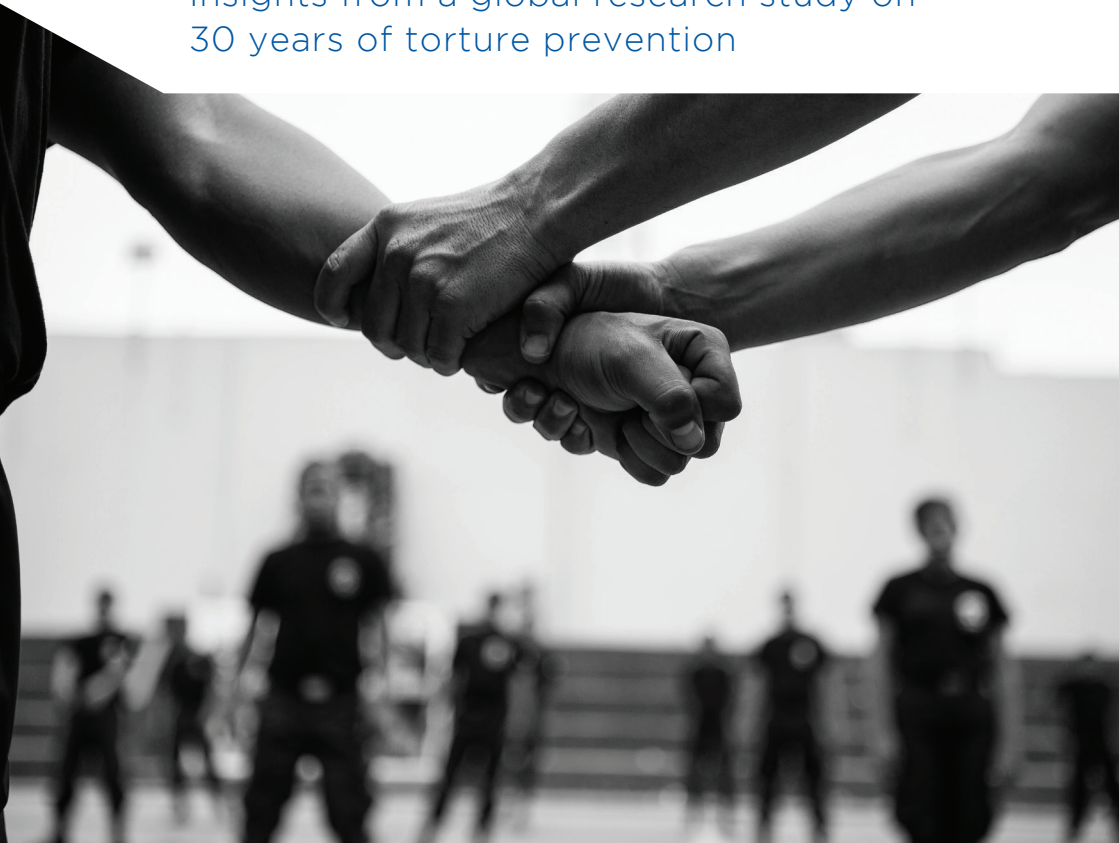


“YES, TORTURE PREVENTION WORKS”

Insights from a global research study on 30 years of torture prevention



SEPTEMBER 2016



association pour la prévention de la torture
asociación para la prevención de la tortura
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The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. Since then the APT has become a leading organisation in prevention of torture. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture (OPCAT) and National Preventive Mechanisms.

The APT's vision is a torture free world where the rights and dignity of all persons deprived of liberty are respected.

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INTRODUCTION

In the context of a world which acknowledges more openly the global risk of torture and other ill-treatment, its absolute prohibition continues to be questioned and attempts are made to justify its use. However, laudable steps have been taken, over the last thirty years, to prevent all abuses in detention but independent evidence of their impact was lacking. Although torture has been the object of numerous studies, none has looked at which measures have the greatest effect in reducing the risk of torture, if at all.

This is why the Association for the Prevention of Torture (APT) commissioned in 2012 an independent academic global research to address the big question: does torture prevention work? It was hoped that such challenging research would promote a better informed public debate, based on objective data and concrete evidence regarding the result of torture prevention measures.

In July 2016, Dr. Richard Carver and Dr. Lisa Handley published the results of their research, “Does torture prevention work?”¹ The study uses a new methodology developed by the authors, combining both quantitative and qualitative methods to assess the impact of torture prevention measures. Research teams applied that methodology in 16 countries in relation to a 30-year period (1985-2014).



Does torture prevention work? The question that we address (...) is both simple and generally neglected.

(...) In recent decades, treaties have required states to adopt a series of preventative measures in order to reduce the risk of torture. These measures, originally inspired by common sense and practices that seemed to work, have not been systematically tested. That is what we do in this study.” p. 1

The study analyses more than 60 preventive measures and identifies which of them have a particular effect on the occurrence of torture. The global conclusion of the research is that, yes torture prevention works, and that some measures are more effective than others in reducing the risk of torture.

In response, the APT has written this briefing paper to introduce the research, summarise its main findings and highlight the implications of some of the methodological choices made (part I). The briefing paper then presents, in the form of eight messages on torture prevention, key insights based on the main elements confirmed by the research (part II). The briefing paper’s principal target audience is those persons who can make a difference in strengthening the prevention of torture. We hope that this briefing paper will encourage people to read the full study and also contribute to debates and decisions on future policies and actions on torture prevention.

I. THE RESEARCH

The four-year multi-country research project, although commissioned by the APT, was conducted in full independence by the two main authors, who decided on the methodology, the selection of assistant researchers and the choice of countries. This section provides information on the methodology and scope of the study as well as a summary of the key research findings, based on chapters 2 and 3 of the research (“Studying Torture Prevention” and “Identifying What Preventive Mechanisms Work”), and a brief analysis of the implications of the research methodology.

1. METHODOLOGY AND SCOPE

The main authors developed a methodology combining quantitative and qualitative methods to examine which measures adopted by states have worked, and which have not, during the 30-year period between 1985 and 2014.

The quantitative research identifies correlations² between the prevalence of torture in the 16 countries studied (see list below) and the existence, in law and practice, of preventive measures. In order to do so, Dr. Richard Carver and Dr. Lisa Handley, **identified more than 60 "independent variables"** based on legal obligations contained in relevant international or regional treaties and recommendations from human rights mechanisms.³ These measures were divided into four main groups: 1) detention; 2) prosecution; 3) monitoring; and 4) complaints mechanisms. For all four groups, the researchers looked at both law and practice in each country, over the 30-year period. Within each of the clusters, the authors included a variable that indicates how much training in torture prevention was received by detention, prosecution, complaints and monitoring personnel.

The main authors also **developed a new index to measure the incidence of torture: the Carver-Handley Torture Score (CHATS)**. The scores were compiled by using a variety of sources (including reports from national and international bodies and organisations, official and unofficial statistics and extensive interviews) and measured the frequency, the geographical spread (whether torture is generalised or occurs in one particular region or area) and the severity of torture.⁴ Finally, the authors also **considered in their analysis the impact of the broader political environment on the incidence of torture** (namely three environmental factors as "control variables": the level of democracy, the presence of conflict, and the degree of economic development).

To test this methodology, the main authors first conducted four pilot studies in Turkey, Argentina, Norway and the United Kingdom, with the support of local researchers. Following an open call for proposals, they selected researchers (one or two for each country) to gather quantitative and qualitative data in 12 additional countries: Chile, Ethiopia, Georgia, Hungary, India, Indonesia, Israel, Kyrgyzstan, Peru, the Philippines, South Africa and Tunisia. The final book, "Does Torture Prevention Work?", includes 14 chapters analysing the evolution of torture and the impact of preventive measures in each particular country.⁵

The authors made additional methodological choices to further define the scope of their research. To do so, they used the definition of torture contained in Article 1 of the United Nations Convention against Torture (UNCAT): “(...) *the term “torture” means 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 or a third person information or a confession, punishing him for an act he 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.*”

Finally, in order to discount apparent increases in torture derived only from changing definitions, the researchers took into consideration the shifting definition of this act, in the different countries, over the study period.

2. SUMMARY OF MAIN FINDINGS

2.1 Global findings

This section summarises the global findings of the research contained in chapter 3 of the book which is based on the statistical findings but also partly addresses issues that emerged from the country studies and that were not addressed by the predetermined set of variables.

The key finding of the research is that torture prevention works. The statistical analysis shows that, among the four clusters identified by the researchers in law and practice (detention, prosecution, monitoring and complaints), and independently of the broader political factors, detention safeguards in practice have the highest torture prevention

impact, followed by prosecution and monitoring mechanisms. With regard to complaints mechanisms, the study found no measurable impact on torture prevention.

Overall, the study found a significant gap between law and practice – especially with respect to detention safeguards and investigation and prosecution of torturers. While stressing this gap and the need to bridge it in order to ensure that legal reforms are followed by positive developments in practice, the authors found that *"the extent of this gap is determined by a number of factors, among which the political environment is one of the more important."* (p. 48).

The political environment and willingness to produce changes are key but not sufficient and the study illustrates how, for example, systemic obstacles to successful prosecutions persist, even when the political will exists.

Finally, the research found that training had a positive impact in all areas (detention, prosecution, monitoring and complaints mechanisms) and the authors concluded that training should be targeted at improving professional skills and be included, for example, in the curriculum of police academies. It should not be limited to providing information about human rights norms: *"Training, of prosecutors and judges in handling torture cases, of police in complying with detention safeguards, of doctors in identifying signs of torture, have helped to improve practice, and ultimately to reduce torture."* (pp. 3-4).

The specific findings with regard to detention, prosecution, monitoring and complaints mechanisms are summarised below. To understand what was measured to reach these different findings, the list of questions asked by researchers for each cluster is available in annex of this briefing paper.

Detention safeguards

The study found that, when detention safeguards are applied in practice, this has the highest correlation with the reduction of torture. Among all measures, abstaining from unofficial detention and the

implementation of safeguards in the first hours and days after arrest are the most important means for preventing torture. In particular, notification of relatives or friends and access to a lawyer have the greatest effect in reducing torture, closely followed by access to an independent medical examination.

“

The most important preventive mechanisms are those that ensure that individuals are held only in lawful, documented places of detention; that their families or friends are promptly notified of their arrest; that they have prompt access to a lawyer, as well as to a medical examination by an independent doctor; and that they are brought promptly before a judge.” p. 2

The study also highlights the positive impact of reducing reliance on confession evidence in criminal proceedings: *“When police investigators make use of alternative forms of evidence, and the judicial process insists they do, the motive for, and risk of, torture decline”* (p. 2). Audio or video recording of interrogations is also important but does not seem to be widely used in practice.

Prosecution

The statistical analysis shows a high correlation between prosecutions for the act of torture and the incidence of torture in a given context: *“When torturers are at least somewhat consistently prosecuted, the risk of torture fell”* (p.3). The study highlights the enormous gap between law and practice here and, in particular, the fact that, while most countries criminalise torture, prosecutions are rare. The most important factor in this area, according to the statistics gathered by the researchers, is whether complaints are actually lodged with prosecuting authorities, which is not the case in a number of countries. The findings also emphasise the importance of conviction rates; penalties that are commensurate to the gravity of the crime (in practice, penalties for

torture are usually lower than for comparable crimes) and effective investigation of complaints. In addition, the absence of amnesty laws or pardons are key to torture prevention, as is the suspension of alleged torturers from duty (disciplinary sanctions).

Monitoring

Monitoring bodies also have a direct effect in reducing torture, according to the study's statistical analysis. The study did not assess, however, the impact of monitoring bodies' recommendations on changes to law and practice.

With regard to national monitoring bodies, the quantitative data of the research suggest that the protection of monitors from threats and sanctions and their ability to conduct unannounced visits and have interviews in private with detainees are the key factors for effectiveness (reducing the incidence of torture). The research also highlights the importance of immunity for inmates who communicate with a monitoring body to mitigate the risk of reprisals.

With regard to international monitoring bodies, in particular the European Committee for the Prevention of Torture (CPT), the study found that the relationship between visits by these bodies and the incidence of torture is moderate. The authors explain that this is mainly due to the limited reach of these mechanisms (not present at the national level on a permanent basis). They highlight, however, the positive impact of international visits in some countries such as Ethiopia.

Complaint mechanisms

The study found that these mechanisms do not have a measurable impact on the prevention of torture but that they may be important to address individual cases (although this was not tested). The exception is when they are mandated to carry out effective investigations (including compelling evidence and witnesses) and use this power to conduct thorough investigations and refer cases to a prosecutorial authority.

2.2. Country studies

The quantitative research should be read in conjunction with the qualitative findings of the research country studies. The publication includes individual country chapters, which provide a detailed and nuanced account of the incidence of torture between 1985 and 2014 in the following 14 countries: **Chile, Ethiopia, Georgia, Hungary, India, Indonesia, Israel, Kyrgyzstan, United Kingdom, Peru, the Philippines, South Africa, Tunisia and Turkey.**⁶ Most of these countries went through major political transitions during the study period. The country chapters of the research analyse the complexity of such political processes and the specific prevention measures adopted in those contexts, in order to consider factors not covered by the statistics. The chapters show that political transitions are often a pre-condition for preventive measures to be adopted. They are, however, not sufficient to eradicate torture. The idea that transitions from military dictatorship to democracy have an impact on the reduction of torture is nuanced by some country studies included in the research.

“

The Hungarian case shows how powerful an impact the general political climate and public expectations have on torture prevention. (...) Political factors influenced torture prevention in two ways. Most evidently, they determined the content of laws and the shape of the legal framework. During the period under review, Hungary rarely amended laws in a manner that weakened torture prevention. However, some legislative amendments brought positive changes without remedying the central problem.”
Hungary chapter, pp. 229-230

3. IMPLICATIONS OF THE RESEARCH METHODOLOGY

The authors of the study had to make methodological choices to define the scope of their research. APT highlights below the implications of these choices on some of the findings.

The research assessed the impact of preventive measures on the occurrence of torture only and not on the occurrence of other forms of ill-treatment, including poor conditions of detention that do not amount to torture.⁷ In practice, there is often a *continuum* between ill-treatment and torture as conditions that give rise to ill-treatment facilitate the practice of torture. Furthermore, readers should be reminded that torture and any other form of ill-treatment are absolutely prohibited and can never be justified, no matter what the circumstances.

In addition, the research only considered torture under formal custody (mainly police stations and prisons), whether official or unofficial, prolonged or temporary. It did not address treatment in other closed settings (e.g. health-care settings) that could amount to torture,⁸ nor actions such as the excessive use of force by security agents in the context of public protests.

As a consequence of this focus, the impact of international and national detention monitoring bodies as preventive bodies was only partially measured because their mandate also encompasses other forms of ill-treatment (including poor conditions of detention), as well as a wider range of places of deprivation of liberty not limited to prisons or police stations. The authors recognise the preventive role monitoring bodies play in improving laws, policies and practices through their recommendations but the research did not evaluate their impact *"beyond their direct influence on the incidence of torture."* (p. 97).

The study has a broad understanding of what constitutes a monitoring body, to include a number of institutions who exercise detention oversight: National Human Rights Institutions (NHRIs), National

Preventive Mechanisms (NPMs) under the Optional Protocol to the Convention against Torture (OPCAT), civil society organisations, prosecutors, judges or parliamentarians. With regard to NPMs, the findings of the research are limited by the fact that only two countries, the United Kingdom and Georgia, had an operational NPM in place during part of the period covered by the research (and, in both instances, pre-existing institutions were designated as NPMs).⁹ NPMs are indeed still a relatively recent development as the OPCAT entered into force in June 2006.

“ Much “prevention” work by monitoring bodies aims to prevent other forms of cruel, inhuman or degrading treatment, rather than torture. In particular, they seek to improve conditions of detention and imprisonment. While poor conditions may constitute ill-treatment, they almost never amount to torture. As a result, our evaluation, which assesses how much monitoring bodies reduce the risk of torture, only addresses a part of what they do and our quantitative analysis does not capture improvements that may have occurred in conditions of detention and imprisonment.” p. 97

Unlike other institutions, the mandate of NPMs stems from an international treaty, the OPCAT, which grants these mechanisms the powers to visit any place of deprivation of liberty at any time and be granted unhindered access to persons and information within such facilities. This international mandate puts them in a unique position to promote changes and improve detention practices. NPMs’ action is therefore key to bridging the gap clearly identified in the study between law and practice, and ensuring that detention practices are improved. They can make this contribution through regular visits to places of detention and their advisory function on laws and policies, as well as their continued cooperation with the authorities.¹⁰

II. APT'S INSIGHTS FROM THE RESEARCH FINDINGS

The research findings confirm, for the first time in a global quantitative and qualitative study, that torture prevention works. They provide unique analysis into which measures are the most effective in reducing the risk of torture.

This research therefore gives us a new foundation to reflect upon and, where necessary, refine our strategies on torture prevention. In this second section, the APT presents eight key insights on torture prevention, based on the main elements confirmed by the research.

1. TORTURE PREVENTION IS NEEDED EVERYWHERE AND AT ALL TIMES

The study clearly illustrates that torture can occur in very diverse socio-political environments and circumstances and that prevention is therefore necessary everywhere and at all times.

Methods of torture have evolved in response to specific measures or decisions, as illustrated by the case of Northern Ireland. After the European Court of Human Rights found, in the late 1970s, that the United Kingdom had violated article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment), some methods (known as "the five techniques") were no longer used in Northern Ireland but others (electric shocks and waterboarding) continued to be inflicted on Republican prisoners. Another example is the fact that, if torture fell dramatically in Northern Ireland and the UK mainland, the use of torture by the military re-appeared overseas (e.g. in the context of the more recent British Army presence in Iraq).

The practice of torture can "shift" from a detention environment to another, following sustained attention brought to some facilities, as evidenced by the experience of Georgia where police reform after 2004 was accompanied by intensive monitoring: *"Despite effective reform of law enforcement agencies and improved police performance, concerns over torture and ill-treatment persisted. These were now associated more with prisons than the police. Concern over torture in prisons was accompanied by a dramatic increase in the prison population."* (Georgia chapter, p. 397). Also, according to the study, the strengthening of safeguards (such as the introduction of tape recording of interrogations in the UK and in other countries) has led to allegations that confessions are made in the car on the way to the police station.

“ *These reforms reduced serious human rights violations in Peru, including torture and arbitrary detention. But abuses did not end; instead, methods of torture, the profile of victims, and the circumstances in which abuses occurred changed. Because torture and ill-treatment were deeply-rooted in societal practices, embedded in the training of security officials, abuse was largely self-perpetuating.*” Peru chapter, pp. 300-301

The study also shows the diverse profiles of torture victims and the fact that these are not limited to political and security detainees (including terrorism suspects). It documents, in certain countries, how groups or persons that are marginalised or discriminated against in society (e.g. LGBTI persons, ethnic or religious minorities, indigenous peoples, children and adolescents living in poor urban areas) are particularly vulnerable to abuse and more likely to be subjected to torture or other forms of ill-treatment when deprived of their liberty.

2. GOOD LAWS ARE NECESSARY BUT NOT SUFFICIENT

The research clearly shows a broad gap between law and practice in the torture prevention field. Torture is a specific crime in most of the 14 countries covered in the study but prosecutions are very rare. The Philippines offer a good illustration of a country with numerous laws that have little effect (including an anti-torture law under which no one has been prosecuted), a contradiction known in the country as “*doble kara*” (two faced).

“ [...] *The power of legal reform to transform society is limited and highly dependent on other factors, such as the quality of political and executive leadership* [...]” South Africa chapter, p. 389

In several countries of the study (Chile, South Africa, Hungary), important procedural law reforms have not been accompanied by adequate implementation, thereby contributing to the perpetuation of torture. The reasons vary depending on the context and range from poor training and basic knowledge of the law, a lack of willingness to abide by the law and an institutional culture inherited from an authoritarian past that remains embedded in the daily practice of law enforcement personnel.

More broadly, the research highlights that ratification of international treaties is a first step provided that these are properly implemented. In practice, it is positive that most countries have criminalised torture in their domestic legislation. However, such prohibition very often lacks implementation in practice. This is illustrated by the fact that 13 out of the 14 countries in the study are parties to the United Nations Convention Against Torture (UNCAT) but few of them enacted legislation containing a definition of torture that complies with the Convention and very rarely do these states effectively prosecute and sanction torture.

In conclusion, although adequate laws and safeguards are necessary steps to prevent torture, they need to be complemented by concrete measures to ensure their effective implementation in practice and contribute to real changes in the protection of persons deprived of their liberty.

3. EFFECTIVE SAFEGUARDS FROM THE OUTSET OF DEPRIVATION OF LIBERTY ARE CRUCIAL

The research found that the most important measure for preventing torture is ensuring effective access by all detainees to all procedural safeguards during the first hours and days of custody. This confirms the conclusions reached by the CPT since the early 1990s¹¹ and what many human rights advocates have long believed.

Incommunicado detention (i.e. where a detainee is permitted no contact with anyone outside the place of his/her detention) is identified as a situation of high risk of torture in many, if not all, countries studied. Safeguards that protect against incommunicado detention are thus crucial for preventing torture.

According to the statistics of the study, **notification of family or friends** is the most effective safeguard in preventing torture. Although this right is usually guaranteed in law in the countries studied, it is often not implemented in practice.

“ *The greatest obstacle to notification of relatives through most of the researched period was the police practice of questioning arrested individuals informally ('calling a person to account' in police jargon), because the police were not obliged to inform arrestees of their rights or inform relatives before they formally initiated criminal proceedings.*” Hungary chapter, p. 193

Other key safeguards identified by the study are **access to a lawyer** and **medical examination by an independent physician**.

While all countries covered in the study guarantee the right to a lawyer in law, access to a lawyer from the first hour of deprivation of liberty and the presence of a lawyer during interrogation still remains an exception. In addition, many obstacles to effective legal assistance from the outset of deprivation of liberty persist in practice: lack of information on the right; late notification to lawyers, who are

then absent during interrogation (in such circumstances, evidence obtained in the absence of a lawyer should be excluded but this is often not considered by judges); lack of independent counsel (e.g. ex officio lawyers for indigent detainees appointed by the police); client-lawyer confidentiality not respected; absence or poor funding of a legal aid system.

Medical examination is key, providing that the physician is independent and receives appropriate training to document torture and other ill-treatment. In a number of countries, this safeguard can be strengthened in both law and practice by ensuring the confidentiality of the medical examination (sometimes not secured as the exam occurs in the presence of the police) and preventing any actions by doctors that contribute to acts of torture.



In addition, the law did not stipulate that examinations must be private. Doctors in Tunisia were not always independent and some even participated in acts of torture.” Tunisia chapter, p. 424

The right to be promptly brought before a judge is also an important safeguard that is not always guaranteed in law and, when it is, it is still necessary to break the culture of indifference in many countries where judges simply ignore allegations of ill-treatment during the first hours of custody and rely on confessions, even when they were obtained through coercion.

The positive effect of the **use of audio or video recording of interrogations** was also recognised when such technologies are made available to the police: *“Police and others speak positively of the effect of audio and video technology when it has been used. Police are said to have been “more restrained” when interrogations were videoed.”* (Indonesia chapter, p. 260). However, this measure still lacks implementation in many countries.

A major concern is that these key detention safeguards are often restricted in law and practice for certain detainees (e.g. political

detainees) in specific circumstances (state of emergency, fight against terrorism, conflict-related situations). Examples can be drawn from all countries studied but Israel is one of the most striking illustrations of the application of distinct legal regimes: *"In effect, between 1985 and 2014, the areas under Israeli control have been subject to a mix of regimes and rules. The nature of this mix explains how Israel has been able to maintain a fairly democratic, almost torture-free environment within Israel while condoning the systematic application of torture methods in the Occupied Palestinian Territories, using separate but related legal arrangements."* (Israel chapter, p. 275)

4. ALL FORMS OF UNOFFICIAL DETENTION MUST BE ELIMINATED

The study confirmed that the practices of unofficial detention – often used to hold detainees *incommunicado* – and secret detention constitute the highest risk situation as their purpose or effect is to place the person outside the protection of the law. This practice can never be justified, not even in emergency situations. It should be prohibited at all times and such prohibition enforced to reduce the opportunity for torture. Too many examples are known of the continuing practice of secret detention in recent years, which allow perpetrators to torture in total impunity. The research illustrates this practice in several countries over the study period.

“ *Poor regulation and lack of oversight mean that suspects may be detained incommunicado for hours or days in unofficial locations (such as private or police vehicles, private apartments, or abandoned factories) before their detention is officially registered. During this period, the police claim to hold ‘conversations’ or ‘interviews’ with suspects or witnesses: in fact, they conduct de facto interrogations, to obtain a confession or information or to extort money, which often involve physical and psychological abuse amounting to torture.*” Kyrgyzstan chapter, p. 563

In the case of Turkey, the research emphasised how the strengthening of detention safeguards perversely led to the use of unofficial detention: *"All non-governmental sources stressed that violence and ill treatment by police outside formal custody have increased in recent years. This violence fell into two distinct types, which NGOs accounts often conflated. The first was excessive use of force against demonstrators. [...] The second form of violence occurred in the context of unofficial detention and was a perverse effect of tighter detention procedures. [...] Although unofficial detention was a criminal offence throughout the research period, it occurred frequently."* (Turkey chapter, p. 445)

5. MOVING AWAY FROM CONFESSION-BASED SYSTEMS REDUCES THE RISK OF TORTURE

The research statistics, as well as most country chapters, found that an over-reliance on confession-based evidence in criminal cases provides one of the main incentives for law enforcement officials to use torture.



The police officials who were responsible for most of the torture and ill-treatment that occurred during the review period relied on confessions to secure prosecutions, and on torture to secure confessions. Their belief that torture was the 'best way' to establish the guilt of criminals and opponents of the regime was sustainable for so long for two primary reasons. First, the police lacked training, investigative skills and forensic tools and had to rely on beating confessions out of people because they had no other ways to proceed." Tunisia chapter, p. 436

A lack of investigative skills and adequate training of law enforcement officials contributes to the perpetration of abuses to obtain confessions (e.g. in Georgia and Kyrgyzstan after the fall of the Soviet Union and unskilled police that torture in India). In addition, the fact that police do not have access to modern technologies (e.g. for recording interviews) means they continue to rely on the extraction of confessions as their main investigative tool.

The pressure for results within the police – promoted by the need to implement “tough on crime” policies (e.g. Hungary, Argentina) - constitutes another incentive to extract forced confessions. This includes performance indicators or rewards, including monetary rewards, for rapid processing of cases.

“ *Abusive officials will continue to violate detainees’ rights if they have nothing to fear, especially in a system that relies almost entirely on confessions and rewards officers who solve cases by this means.*” *Kyrgyzstan chapter, p. 588*

The development of alternative methods of investigation, moving away from relying on confessions, contributes to preventing torture. This includes the adoption of a new approach to investigative interviewing rather than interrogating (e.g. UK, Norway) and investment in modern techniques of crime detection: *“The incentive to torture fell when police and prosecutors developed alternative methods of evidence gathering which enabled them to rely less on confessions to secure convictions.”* (Turkey chapter, p. 445). The police should therefore aim at developing such skills in order to conduct these interviews. The study shows, however, that in a number of countries the lack of resources needed to implement such methodologies remains a serious obstacle.

“ *The courts enabled torture primarily because they relied on confessions.*” *South Africa chapter, p. 343*

In this context, in addition to the need for in-depth reform of police interrogation practices to increase professional policing, it is also critical to amend criminal procedures to exclude the sole reliance on confession evidence. It is fundamental that judges and prosecutors request alternative evidence and do not rely exclusively on confessions, and always exclude information obtained through coercion.

6. LAW ENFORCEMENT PRACTICES AND CULTURE NEED COMPREHENSIVE REVIEW AND REFORM

The research stresses the importance of comprehensive reform of institutions which have been responsible for systematic torture, in particular the police, with a view to changing practices and institutional culture to ensure greater trust in these institutions. Thorough institutional police reforms have clearly contributed to the reduction of torture in the hands of the police in some countries (e.g. Northern Ireland, Georgia) whereas other countries that have not gone through similar processes have seen practices of torture continue.

A key challenge in a number of countries is the need to break the perception by the police that torture is an acceptable and effective part of policing.



[...] recent research has shown that, even after police have been trained in human rights, they often continue to believe that it is justified to torture 'terrorists' and 'hardened criminals in the context of an inefficient criminal justice system'." India chapter, p. 542

The lessons from different countries show that, to lead to sustainable change, reforms of law enforcement institutions need to include a series of measures, such as:

- Vetting of police personnel in certain cases.
- Reviewing recruitment processes (to hire qualified officers who will be appropriately remunerated) and performance reviews.
- Creating a more inclusive and representative institution.
- Undergoing symbolic transformation of the institution (including new name, uniform, ...).

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- Reviewing police investigation procedures, moving away from interrogations to investigative interviewing, and ensuring proper training of personnel in such new professional techniques of criminal investigation.
- Radically changing the institutional culture through a strong leadership prohibiting torture and holding perpetrators of abuses accountable.
- Establishing civilian oversight bodies of law enforcement institutions, including independent commissions for investigation of complaints.

“

Basic training courses in police academies were extended from nine months to two years and human rights were included in the curriculum. The following year, the CPT noted an improvement in the quality of police personnel.” Turkey chapter, p. 453

7. A CULTURE OF IMPUNITY SUSTAINS THE PRACTICE OF TORTURE

The research found that impunity had at different times been generalised, in most of the countries studied, and that this strongly contributed to perpetuating torture. The consistent prosecution of torturers is therefore important for reducing the risk of torture, and sending a strong message that torture is not tolerated and that perpetrators will be held accountable for abuses.



Impunity was a decisive factor in promoting the practice of torture.” Ethiopia chapter, p. 474

It should be noted that the country studies found few positive examples of real accountability to illustrate that prosecutions can help reducing torture. Instead, the research focused on the fact that a culture of impunity is a major obstacle to the prevention of torture.

The case of Israel shows how those who are most likely to torture (the secret services) are shielded from prosecutions: “(...) [The Landau Report] revealed that Shin Bet had consistently lied to the courts when it denied that it had used physical force during interrogations, and that this position had been approved by senior staff in the organization. Though the report ‘utterly condemns’ this practice, it recommended at the same time that no criminal proceedings for perjury should be brought against any Shin Bet operative.” (Israel chapter, p. 277). In several countries, structural problems also persist in prosecuting police officers, as illustrated by the few prosecutions for numerous cases of deaths in custody in the UK (p. 132).

“ *If police abuse lies at the heart of Peru's failure to prevent torture and protect rights, the country's deeply dysfunctional judicial, prosecutorial and penal system have played an important supporting role. Their structural shortcomings remain apparent.*” Peru chapter, p. 301

This lack of accountability is aggravated, in many instances, by the fact that the criminal justice system as a whole is dysfunctional. As a consequence, it fails to effectively investigate, prosecute and appropriately sanction cases of torture: *“Prosecutors are not independent; police officers may be implicated in the cases they investigate or may have personal links to colleagues under investigation, the judiciary is neither truly independent nor effective. Legal and institutional reforms are required to redress these faults and to create an independent mechanism that can promptly investigate cases of torture and ensure that torturers are prosecuted.”* (Kyrgyzstan chapter, p. 581)

Another obstacle to ensuring investigations and prosecutions is the fear of reprisals by torture victims if they file complaints. This should be addressed in particular by ensuring that independent complaints mechanisms are in place (although, as mentioned above, to be preventive, such mechanisms need to have a link with prosecutorial authorities and be able to refer cases to an investigative/prosecutorial authority) and that sanctions are imposed against those responsible for such reprisals.

“ (...) *the sense of impunity that once existed in Northern Ireland police has been entirely eliminated, and the police are aware that disciplinary infringements (let alone criminal offences) will be punished.*” UK chapter, p. 135

Despite the fact that impunity for torture remains the norm and must be tackled (including through raising awareness with and training of judges and prosecutors), there are notable examples, over the last decades, to show that even the most senior state officials are no longer immune from prosecution, as illustrated by the General Pinochet case in 1998, and the convictions of former Peruvian President Alberto Fujimori in 2009 and of former Chad dictator Hissène Habré in late May 2016.

8. INDEPENDENT MONITORING OF DETENTION IS INSTRUMENTAL IN PREVENTING TORTURE

The statistics of the study demonstrate that monitoring mechanisms have an effect in preventing torture. As referred to earlier, due to the fact that the research focuses on torture (and not on other forms of ill-treatment), the authors only partially assessed the impact of monitoring bodies.

The research provides examples of the positive influence of different types of monitoring on detention practices, as illustrated by the case of Georgia: *“The Public Defender’s Office made very frequent visits from the end of 2004 until 2006. It visited every police station in Tbilisi every few days and monitoring groups regularly visited police stations in the regions. This intense programme, actively supported by the Ministry of Interior, had a very clear impact on police detention procedures.”* (Georgia chapter, p. 414). The research also shows that, as in the case of Peru’s Ombudsman’s Office, monitoring mechanisms can have a positive impact even in difficult political circumstances.

“ *Peru’s experience shows that these mechanisms can be effective under authoritarian rule and under forms of democracy that do not protect human rights, but also that their impact is inevitably limited when they operate in isolation and in an indifferent and often hostile state system.”*
Peru chapter, p. 301

To be effective and play an essential role in the improvement of detention practices, monitoring bodies need to be independent, well-qualified and resourced, and monitors need to be protected from any forms of reprisal or sanction. The persons deprived of liberty, who provide information to monitoring bodies, are often also at serious risk of reprisals. This should always be taken into consideration by monitors and the “do no harm principle” applied to mitigate such a risk.

The country studies also illustrate that international and regional bodies who conduct visits to places of detention have contributed to improving detention safeguards (e.g. Inter-American Commission on Human Rights in Peru; European Committee on the Prevention of Torture in some countries; African Commission on Human and People’s Rights and International Committee of the Red Cross in Ethiopia).

Finally, the research illustrates how a lack of transparency and absence of independent monitoring contributes to the continuation of torture (e.g. Israel, India, Chile, Ethiopia) and draws attention to the responsibility of state authorities to cooperate with monitoring bodies.

“ *Before 2007, a high proportion of the Palestinian detainees who experienced torture were held in IDF facilities and designated Shin Bet facilities, neither of which are subject to monitoring bodies.*” Israel chapter, p. 295

FINAL REMARKS: A HOLISTIC APPROACH TO TORTURE PREVENTION

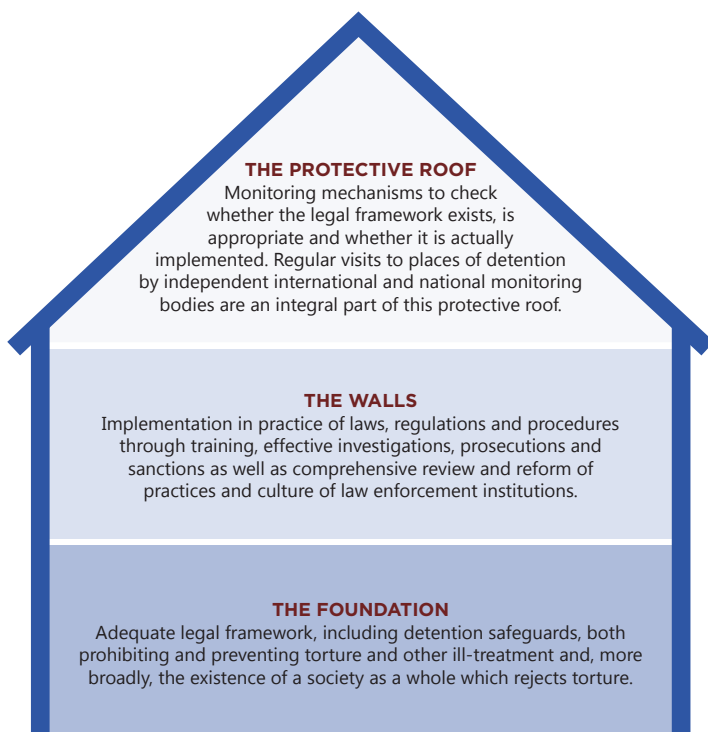
The study demonstrates that torture prevention works and identifies a variety of measures that are particularly important to reduce the risk of torture. As illustrated by the qualitative analysis in the 14 country chapters, no single measure alone is sufficient to prevent torture. To bring concrete changes, an array of measures need to be implemented in combination with one another.

“

The lesson appears to be that the risk of torture can largely be eliminated when detention safeguards, an effective investigation mechanism and independent custody monitoring operate in concert, provided each part of this framework receives adequate resources.” UK chapter, p. 142

Furthermore, torture prevention is not limited to a set of measures and requires a holistic approach, where different measures undertaken are interconnected and influence each other, in order to create an environment where torture and other ill-treatment are less likely to occur. This also implies structural changes in terms of reform and institutional culture and mind-set towards a more transparent system and accountable institutions.

Over the years, the APT has illustrated the need for this systemic approach to prevention through the **"house of prevention"**:



Monitoring mechanisms, and NPMs in particular, are instrumental in contributing to the "functioning" of the whole house of prevention as part of the "protective roof". This includes contributing to the

improvement of detention practices, such as the absence of unofficial detention and ensuring access in practice to fundamental safeguards against torture in custody - the most effective preventive measures identified in the research.

Torture prevention, however, is a shared responsibility. To ensure that the various findings and conclusions of the research are implemented in practice and that torture and other ill-treatment are never used nor justified, no matter what the circumstances, many other actors play an important role. The main responsibility lies with the different state institutions, as the State is the primary bearer of the duty to prevent torture. As illustrated by the country studies, political will is essential to produce concrete change and reforms and ensure the adoption of coherent policies and strategies to prevent torture. The role of civil society organisations to exercise oversight over public policies and practices is also key. So is the media's contribution to influencing public opinion and addressing the fact that torture is accepted by significant proportions of society in many countries globally.

The findings of the unique research on torture prevention led by Dr. Carver and Dr. Handley have already strongly inspired the APT and influenced the thinking behind our strategies for the years to come (see [APT 2016-2019 Strategic Plan and Agenda for Change](#)).¹² We hope that this briefing paper will encourage people to read the full study and that the research become a source of information for debate, plus an inspiration for all actors contributing to a torture free world where the rights and dignity of persons deprived of their liberty are respected.

ANNEX: CODEBOOK USED BY THE RESEARCHERS

Below is a list of questions posed by the researchers to assess the occurrence, in law and practice, of 66 preventive measures (the independent variables identified by the lead researchers) in each country covered in the study. The variables were scored on a scale from 0 to 2: "0" if the preventive measure was completely non-existent; "1" if it was partially in effect; and "2" if it was fully in effect.

PART I: LAW

Detention Law

1. Has unofficial detention been criminalised?
2. Is prompt family notification legally required?
3. Is prompt access to a lawyer required by law?
4. Is prompt presentation before a judge required by law?
5. Is a medical examination shortly after detention required by law?
6. Is audio or video recording of interrogation required by law?
7. Does the law require detention centres to be monitored by cameras?

Prosecution Law

8. Is torture criminalised?
9. Is there a statute of limitation for torture?
10. Are the penalties associated with torture substantial?
11. Are allegations of torture investigated by an independent authority?

12. Are statements extracted under torture admissible as evidence?

International Law

13. Is the state a party to the CAT?
14. Is the state a party to the OPCAT or some other regional or international treaty or agreement allowing for international monitoring visits?

Complaints Mechanism Law

15. Does an independent complaints mechanism exist that deals with torture or ill-treatment?
16. Does the complaints mechanism have the power to compel the production of evidence and witnesses?
17. Does it have the power to refer cases to an investigative authority?
18. Does it have the power to recommend redress?

Domestic Monitoring of Detention Centres Law:

Domestic Monitoring of Police/Gendarmerie Stations

19. Is a domestic monitoring mechanism for police/gendarmerie stations outlined in the law?
20. Does the monitoring mechanism have the power to make unannounced visits to all places of detention?
21. Does it have the power to conduct interviews with detainees?
22. Is the monitoring mechanism required to produce reports on its activities and findings?
23. Do monitors have immunity from sanctions for their monitoring-related activities?

Domestic Monitoring of Prisons Law

24. Is there a domestic monitoring mechanism for prisons in the law?
25. Does the monitoring mechanism have the power to make unannounced visits to all places of detention?

26. Does it have the power to conduct interviews with prisoners?
27. Is the monitoring mechanism required to produce reports on its activities and findings?
28. Do monitors have immunity from sanctions for their monitoring-related activities?

PART II: PRACTICE

Detention Practices

29. Is unofficial detention employed?
30. Are families or other person of choice being promptly notified of a detainee's detention?
31. Are detainees promptly informed of their right to a lawyer?
32. Do detainees exercise their right to a lawyer?
33. Are detainees promptly presented to a judge?
34. Are medical exams being given by independent doctors without security officials being present?
35. Are interrogations electronically recorded and are these records provided to investigating authorities when requested?
36. Are detention center cameras used and are the films provided to investigating authorities when requested?
37. Is there torture prevention training of arresting, detaining, interrogating and custodial personnel, as well as medical personnel charged with examining detainees?
38. Do confessions play an important role in the evidence presented in criminal cases?

Prosecution Practices

39. Are complaints of torture being lodged, assuming torture is occurring?
40. Are allegations of torture being thoroughly investigated?
41. Are charges of torture being brought against alleged torturers?
42. Is the alleged torturer suspended from duty or otherwise removed from contact with the public (prior to conviction)?

“YES, TORTURE PREVENTION WORKS”

43. Is the conviction rate for torture comparable to the conviction rate for other crimes?
44. Are sentences for torture commensurate with the seriousness of the crime?
45. Have civil proceedings ever been brought against the State or an alleged torturer seeking redress?
46. Has the State refrained from pardoning or granting amnesty to torturers?
47. Is there torture prevention and torture investigation training of prosecutors and judges?

International Law Practices

48. If the State has been visited by an international treaty body visiting mechanism, does it provide unimpeded access to places of detention?
49. Does the State grant permission to visiting mechanism to publish its findings?

Complaints Mechanism Practices

50. Does the complaints mechanism investigate complaints effectively?
51. Does the complaints mechanism refer cases to an investigative authority?
52. Does the complaints mechanism make recommendations of redress?
53. Does the complaints mechanism publish its findings in relation to torture complaints?
54. Is there torture investigation training of complaints personnel?

Monitoring Mechanism Practices

Domestic Monitoring of Police/Gendarmerie Stations

55. Does the domestic monitoring mechanism conduct regular and frequent visits?

56. Does the domestic mechanism make unannounced visits?
57. Does the domestic mechanism conduct interviews with detainees?
58. Does the domestic mechanism publish its findings?
59. Have domestic monitors been sanctioned for their monitoring-related activities?
60. Is there torture prevention and torture investigation training of domestic monitoring personnel?

Domestic Monitoring of Prisons

61. Does domestic monitoring mechanism conduct regular and frequent visits?
62. Does the domestic mechanism make unannounced visits?
63. Does the domestic mechanism conduct interviews with detainees?
64. Does the domestic mechanism publish its findings?
65. Have domestic monitors been sanctioned for their monitoring-related activities?
66. Is there torture prevention and torture investigation training of domestic monitoring personnel?

PART III: INCIDENCE OF TORTURE

These questions were posed by the researchers to measure the incidence of torture in each country covered by the research. The frequency was scored on a scale of 0 to 3, the geographical spread on a scale from 0 to 2 and severity (assessed partly in terms of the torture techniques used but also considering combinations of method, and duration and repetition) on a scale from 0 to 2. Then an overall CHATS score combined the three elements on a scale of 0 to 5.

67. How frequently does torture occur?
68. How severe is most torture?
69. How widespread geographically is the use of torture?
70. Who is most likely to torture, assuming torture occurs?

Notes

1. Richard Carver, Lisa Handley, *Does Torture Prevention Work?*, Liverpool University Press, Liverpool, July 2016, <http://liverpooluniversitypress.co.uk/products/80890>. All citations in this briefing paper refer to this publication.
2. The authors made two types of data analysis: multivariate regression (i.e. that all the indices of “independent variables” were included in the same analysis, along with the “control variables”) and bivariate correlations. Multivariate regression showed that detention practice had a strong correlation with reduced incidence of torture. This was the only index that had a strong relationship with reduced torture and statistical significance. Bivariate correlations showed the relationship between each index (or each individual preventive measure) and the incidence of torture.
3. See Annex for the full list of independent variables.
4. See Annex for the list of questions posed to measure the incidence of torture.
5. Two countries, Norway and Argentina, which were included in the study during the pilot phase, are not among the country chapters but their scores are included in the quantitative analysis.
6. For more information on the research and the country studies, see www.apr.ch/en/research-project
7. This applies mainly to the quantitative part of the research as some of the country narratives do address the occurrence of ill-treatment.
8. On the issue of torture in health-care settings, see Report of the United Nations Special Rapporteur on torture, Juan E. Méndez, UN Doc A/HCR/22/53, 1 February 2013.
9. In Georgia, the Ombudsman’s Office was designated as NPM in July 2009. In the United Kingdom, 20 bodies were designated as part of the UK NPM in 2009. These 20 bodies are coordinated by Her Majesty’s Inspectorate of Prisons.
10. For examples of NPM impact over the first ten years of OPCAT implementation (2006-2016), see opcat10.apr.ch
11. See 2nd General Report on the CPT’s activities covering the period 1 January to 31 December 1991, Ref: CPT/Inf(92) 3 [EN], 13 April 1992.
12. See APT website: <http://www.apr.ch/en/resources/agenda-for-change-for-torture-prevention-apr-strategic-plan-2016-2019/?cat=17>



association pour la prévention de la torture
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association for the prevention of torture

Over the past 30 years, a number of important steps have been taken to prevent torture and other ill-treatment around the world. There has been, however, very little research into the effectiveness of these efforts.

In 2012, the Association for the Prevention of Torture (APT) therefore commissioned an independent, in-depth research to address the question: “Does Torture Prevention Work?” For the first time, a team of researchers, under the lead of Dr. Richard Carver and Dr. Lisa Handley, studied the impact of torture prevention measures, over three decades. The results were published in 2016 and include 14 country studies.

The research confirms, for the first time in a global quantitative and qualitative study, that torture prevention works and it provides us with a better understanding of which measures are the most effective in reducing the risks of torture.

In this briefing paper, the APT extracts the key findings from the study and provides further insights on the need for a holistic approach to torture prevention.

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