response to Violent Crime on South African Farms*. New York: Human Rights Watch. (2001).
For mental health institutions, see: Olivia Streater, *Review of Existing Mechanisms for the Prevention and Investigation of Torture and Cruel, Inhuman and Degrading Treatment or Punishment in South Africa*. Johannesburg: Centre for the Study of Violence and Reconciliation. (2008).

[xv] *Woman held in men's cell 'to sue'*, SATURDAY CAPE ARGUS, 28 January 2006. *Woman locked in cell with four men*, SATURDAY STAR, 28 January 2006.
[xvi] See for example: Art 8 of the *UN Standard Minimum Rules for the Treatment of Prisoners* (1955); *the South Africa Police Service Policy on the Prevention of Torture and The Treatment of Persons in Custody of the South African Police Service* (1999), Pretoria; and SAPS Standing Orders regarding the treatment of prisoners in detention.
[xvii] *Captain Crime Stop rape cry*, CITIZEN, 16 March 2006.
[xviii] *Refugee say police beat him up*, CAPE ARGUS, 10 November 2006.
[xix] Tina Sideris, *Post-Apartheid South Africa – Gender, Rights and the Politics of Recognition*, In JENSEN, S, BUUR, L AND STEPPUTAT, F, (ed.)'The Security Developement Nexus, Expressions of Sovereignty and Securitization in Southern Africa. Cape Town, HSRC Press (2007).
[xx] Julia Hornberger, *Translating Human Rights in the Margins: A Police-Migrant Encounter in Johannesburg*, In JENSEN, S AND JEFFERSON, A.M. (ed.) 'State violence and human rights: state officials in the South'. New York: Routledge-Cavendish. (2009). Loren Landau, *Passage, Profit, Protection and the Challenge of Participation: Building and Belonging in African Cities*. In HADLAND, ADRIAN (ed) 'Violence and Xenophobia in South Africa: Developing Consensus, Moving to Action'. Pretoria: HSRC. (2008). Morten Lynge Madsen, *Living for Home: Policing Immorality among Undocumented Migrants in Johannesburg*. AFRICAN STUDIES 63(2): 173-192. (2004). Shireen Hassim, Tawana Kupe and Eric Worby, *Go Home or Die Here: Violence, Xenophobia and the Reinvention of Difference in South Africa*. Johannesburg: University of the Witwatersrand Press. (2008).
[xxi] *Cop charged for rape fired*, SOWETAN, 19 October 2006.
[xxii] Jensen, *Gang, politics and dignity*
[xxiii] Pupils lay charges after 'lesson' from police, Independent on Sunday, 27 October 2000
[xxiv] *Beaten pupil fights for life*, SUNDAY TRIBUNE, 5 February 2006.
[xxv] Robert Morrell, *Corporal Punishment and Masculinity in South African Schools*, MEN AND MASCULINITIES, 4 (2), October 2001 140-157.
[xxvi] Jensen, "The vision of the Police"
[xxvii] Summarized from Cronjé 2001: 7-15. The introduction of a human rights policy was far from the only institutional transformation that the South African police underwent in the aftermath of the 1994 transition. The transformation included vast institutional recovery, change and re-direction, new legal frameworks and an envisaged different role in societySee Jensen, Gangs, politics and dignity; Altbeker, The Dirty Work of democracy; Hornberger, "Don't push this constitution down my throat", etc.
[xxviii] Hornberger, 2010, "Human Rights and Policing"
[xxix] Summarized from Hornberger, 2008: 89-141. Indeed, Hornberger argues that also ordinary police officers used religion to explain how they had to convert to human rights (Hornberger 2010).
[xxx] Massoud, Engelund, Jefferson and Jensen, Merry
[xxxi] Monique Marks, *Transforming the Robocops: Changing Police in South Africa*, 2005
[xxxii] Chantal Mouffe, *The Democratic Paradox*, 2000