ACAT 2016 Report

ACAT france

A World of Torture

"Torture does not merely aim to hurt, it aims to destroy a person to create a being far removed from the human species."

Daniel Pennac

ACAT 2016 Report

A World of Torture

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* Terms followed by an asterisk in this report refer to a definition in the lexicon p. 295

PREFACE

BY EMMANUEL DECAUX, author[1], professor of public law at the Université Panthéon-Assas Paris II and Chairman of the Committee on Enforced Disappearances

The changes seen in international human rights over the past 40 years come complete with contrasts and contradictions, thus denying us a black and white understanding of the situation and instead encouraging us to exercise heightened vigilance. The significant legal progress achieved through the United Nations cannot hide the systematic and flagrant violations that occur across the world, despite an increase in the Human Rights Council's commissions of inquiry tasked with recording the atrocities committed, from Syria to Sri Lanka and Eritrea to Burundi, as well as the Security Council's diplomatic initiatives rolled out as part of a "duty to protect". Political debate within the old traditional democracies is increasingly being disrupted by demagogic provocation, when an electoral candidate such as Donald Trump, for example, prides himself on re-establishing torture and "*doing much worse*" than the Bush administration.

Instead of learning from America's failed war on terror that led to a network of secret prisons and clandestine CIA flights, the European States that were hard hit by terrorist attacks conceal their impotence behind warlike declarations, dismissing arguments based on human rights as "legalism". Authorities in France and the United Kingdom are speaking out to deplore "judicial activism" while undermining the authority of the European Court of Human Rights. And yet the rule of law is the best protective shield a democracy can have. The bravery of NGOs such as ACAT must be welcomed, as time and time again they remind us of the moral evidence on the ground, and in doing so run the risk of finding themselves on the stand for having dared to denounce torture where they see it.

This is yet another reason for us not to neglect the international obligations that have gradually ensured torture is outlawed. Although human rights were first enshrined in the Charter of the United Nations in 1945 and the Universal Declaration in 1948, it wasn't until much more recently that they were acknowledged as one of the United Nations' three fundamental pillars alongside security and peace, although the resources employed to this effect leave much to be desired.

Progress for treaties

Just 40 years ago, in 1976, the two international covenants that turned the key principles of the Universal Declaration into legal obligations for the party States entered into force. Today, 168 States are signatories of the Covenant on Civil and Political Rights and 164 have signed the Covenant on Economic, Social and Cultural Rights. These States are required to demonstrate their compliance with their obligations by submitting national reports to committees of independent experts that answer to civil society, and notably NGOs, who may submit alternative reports. The States that ratified optional protocols allowing individual complaints may also be subject to a complaints procedure of a "semi-jurisdictional" nature.

In 1987, almost 30 years ago, the Convention against Torture that was adopted in 1984 entered into force. This convention ushered in the absolute prohibition of torture and "cruel, inhuman or degrading treatment or punishment" via a series of measures of prevention, international cooperation and criminal punishment overseen by the Committee against Torture. The Convention has still only been signed by 158 States, but the Human Rights Council has just adopted a new resolution to support the *Convention against Torture Initiative* launched in 2014, which aims to "achieve universal ratification and to put the Convention against Torture into concrete practice by 2024". Real mobilisation of all stakeholders is still needed. Failing this, the stated deadline runs the risk of being postponed indefinitely.
Nothing can be built in a day. The system of on-the-ground visits trialled on a regional level with the participation of the European Committee for the Prevention of Torture (ECPT) in particular, was only set up by the United Nations following a protocol that entered into force in 2006, the "OP-CAT", which established a Subcommittee on Prevention of Torture (SPT) tasked with visiting places of detention around the world. Only 80 States ratified this Protocol and, due to a lack of resources, the experts only carry out a half dozen visits every year. Yet here too, the OP-CAT set up a national independent system that which led to France appointing an Inspector-General of Places of Deprivation of Liberty. In other words, there are now three independent bodies established on a national, regional and universal level, working closely together to achieve their shared goal of monitoring places of deprivation.

Ten years ago, in 2006, the International Convention for the Protection of All Persons from Enforced Disappearance was adopted before entering into force on 23 December 2010. This innovative mechanism increases the safeguards required to prevent this crime that obliterates human dignity and legal capacity by creating no-go areas, and enables the prosecution of perpetrators in a bid to enforce compliance with victims' rights to justice and reparations. Today, 51 States are bound by this Convention, which in turn consolidates the network of preventative measures and international remedies. Several hundreds of urgent appeals concerning Mexico have already been logged, in particular regarding the case of the 43 Iguala students who disappeared in September 2014 and whose whereabouts remain unknown.

The link between enforced disappearance and torture is evident, as illustrated by the case of Giulio Regeni, the Italian student who disappeared on 25 January 2016 in a central Cairo neighbourhood teeming with police, and whose body was found by the roadside in Egypt. Arbitrary detention is torture in itself for the disappeared person, who is left ignorant of the fate that awaits them and deprived not only of the protection of the law but also of the basic reference points of ordinary life. It is also a form of endless psychological torture for the victims' families, as demonstrated by the unrelenting fight put up by the Grandmothers of the Plaza de Mayo, 40 years after the military coup in Argentina.

This phenomenon was characteristic of the 20th century's totalitarian dictatorships, from Nazism and Stalinism to a revival during the colonial wars, particularly in Algeria, before becoming a systematic practice in Latin America's military dictatorships as part of Operation Condor. It wasn't until 1980 that the first working group on involuntary or enforced disappearances was set up by the Human Rights Commission. This working group still exists today, operating on a universal scale with a humanitarian mandate, adding to the work carried out by the Committee on Enforced Disappearances as part of the 2006 Convention.

The same applies to the mandate held by the Special Rapporteur on Torture, one of the oldest thematic procedures initiated by the Human Rights Commission in 1985, which has since seen a succession of particularly competent and committed rapporteurs, such as Nigel Rodley, Theo van Boven and Juan Mendez, with the latter having been the mandate holder since 1 November 2010. His latest report records the urgent appeals addressed to 72 States around the world. Here too, the rapporteur's tasks complement those of the other international bodies, from treaty organs to the various different special procedures. As an example, the Special Rapporteur travelled to Mexico, along with the working group on involuntary or enforced disappearances. Far from serving as two hands busied with the same task, these different independent procedures are complementary and strengthen one another in the face of States that all too often tend to undermine external viewpoints as interference.

Progress for victims

It goes without saying that progress for States is not synonymous with progress for victims. In contrast to the calculating progress of “cold monster” States, victims of torture continue to suffer to this day, and extrajudicial killings and enforced disappearances continue to take place. The most recent treaties take into account the necessity of a long-term approach based on patience rather than resignation or impatience, in a spirit of "hope against hope" to borrow the words used in the memoirs of Nadezhda Mandelstam, the wife of the great Russian poet who disappeared into a mass grave in late 1938.

Drawing on works carried out in the 1990s by Louis Joinet on the fight against impunity and by Theo van Boven on the right to reparations as part of the United Nations' Human Rights Subcommittee, the Convention on Enforced Disappearances includes highly innovative provisions concerning victims' rights. According to Article 24 §.1 of the Convention, "*'victim' means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance"*. In other words, the parents and relatives are considered victims, with no distinction made between "direct victims" and "indirect victims".
The jurisprudence of the European Court of Human Rights had already demonstrated that the families of disappeared persons are themselves victims of "inhuman treatment" in the absence of any inquiry and in light of official indifference and even police harassment and social stigmatisation, but Article 24 of the Convention takes this concept much further in terms of victims' rights, by enshrining "Joinet's principles". Thus: *"Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard"* (§.2). Similarly, the Convention refers to "van Boven's principles", specifying that: *"Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation"* (§.4). The Convention also expressly enshrines the "*right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance"* (§.7).

These legal obligations are fully enshrined in an international treaty and are made all the more significant by the fact that States continuously backtrack on the principles of the Declaration on Human Rights Defenders adopted by the General Assembly on 9 December 1998, thus increasing obstacles to the unimpeded functioning of NGOs, despite the best efforts of the Special Rapporteur on Human Rights Defenders, Michel Forst. The ten human rights' treaty bodies were also willing to take up the challenge, and approved the "San José guidelines against intimidation or reprisals" during their 27th annual meeting that took place in Costa Rica in June 2015 in a bid to protect all individuals who are cooperating, have cooperated or are seeking to cooperate with the treaty bodies.
Over the past year, these guidelines have been taken up by the different treaty bodies who are required to appoint their own contact person tasked with acting in the event of an emergency, and to form an informal network in order to coordinate responses more effectively when required. This is an empirical process, as each case may differ, requiring discreet diplomacy or in contrast public denunciation, yet it is also an approach based on the guidelines, with the primary concern being to protect and respect individuals' free will. Thus, the treaty bodies are tangibly incorporating the principled condemnation expressed by the General Assembly in its resolution 68/268 adopted on 9 April 2014, whereby it "*condemns all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies, and urges States to take all appropriate action, consistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*[2] *and all other relevant human rights instruments, to prevent and eliminate such human rights violations"*.

It is astonishing to see the attempts made by some States, particularly in Africa, to decry the "San José guidelines" as placing extra-conventional obligations upon States, going so far as to question the vague definition of what constitutes intimidation. Unfortunately, NGO workers on the ground are all too familiar with anonymous letters and phone calls, death threats made to their loved ones, and particularly children, and pressure on families to withdraw complaints, let alone stalking, sabotages and accidents, with CCTV now filming kidnappings while the police remain incapable of opening effective investigations. More often than not, threats are insidious and carried out by private militia or paramilitary soldiers, rather than the former "death squads" acting with the "*authorization, support or acquiescence of the State"*[3]. Yet in the absence of such complicity, the State retains its primary responsibility for ensuring public safety and security, and where necessary, is required to "*take appropriate measures to investigate acts […] and to bring those responsible to justice"* [4].
Faced with the inertia and obstruction of the States, who know that the passing of time works to their advantage, victims' rights are handled by systems designed to protect the non-applicability of crimes against humanity. Victims' rights do not belong to a bygone era, but are necessary requirements in the here and now. The

same applies to regulations concerning self-amnesty or manoeuvres designed to obstruct universal jurisdiction. As Louis Joinet puts it in the concluding lines of his report on the fight against impunity, "to turn the page, we must first write it". Torture victims' right to the truth and to justice, and that of victims of disappearance, cannot be snuffed out by indifference, opportunism or cronyism.

The fight against terror cannot be used as justification for all things. It cannot be used to justify the impunity of torturers, the use of torture, kidnappings, or extraditions of suspects to countries that systematically make use of torture. The European Court of Human Rights recalled this principle in successively condemning the FYROM, Poland and Italy for their support of CIA activity. Our country should not waver from these intangible principles in the name of necessary cooperation in the war against terror. The prohibition of torture is an absolute right, part of the unshakeable core of these intangible rights that cannot under any circumstances, whether in times of crisis or times of war, be undermined. Our most pressing priority today is the defence of rights, starting with human rights, the firewall against all escalation and troubles.

[1] *Droit international public* (Dalloz, 9th ed, 2014), *Les grands textes du droit international des droits de l'homme (La Documentation française, 2016), La liberté d'expression* (Dalloz, 2015) with Géraldine Muhlmann and Elisabeth Zoller.

[2] The official title of the Declaration on Defenders of Human Rights adopted in 1998 via resolution 53/114.

[3] Article 2 of the Convention for the Protection of All Persons from Enforced Disappearance.

[4] Article 3 of the Convention for the Protection of All Persons from Enforced Disappearance.

INTRODUCTION

THE INERTIA OF TORTURE

BY JEAN-ETIENNE DE LINARES, General Delegate to ACAT

"When the suspect hides behind phrases such as the classic 'I don't know' or 'I don't know him', we start beating him to apply pressure. Then, we suffocate him with a plastic bag that we fill with water if he resists. When he runs out of oxygen and needs to breathe, the water goes up his nose and he starts suffocating. Then we use electric shocks. You have to wet them and then start electrocuting them."

These are the words of a standard torturer in Mexico, an ex-serviceman describing the everyday war against drugs. *"You think it's easy to sleep at night [...] hearing the cries of a man being tortured?"* he confesses. *"They [my superiors] want to see results because citizens can't take the instability any more. We're just following orders, nothing more"*[1].

This former soldier is Mexican. He could just as easily have been Chinese or Nigerian, Tunisian, Russian or Filipino. Torturing a dissident to keep him quiet or a suspect to have him confess is an everyday occurrence in more than half of the countries around the world, despite the fact that just 40 years ago on 23 March 1976, the International Covenant on Civil and Political Rights entered into force, in which Article 7 reiterates word for word Article 5 of the Universal Declaration of Human Rights: *"none should be subjected to torture or cruel, inhuman or degrading treatment"*. Since 1976, international texts prohibiting the use of torture and mechanisms aiming to ensure they are obeyed have proliferated, as emphasised in the articles written by various authors to open this first part of our analysis of the phenomenon of torture in our "The 40-Year Legal Battle against Torture: An Assessment of the Progress Made" report.

Yet despite the fact that Mexico is implicated in many international reports for its routine use of torture, it was this same country that made a crucial contribution to unblocking negotiations that resulted in the UN adopting the Optional Protocol to the United Nations Convention against Torture (OPCAT) in 2002[2].

How might we explain this failure of law? Why has so much human effort and energy failed to vanquish this unwavering plague? There are many possible reasons, but perhaps it is simply because war continues to exist and torture to be effective and sometimes lucrative, because torture is less risky than robbing a bank, and because terrorism has allowed the gates leading to torture to swing wide open.

War and torture

While wars of conquest between States have become few and far between, a number of ongoing armed internal conflicts have endured to greater or lesser extents around the world, from Afghanistan, Libya and Israel and Palestine to South Sudan, Syria, the Democratic Republic of Congo, Iraq, Thailand and Pakistan – and the list goes on. In times of war, captured prisoners are tortured to extract strategic information. Groups suspected of supporting dissident factions are terrorised using the most extreme means possible. Rape is used as a weapon of war. Fallen comrades are avenged, abuses suffered are returned to the enemy.

In all armed conflict, torture is routine, legitimised by a nation's or group's higher cause, and fostered by a spiral of violence that is often encouraged, if not ordered by, the upper echelons of a hierarchy. Prohibition and punishment are replaced with orders to be obeyed, brothers in arms to be avenged, fear and hatred of the Other, bringing together all the ingredients conducive to torture. No conflict escapes this rule.

The effectiveness of torture

Retaining power

In many countries, political opponents, journalists, lawyers, trade unionists, human rights' defenders and all those who represent a form of dissidence are harassed or prevented from working. They live in the constant fear of being arrested, tortured and imprisoned for years during and after sham trials. Failing that, they may simply be shot in the head, or "disappear" one day. Members of ethnic and religious minorities are prime targets, especially when their calls for independence or equality are deemed disruptive to maintaining power, even when they attempt to exercise their rights peacefully.

"*The risks of torture are particularly high for those who belong to a 'sensitive' category, such as human rights lawyers, petitioners, dissidents, members of ethnic minorities [...]. An increasing number of activists are being arrested for crimes as vague as 'being a threat to State security', 'disrupting public order' or 'separatism'*"[3]. Whether in China, Uzbekistan, Syria or Nigeria, the message sent by torture is clear: this is what it will cost you to oppose us. The goal is to silence, rather than force to speak. A formidably effective weapon when used not to extract information, but to quash all desire for revolt.

Making money

it is a little-known fact that the majority of torture victims are common law delinquents, especially when they are also from marginalised and impoverished backgrounds.

"*All arrested and detained people, whatever the crime they are believed to have committed, risk being subjected to torture or mistreatment. [...] Those with little in the way of financial means are easily turned into guilty parties and are easy to make confess in a system where quick communication and a high clearance rate takes precedence over scientific evidence.*"[4]

If torture is an everyday occurrence in many countries, it is primarily because poorly trained, low-paid police officers use it as a method of inquiry. In general, suspects confess quickly to put an end to their suffering. It is therefore much quicker, easier and cheaper to obtain confessions by beating suspects rather than leading real investigations, seeking out tangible evidence (fingerprints, DNA, etc.) or interviewing witnesses.

Judges are overwhelmingly responsible for this phenomenon, as they choose to accept confessions clearly obtained under duress as incriminating evidence, take little interest in the extent to which arrest procedures or custody times are respected, fail to examine victims' complaints and only very rarely prosecute police officers guilty of torture.

Once they have received their sentences, the threat of torture continues to hang over these delinquents, or alleged delinquents. They are often crammed into overpopulated, unsanitary, disgraceful prisons where abuse is used as a way of maintaining order and an extra form of punishment.

Impunity

Torturers rarely find themselves behind bars. Impunity remains one of the leading causes of the persistent and widespread nature of torture.

Most States are equipped with a legislative arsenal from which to draw on in punishing acts of torture, yet because these crimes are the result of fixed policy or at the very least tolerated by the higher echelons, and because they can only be committed in such high numbers thanks to the assistance and participation of a host of police officers, soldiers and judges, it comes as no surprise to see that even the most well

adapted legal instruments cannot compete with these many guilty parties determined to never have to pay the price for their acts.
In any case, very few victims ever lodge complaints or agree to testify to the abuse they suffered. Who would they complain to, when their torturers are also State officials? Why would they risk everything, when they know that by speaking out or attempting to seek justice, they put themselves and their families in the firing line of reprisal and perhaps more torture? When they are under no illusions regarding the capabilities and intentions of the justice system in investigating, identifying and prosecuting their torturers?
Sooner or later, even the most authoritarian of regimes are overthrown. While leaders and their families may well be eliminated, most will continue to enjoy impunity. Even long after the events, the State tends to protect its own and baulks at the idea of initiating proceedings. The perpetrators and accomplices of torture are too many, with some still holding important positions or too much influence. A code of silence and esprit de corps form the bedrock of the army, police and justice system in all countries around the world. In addition, courageous victims who keep up hope and persist in seeking legal action, if indeed they manage to gather the proof they need, generally find themselves confronted by limitation periods or amnesty laws hastily assembled in the days following the fall of dictatorships.

The privatisation of torture

ACAT, like most other NGOs, has always deemed it necessary to use the word torture when the abuse in question is inflicted by agents of the State (police officers, soldiers, prison wardens, etc.). In this respect, it mirrors the UN, which defines torture as *any act by which severe pain or suffering, whether physical or mental [...] 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 has long been accepted that the acts of violence committed by paramilitary troops (often soldiers involved in clandestine operations) or rebel groups seeking to seize power by force also fall under this definition.
But a surge in acts of torture committed by non-State perpetrators over the past few years is forcing our organisations to examine this phenomenon more closely.

The primary victims of “privatised torture” are migrants. Coline Aymard's article on the persecution of Eritreans in exile in the Sinai Peninsula is an example of this situation[5]. In it, she describes veritable “torture houses” in which hundreds of Eritrean, Ethiopian and Sudanese victims are burnt, raped, beaten, and hung for days on end in a bid to extract ransoms worth thousands of dollars. They are sometimes tortured over the phone for their families to hear. The same phenomenon occurs in Mexico. Latin American migrants heading for the United States are an extremely lucrative source of income for cartels and other criminal groups, as well as the police or army with whose help the former often operate. Victims here are kidnapped, imprisoned, beaten and subjected to mistreatment, forced into prostitution and sometimes killed if they do not succeed in paying their release money.
The road to exile is overwhelmingly a lawless one. Migrants are isolated, subjected to rampant racism, and find themselves in a perpetual position of weakness. They make ideal targets for groups similar to the *chauffeurs* that operated in the countryside in the wake of the French Revolution, who would hold their victims' feet in fires to strip them of their worldly goods.

The use of torture as a means of personal financial gain is also reflected in the slave trade. Far from having disappeared, this practice still affects hundreds of thousands of people, primarily in Asia and Africa. Debt slaves, victims of forced labour, sex slaves: these men, women and children are mercilessly exploited. Unlike the slavery that existed in bygone centuries, the determining factor here isn't skin colour, but vulnerability. And while forced labour cannot be described as torture, the brutal methods used to maintain servitude and dissuade slaves from fleeing can, indeed, be defined as torture. In Thailand, thousands of people are forced to work on fishing boats. Those who put up a fight are starved, deprived of sleep, beaten, have their teeth broken, and more. Sometimes, they are subjected to death by dismemberment.

Another worrying development is that of private armies. Since the early 2000's, some western states, and the United States first and foremost, have tended towards contracting private companies in handling tasks that generally fall under the remit of the armed forces. As long as these tasks remain logistical, there is no issue. This changes, however, when these modern mercenaries are called upon to take part in field operations, to fight, or simply to intervene as trainers and advisors, titles which are generally nothing more than a way of concealing their effective participation in acts of war. The violence committed in Iraq by Blackwater troops (later renamed Xe Services and then Academi) perfectly illustrates the fears surrounding this phenomenon. Another example, once again in Iraq, is the company CACI International, a subcontractor used by the American army for information and intelligence gathering. A group of Abu Ghraib's former prisoners accused several CACI employees of having personally beaten and sexually assaulted them, as well as having subjected them to mock executions.
These private armies consider themselves above the law and behave as such on the ground. They do not feel bound by the rules that govern official troops forced, how-

ever theoretically, to comply with them. Procedures surrounding the recruitment, training and supporting of these men are much laxer than in national armies, which makes them particularly susceptible to committing human rights abuses, especially in the favourable context of armed conflict and especially if States employ them with the aim of escaping direct implication in the crimes that these mercenaries may commit.

Torture and terrorism

Terrorism is not a recent phenomenon. In the 1970's in the western world alone, planes were hijacked, Israeli athletes were massacred by Black September at the Olympic Games in Munich, with the same organisation launching attacks in Baader (Germany), the Red Brigades were active in Italy, the ETA in Spain and the IRA in Northern Ireland. What has changed, since the 9/11 attacks in particular, is a growing feeling that in their guerrilla war against the West, groups such as Al-Qaeda and Daesh permeate a reign of terror over all citizens, as opposed to merely targeting distant symbols of western power, whether military, capitalistic or Israeli.
And now in an era where nobody is safe from the threat of terrorism, the question arises of the lengths a State might go to in order to ensure security for its citizens, to extract information and to protect from those who do not hesitate to strike out. Might a State go as far as to use torture?

Dictatorships have already made their answer to this question clear. Under the banner of “the war against terror”, they justify breaches of human rights, including torture, used to quash political unrest. They adopt anti-terrorist legislation based on vague definitions of terrorism, enabling them, if need be, to carry out arrests and arbitrary detentions, and hand down sentences based on confessions extracted through beatings and electrocutions. In these regimes, the war against terror is merely a smokescreen via which to lend oppression some semblance of respectability.

And western democracies are no different. In her article on the Algerian War[6], Raphaëlle Branche assessed the widespread use of torture by the French Army. More recently, and again under the pretext of the war against terror, the British armed forces used these methods against Northern Ireland's IRA, as did the Spanish police in their dealings with ETA, long after Franco's death. Today still, Israel tortures many Palestinian prisoners and was even one of the very few countries to authorise some practices ushered through under the euphemism of “moderate physical pressure”. The United States has continuously made use of torture, whether employed by their armed forces or their secret service agents, with the latter having served as

instructors in training up security forces in authoritarian regimes the country supported or helped put in place. As for Guantanamo or Abu Ghraib, they have become symbolic of the horrors committed during George W. Bush's “war against evil” in the aftermath of the 9/11 attacks.

Since Barack Obama's rise to power, the CIA has been forced to renounce the techniques it refused to qualify as torture, such as waterboarding or stress positions. The United States Senate even published a damning report on the previous administration's practices, in which it also acknowledged their complete lack of effectiveness[7]. But what might we expect to see in the US and Europe if the attacks we have already witnessed were to multiply?
Voices are already calling out for the use of torture to be legitimised. Donald Trump announced that if elected he would approve the use of torture, waterboarding and "much worse" forms of torture against persons suspected of being terrorists, claiming that "*we have to change our laws and we have to be able to fight at least on almost equal basis*". In France, even before the 2015 attacks, Marine Le Pen stated that it might be necessary to torture those who know where a bomb is set to be detonated. Although encouraged by leading politicians, this rhetoric remains a marginal view, and to date, investigations conducted in Europe against terrorist cells have taken place without the use of torture. However, some emerging signs are worrying.

In 2014 in Paris, ACAT began legal proceedings for torture against Abdellatif Hammouchi, the head of the Moroccan secret services who tortured French-Moroccan citizens. A year later, the governments of the two countries signed a new judicial cooperation agreement, making it nigh on impossible to try Moroccan torturers in France. The message was clear: in the fight against Al-Qaeda in the Islamic Maghreb (AQIM), France needs the assistance of the Moroccan secret services, regardless of the methods they use. We are seeing torture being sub-contracted out, and we can expect to see similar complacency with respect to other torture-based regimes, spurred on by a desire to use them as buffers against terrorism.

Since the November 2015 attacks, France has been under a permanent state of emergency. Searches, including night searches, carried out for vague reasons and without prior judicial authorisation, house arrests ordered by ministerial decrees, again without judicial supervision, and bans on gatherings and protests: these are the primary measures the authorities may take under this system. A few months after a state of emergency was announced, these measures began being applied on a discriminatory basis, targeting Muslims deemed to have been "radicalised" in particular, and used disproportionately compared to the stated objectives and some-

times for reasons other than the fight against terror (protests against COP21 banned, activists with no links to the jihadist movement placed under house arrest).

It is true that major abuses have yet to occur. But when we consider that more justice, more democracy and more human rights are our best weapons against terrorism, the State's decision to bolster the powers of security forces to the detriment of those of judges, is worrying. History has taught us that to prevent torture in a democracy requires early identification of its early symptoms. Here are two types of the symptoms in question:

• Consistently using war-like language; continuously criticising a legal system that hampers the action of security forces; denigrating researchers, whose explanations are immediately dismissed as excuses; surrealist debate surrounding the decline of national identity; calls for preventive imprisonment of individuals with a criminal record, etc. All of these ways of using language point to a state of emergency becoming the norm, and legislative changes risk making them permanent, laying the groundwork for increasingly radical measures to become accepted by the general public, if future attacks were to occur.

• And much to our dismay and horror, public opinion is indeed already indicating a greater acceptance of the use of torture. When asked *"Is the following scenario justifiable: a police officer uses electric shocks on a person suspected of having planted a bomb ready to be detonated?"* In September 2000, 34% of French respondents answered "yes" [8]. Sixteen years later this figure rose to 54% [9].

May we never forget just how flimsy the barriers that stand between us and inhumanity truly are.

"Torture is a dangerous invention, a test of strength rather than of truth. He who is capable of withstanding torture hides the truth, as does he who is incapable of withstanding it: Why would suffering have me confess my faults more than it would force me to say what does not exist?"

Michel de Montaigne

[1] Interviewed by Yemeli Ortega, AFP Mexico, 7 May 2016.

[2] See the article by Veronica Filippeschi, page 163 of this *A World of Torture 2016* report.

[3] See the report on China, page 63.

[4] See the report on Mexico, page 39.

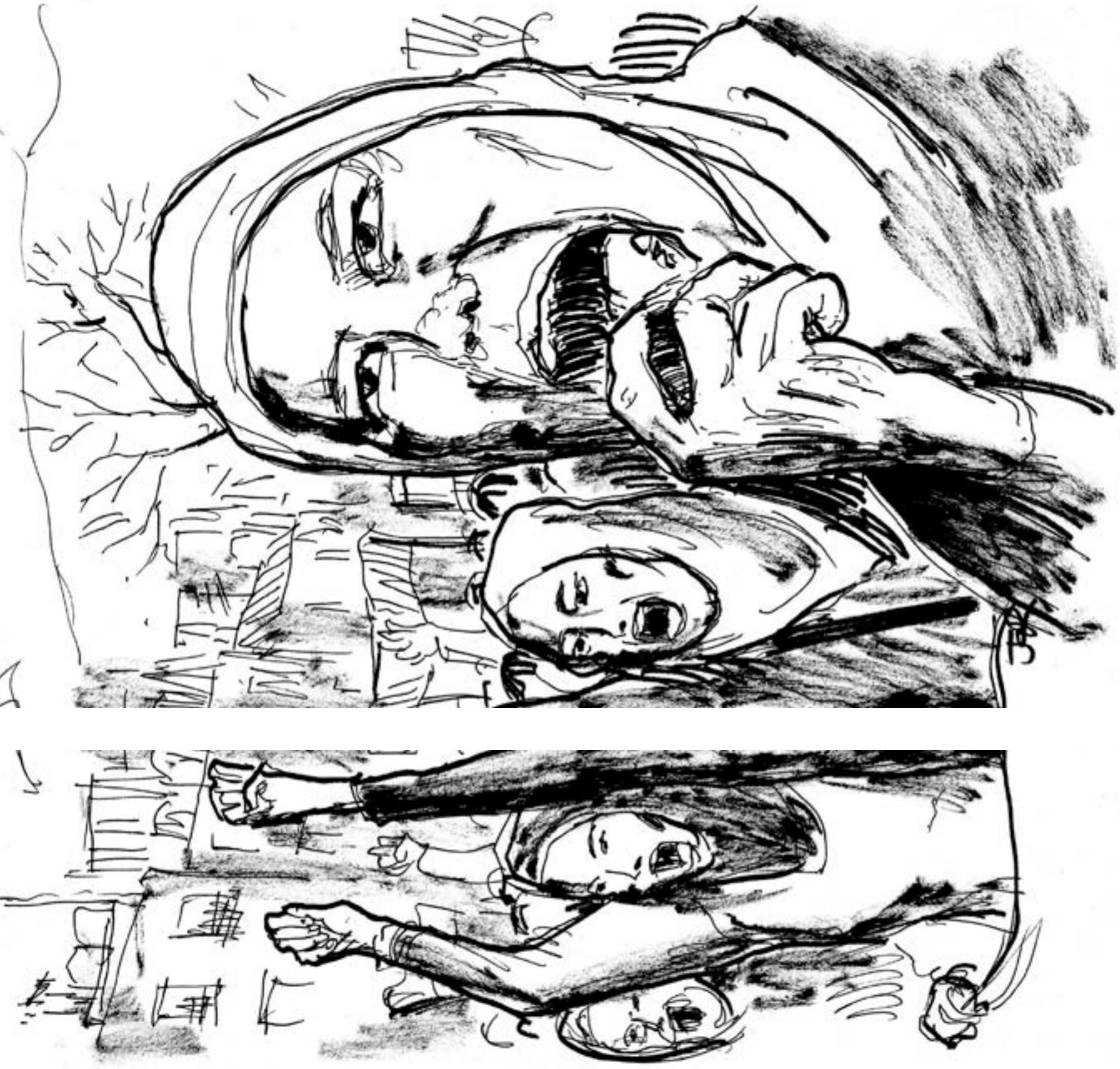
[5] Coline Aymard, *Left out in the cold: Eritreans persecuted at home and in exile,* page 263 of this *A World of Torture 2016* report.

[6] Raphaëlle Branche: The quest for the truth, the will to forget: torture during the Algerian War, page 245 of the *A World of Torture 2016* report.

[7] While President Obama's initiatives are to be applauded, we should not forget that Guantanamo has still not been shut down, that targeted drone assassinations do not necessarily mean progress, and that the detention of close to 80,000 prisoners in complete solitary confinement in tiny cells for years on end is treatment that may be qualified as torture.

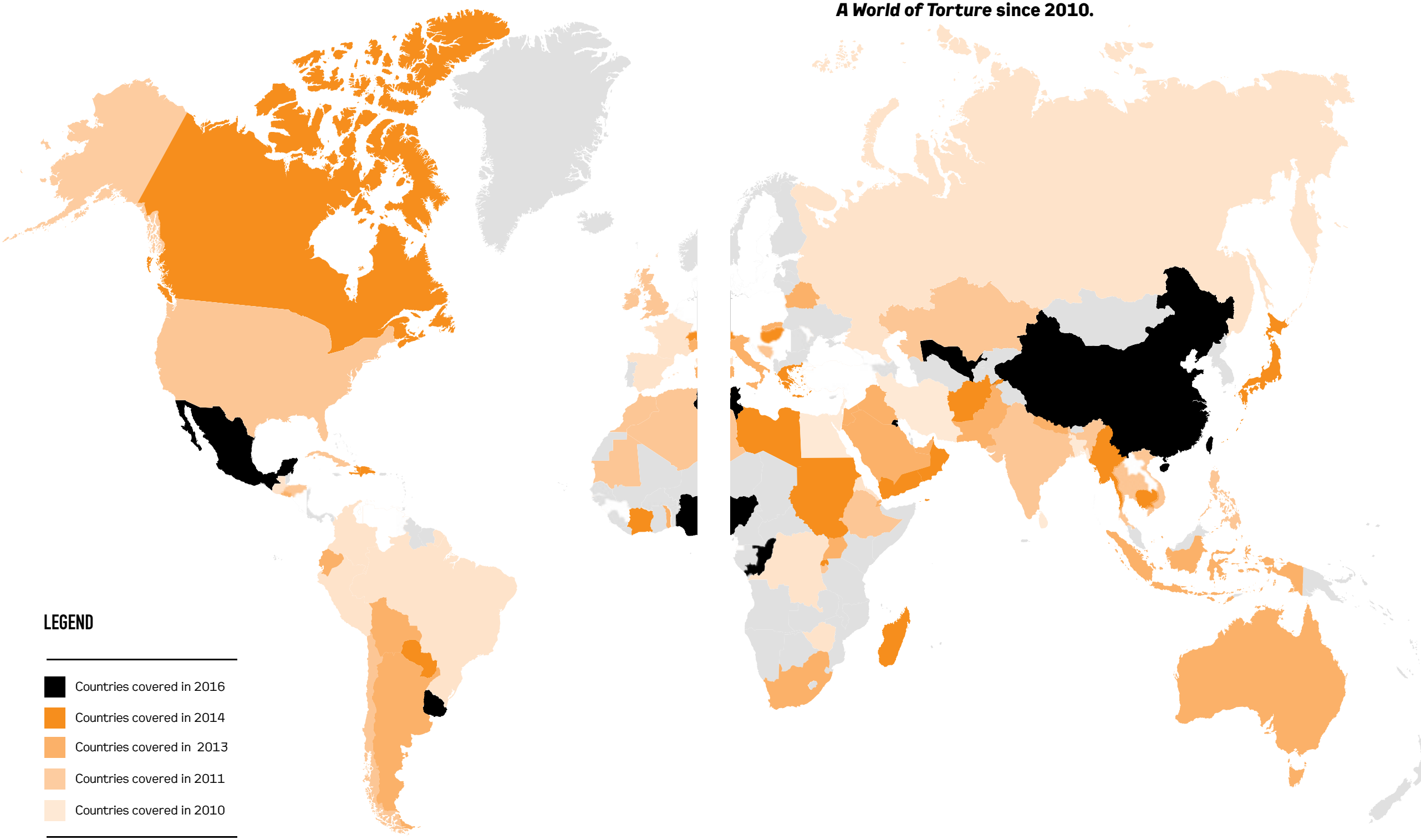
[8] September 2000: CSA survey for Amnesty International (1,005 respondents).

[9] April 2016: Ifop survey for ACAT (1,500 respondents).



GEOGRAPHY OF TORTURE

Detailed map of the countries covered in reports *A World of Torture* since 2010.



AMERICAS

Mexico . Uruguay .

Countries covered in the 2016 report

Countries covered in previous reports (2010, 2011, 2013 et 2014)

* Population in 2015, in million of inhabitants / Source: World Bank 2015

MEXICO

BACKGROUND

Human rights violations in Mexico have considerably increased since the end of 2006, when Felipe Calderón declared war on organised crime and drug trafficking. Many tens of thousands of military and marine troops have been deployed in the streets alongside federal police. In all 31 federal States and the federal district of Mexico (hereinafter referred to as the States), the civilian population has paid a heavy price for this military strategy, yet the violence perpetrated by criminal gangs continues. In December 2012, when the President's mandate came to an end, a total of at least 60,000 people had died, 26,000 had disappeared, 250,000 had been internally displaced, and thousands have been arbitrarily detained and tortured.
Despite a slight decrease in the number of troops present in certain States, the new President, Enrique Peña Nieto, has maintained his predecessor's policy. A climate of violence continues to reign (22,732 killings in 2013[1]). There has been no respite from the mass human rights violations, and there have been no effective steps taken towards far-reaching reforms or sanctions for the reprehensible behaviour of the country's security forces and other judicial representatives.

PRACTICE OF TORTURE

In April 2014, the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, described such practices in Mexico as a "generalised" phenomenon[2]. At the beginning of December 2014, the Supreme Court of Justice of the Nation (SCJN) recognised that torture continued to be "widely used" in Mexico[3]. However, the executive, legislative and judicial authorities as well as the security forces generally refuse to recognise this problem and manage to disguise it due to the lack of an effective system to record suspected cases of torture.

Some figures that have been made public nonetheless make it clear that torture practices are on the increase. The National Human Rights Commission (CNDH) recorded an increase of around 600% in the number of allegations at a federal level between 2003 and 2013, including 7,164 reported cases over the last four years[4]. These figures do not include cases reported at a State level – which are higher in number and even less well recorded – or those involving kidnappings, disappearances (almost 5,000 during the first ten months of 2014[5]) or executions. Finally, only a minority of victims dare to file a complaint for fear of appraisals or due to a lack of trust in public institutions.

Victims

Anyone who is arrested or detained, regardless of the charges, is at risk of being subjected to torture or ill-treatment. Those suspected of involvement in organised crime or of having committed a "serious" crime more generally are the most vulnerable. In most cases, these are people with meagre financial resources who are socially marginalised or discriminated against. It is easy to fabricate their guilt or extract a confession from them in a system where it is considered more important to issue communications about the swiftness and high rates of crime solving than to rely on scientific evidence.

A majority of victims are young men, minors in some cases, from poor areas and stigmatised as delinquents. On 28 July 2013, 19-year-old Juan Gerardo Sánchez and seven other men aged between 17 and 34, all from the impoverished San Martín district of Malinalco, were arrested by police officers in Mexico State. They allege they were tortured during a 30-hour period of secret detention in order to secure confessions for weapons theft and possession of narcotics[6].
Migrants, mostly from Central America, are often blamed for all the country's problems and are regularly tortured in order to make them confess crimes, to extort money or have them deported. On 23 October 2013, José Ismael García, a Honduran national, was arrested by municipal police officers in Saltillo while walking in the street. He was tortured for more than 36 hours in the hope that he would confess to possession of narcotics[7]. The Casa del Migrante, an NGO based in Coahuila, recorded 40 similar testimonies between January 2013 and May 2014[8].
There are also many victims within Mexico's indigenous communities, who suffer from discrimination and often speak little or no Spanish. Juan Antonio Gómez Silvano, Roberto Gómez Hernández and Mario Águilar Silvano, indigenous Tzeltals, claim to have been tortured by municipal police officers in Chilón (Chiapas) on 16 and 17 September 2014, when they were made to confess to injuring one of the officers' colleagues. Illiterate and without legal aid, they were forced to place their fingerprints on a statement confessing to the charges[9].
The Committee on the Elimination of Discrimination against Women (CEDAW) has pointed to the fact that, in the absence of protection from physical and psychological abuse, women are more often subjected to acts of sexual torture than men[10]. Between January 2010 and June 2014, according to information collected by the human rights NGO Centro ProDH, 143 allegations of torture against women were submitted in thirteen different States (the worst offenders were Chiapas, Baja California, the Federal District and Puebla)[11]. Cristel Fabiola Piña Jasso was arrested in Ciudad Juárez on 12 August 2013 by police officers in Chihuahua State. She was slapped, beaten and sexually assaulted before being compelled to confess to extortion[12].

Participants in public demonstrations, as well as onlookers and even anyone found in the vicinity, also experience first-hand the excessive and indiscriminate use of force, arbitrary detention and torture. Generally speaking, journalists, community and social leaders and human rights defenders are also at risk since their activities are hampering powerful actors like authorities or multinational firms[13]. On 26 September 2014, students at the rural Ayotzinapa school (Guerrero) who had travelled to a demonstration in Iguala were the subject of a brutal crackdown by law enforcement officials with connections to organised crime. The result was 6 dead, 25 injured and 43 disappearances. In November and December, during gatherings held as an act of solidarity, many people including journalists, students and fathers of the disappeared were attacked by federal police officers, *granaderos* (anti-riot police), who insulted and threatened them with firearms, threw projectiles, beat them with their helmets and placed some of them in arbitrary detention[14].

Finally, the situation facing many of the country's 259,000 detainees (including 13,400 women) continues to be a cause for concern. Many are remanded in pre-trial detention well beyond the statutory period of two years (this will change to one year as soon as the new national code of criminal procedure comes into effect)[15]. During his visit, special rapporteur Méndez denounced the extended periods for which detainees are kept in their cells (22 hours per day in high-security prisons)[16]. The NGO Asilegal has highlighted the use of disciplinary punishments that flout international norms: in March 2014, in Tijuana high-security prison (Baja California), a female detainee was placed in solitary confinement for four months for accepting food offered to her by a fellow detainee without first asking for permission from the wardens. The CNDH also recorded a 5.8% increase in the number of complaints made between 2010 and March 2014 by inmates in federal prisons; these related to

threats, beatings, violence or sexual abuse, invasive searches of visitors, and payments made to avoid beatings[17].
Many prisons continue to be managed by members of organised crime, with prison directors and wardens either turning a blind eye or actively complicit: these criminals inflict punishment on other detainees and demand payment for protection and access to meals and telephones.

Torturers and torture sites

Local police, and municipal police in particular, who are considered to be more corrupt, are often singled out. The decision announced at the end of November 2014 to replace these units with State police only[18] is unlikely to resolve this situation: in the absence of effective checks and accountability, all police units engage in torture practices.
The number of military troops dispatched to handle domestic security remains very high (more than 30,000)[19]. They are heavily armed and not trained to carry out police functions (detentions or interrogations), and there are no civilian measures in place to ensure their accountability. The human rights training they are supposed to receive is not the subject of any impact assessment. The Nuevo Laredo human rights committee (Tamaulipas) documented 95 cases of human rights violations, including torture, perpetrated by military troops during the first eight months of Peña Nieto's presidency, representing an increase of 22% compared to the six-year mandate of Felipe Calderón[20].
Police officers and military personnel are generally responsible for the most severe acts of torture during the first few hours following arrests, as well as during transfers and in detention (in secret isolated locations, waste ground, police stations and military barracks).

The importance and number of the different roles played by the office of the public prosecutor during the investigative process and in criminal trials have produced conditions that are conducive to the endurance of torture practices among its representatives. The office of the general prosecutor of the Republic (PGR), together with State prosecutors (PGJE), oversee investigations with the support of the judicial police, which falls under their direct authority, and are responsible for taking the initial statement of the accused, which is often used as evidence that takes precedence over subsequent declarations made before a judge. In many cases, representatives of the public prosecutor have been accused of covering up arbitrary arrests and detention, torturing detainees, fabricating evidence, and persistently intimidating

suspects until they are brought before a judge. On 30 June 2014, 22 civilians died during a military operation in a warehouse in Tlatlaya (Mexico State). The recommendation released by the CNDH revealed that in this case the Mexico PGJE had been complicit in between 12 to 15 extrajudicial killings and the manipulation or dissimulation of evidence, and that its representatives had themselves perpetrated acts of torture, including sexual torture, and ill-treatment against three women arrested after the operation[21].

Several cases have highlighted the complicity of judges who fail to order investigations into torture allegations, publicly appointed lawyers (under the authority of the public prosecutor) who cover up breaches of their clients' rights, and doctors who advise security officials on acts of torture or cover up traces of torture after the event. Directors and wardens in prisons and certain detention centres have carried out acts of torture and ill-treatment against detainees.

Finally, acts of torture are perpetrated by members of criminal gangs (beatings, amputations, burns and rape in public), particularly in the case of kidnappings for ransom. Not only is this "private" torture not properly investigated, but it is also often made possible by the acquiescence and in some cases active complicity of public representatives.

Methods and objectives

Torture is above all used as an investigative method for the purposes of obtaining confessions and information. It is also used to terrorise, punish and humiliate victims and to extort money. The following are some of the most commonly reported techniques: insults, threats (of rape, enforced disappearance or violence against loved ones), prolonged constraint in painful positions, deprivation (food, water, access to latrines), *tehuacanazo* (carbonated water forced into the victim's nose), beatings, electric shocks (in particular using so-called "*chicharras*" batons), mock asphyxiation (with a plastic bag placed over the victim's head) and waterboarding, sexual violence, and enforced disappearances.

Illegal arrests and mass arbitrary detentions create conditions that favour torture practices. Many victims report that security officials fail to identify themselves, provide an arrest warrant or explain the reason for their arrest. Placing the individual in arbitrary detention, often *incommunicado,* makes it possible to justify the arrest retrospectively by fabricating evidence of an offence or the seizure of weapons or

narcotics during a road check. In this context, *arraigo* detention, although it was made constitutional in 2008, remains contrary to all international standards. This form of preventive detention is used prior to any charges or investigation. It can last up to 80 days without judicial supervision from a judge, during which time access to a lawyer and visits are restricted. Following its visit to Mexico, the Subcommittee on Prevention of Torture (SPT) reported that, according to records of the *arraigo* National Centre, half of the detainees showed traces of physical violence[22]. The number of *arraigo* detentions appears to have fallen since April 2014, when the SCJN decided to reserve this practice strictly for cases involving organised crime handled by the federal authorities and made it easier to contest evidence obtained in this way. This form of detention is nonetheless arbitrary and conducive to acts of torture and ill-treatment. Between 2008 and April 2014, around 11,000 individuals were placed in *arraigo* detention.[23] In some States such as Chiapas[24] and in the Federal District, *arraigo* appears to have been replaced by other forms of arbitrary detention[25].

Finally, although becoming less widespread, the practice of presenting suspects to the media before their trial begins constitutes another form of coercion used against detainees.

LAW AND LEGAL PRACTICE

Legal condemnation of torture

On paper, Mexico has a particularly well-developed legislative, judicial and institutional framework with which to defend human rights. It is a State party to all of the instruments used in the fight against torture by the United Nations and the inter-American human rights system. In reality, however, the resources implemented to back up these commitments are totally inadequate if not altogether absent.

Mexico's federal constitution[26] prohibits torture. Amendments were also made to Article 1 in June 2011, requiring the standard that most favours the victim to be applied where there is divergence between domestic and international texts. With regard to torture, this means following the relevant inter-American convention. However, a ruling by the SCJN in September 2013 reduced the scope of this reform, holding that the terms of the Constitution take precedence where there is contradiction. *Arraigo,* defined in Article 16, is therefore not challenged[27].

The federal legislation to prevent and sanction torture[28] (1991, amended in 1994) stipulates that confessions obtained by force cannot be admitted as evidence. Nonetheless, this federal legislation raises several questions. Its legal description of torture is subject to an assessment of the seriousness and intensity of suffering inflicted and does not account for discrimination. The intention to torture must be proven. Abuses inflicted by third parties at the instigation of or with the consent or acquiescence of public officials are not taken into account. The sentence handed down for acts of torture is between 3 and 12 years. The parliamentary debate initiated a few years ago with a view to bringing this legislation in line with international standards has proven inconclusive.

The federal criminal code[29] describes secret detention, intimidation and torture as an abuse of authority and an offence against the judicial administration. According to Article 289, the sentence for such an offence depends on the extent to which the life of the victim is endangered and the duration of the victim's remission (more or less than 15 days). The text makes no mention of the non-applicability of the statute of limitations for crimes of torture.
Each federal State has its own constitution, its own anti-torture normative framework and its own criminal code. The definitions and sanctions provided in these texts vary considerably and are often less protective than at federal level. Guerrero State fails to make any mention of torture in its criminal code.
Since March 2014, Mexico has had a National code of criminal procedure[30] which applies across the national territory in order to regulate the new criminal system. This could help safeguard certain rights of those who are arrested, detained and prosecuted by bringing an end to regional disparities, provided it is duly enforced. However, there is no specific reference to investigations and prosecutions for acts of torture and ill-treatment.

The same problems apply to the case of enforced disappearances. The federal texts do not replicate the commitments made by Mexico in ratifying the relevant UN and inter-American conventions (Mexico has yet to recognise the competency of the UN Committee on Enforced Disappearances to receive and examine individual complaints). Only 15 federal States mention this crime and do so in a way that does not conform to international standards[31]. Despite several bills being brought before parliament, MPs have yet to adopt general legislation on enforced disappearances.

Punishment of perpetrators of torture

There is no centralized record of the number of investigations, prosecutions, disciplinary sanctions or criminal sentences relating to torture. The few available statistics, which often contradict one another, highlight the near absolute impunity of those responsible for this crime and their accomplices. Between 1994 and 2012, just two cases are reported to have led to sentencing at federal level. According to the federal council of magistrates, only four sentences were handed down between 2005 and 2013.[32] At State level, the situation is even worse. In 2013, Chihuahua State was found not to have charged anyone for torture since 2000.[33]

In recent months, the SCJN has issued certain rulings that may set a positive example. In April 2014, it stipulated that judges would be obliged to launch two independent investigations in cases of torture allegations, one to identify the suspects and the other to assess the legality of the evidence against the alleged victim.
In May 2014, the SCJN published its decision to release Israel Arzate Meléndez[34], a torture victim who had been arbitrarily detained in Ciudad Juárez since February 2010.[35] This clearly identifies the need to respect legal guarantees and the inadmissibility of all evidence obtained under torture.
In December 2014, the court issued an action protocol to be applied to acts that constitute torture and ill-treatment for the attention of 1,250 federal judges and magistrates and 800 publicly appointed lawyers[36]. It also reminded those concerned that the absence of investigations and guilty rulings made civil servants of the judiciary complicit in if not responsible for these crimes.

Other advances include the reforms pertaining to the code of military justice approved by MPs in May 2014, which ensure that all human rights violations perpetrated by the armed forces against civilians must now be dealt by the civil judiciary. This should be extended to include military personnel targeted by their colleagues and superiors.

From the complaints procedure to investigative methods and prosecutions, there remain major obstacles impeding the application of the law. The transition towards an adversarial criminal system, which was initiated in 2008 and is due to be completed by June 2016, has failed to usher in the anticipated climate of respect for human rights and legal guarantees. Not only has the take-up rate been insufficient (only 13 States have adopted the new system, 10 of them partially), but it is not being correctly applied.
When they are in a position to intervene, lawyers, in particular those who are publicly appointed, rarely help their clients to denounce human rights violations. This is due to a lack of independence or because of corruption, fear of reprisals or lack of knowledge. In cases involving torture allegations, very few judges order an investigation. They see such allegations as a defence strategy, ignore witness accounts of violent and arbitrary arrests, only admit evidence provided by the public prosecutor, and endorse shoddy preliminary medical examinations in which the marks on the victim's body are presented as a result of resisting arrest and legitimate use of force. If the victims are to have any chance of securing justice, they have no choice other than to file a formal complaint with the office of the public prosecutor in order to initiate proceedings.
Between August 2013 and June 2014, the judicial authorities ordered the release of the Figueroa Gómez brothers and Misael Sánchez Frausto, admitting that they had been tortured to secure confessions to racketeering offences. Yet this did not automatically lead to an investigation with a view to prosecuting those responsible. The victims had to file a torture complaint with the office of the public prosecutor on 2 December 2014.[37]
Officials working for this office regularly record complaints as relating to minor offences (abuse of authority or bodily injury) and apply the most restrictive rules on torture in complete contempt of the constitutional reforms introduced in June 2011. When investigations for torture do take place, in most cases there are many failings and progress is slow. The specialised physical and psychological diagnostic tests introduced in 2003 in the case of allegations of torture or ill-treatment still fall short of the Istanbul Protocol* on which they are based. The forensic legal experts responsible for carrying out these tests are not independent but belong to departments of the office of the public prosecutor in which officials cover up and in some cases participate in acts of torture so as to expedite the indictment process. The tests are often conducted very late. The analysis of psychological trauma is regularly replaced by a personality test that is designed to demonstrate the victim's propensity for lying or for crime and may even be used to accuse the victim of false testimony. A negative test result is enough to bring an end to the investigation. Judges almost systematically take these forensic legal conclusions into account over and above the conclusions reached by human rights commissions and independent professionals who apply the Istanbul Protocol.

The CNDH and State-level human rights commissions which are supposed to counterbalance this situation do not fulfil their role, mainly due to a lack of independence. Few complaints result in public recommendations being made to the authorities concerned (1 out of 127 in the case of the CNDH[38]). Investigations are rarely exhaustive and progress extremely slowly. Victims struggle to obtain the forensic legal con-

clusions reached by these commissions, even though they should be able to use them as part of criminal proceedings. Many commissions continue to refer to the federal criminal code in order to describe acts of torture as lesser offences. They often encourage victims to settle for damages and abandon the prosecution. Finally, this lack of independence is detrimental to the application of the National Preventive Mechanism*, which is monopolised by the CNDH.

Many victims have turned to international mechanisms in an effort to secure justice. In 2012, Mexico produced the largest number of complaints (1,800) to the Inter-American Commission on Human Rights[39]. Since 2009, the Inter-American Court of Human Rights has issued five rulings against Mexico for human rights violations and torture. In March 2012, the first complaint to be brought before the UN Committee against Torture involved four men held in secret detention and tortured by military personnel in Playas de Rosarito (Baja California) in June 2009[40] and held in pre-trial detention since.
In September 2014, a group of NGOs issued the prosecutor of the International Criminal Court (ICC) with a report of 30 cases involving victims of serious human rights violations (including torture) between 2006 and 2012 in Baja California, calling for an investigation into crimes against humanity[41].

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[3] Animal político, *Suprema Corte presenta protocolo contra la tortura,* 9 December 2014.

[4] Amnesty international, *Out of Control: Torture and other Ill-Treatment in Mexico,* September 2014, 86 pages, pp. 11-12.

[5] Centro de Derechos Humanos de la Montaña "Tlachinollan", *Medidas anunciadas por Peña Nieto respecto de la desaparición forzada son insuficientes: OSC y víctimas,* 27 November 2014.

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[9] ACAT, Urgent appeal, 'Trois hommes indigènes torturés', 29 September 2014.

[10] Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women,* Mexico, 27 July 2012, 12 pages, p. 3.

[11] Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos y Todas" (RedTDT), *Mujeres cruzando la línea contra la militarización y la violencia,* 05 December 2014. Centro ProDh, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Centro de Derechos Humanos de la Montaña "Tlachinollan", Asociadas por lo justo (JASS), *Rompiendo el silencio – Todas juntas contra la tortura sexual.*

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[13] RedTDT, *La reforma al artículo 11 constitucional puede generar condiciones para inhibir la protesta,* 03 December 2014.

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[15] Asilegal, *Informe sobre la situación de las personas privadas de libertad,* mayo 2014, 27 pages, p. 9.

[16] OACNUDH, *op. cit.*

[17] Asilegal, *op. cit.,* pp. 10-11.

[18] Presidencia de la República, *10 medidas para mejorar el Estado de Derecho.*

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[28] *Ley Federal para Prevenir y Sancionar la Tortura,* 27 December 1991, last amended on 10 January 1994.

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URUGUAY

CONTEXT

Uruguay is a presidential republic in which executive power is exercised by a president elected for five years who appoints the cabinet and cannot run for a second consecutive term. Legislative power is held by two chambers, the Chamber of Deputies and the Chamber of Senators, all of whom are also elected for a five-year period.
Uruguay is one of Latin America's least corrupt and unequal societies. It also boasts Latin America's highest literacy rates. Freedom of expression and access to public information are well respected here.
The Broad Front (a multi-party left-wing coalition) has been in power since 2004 and has adopted a number of measures that serve to consolidate the country's progressive image, such as the legalising of abortion, gay marriage and cannabis. However, it has also passed a number of laws designed to combat delinquency, which have resulted in serious violations of human rights. Furthermore, measures remain to be taken to put an end to the persistent discrimination against citizens of African descent (8% of the population) and migrants from the Caribbean, as well as violence against women and human trafficking.

THE PRACTICE OF TORTURE

In the report released following his visit in 2012, the UN Special Rapporteur on Torture estimated that torture and mistreatment "are not a systematic problem in Uruguay" but that violence and excessive use of force by the security forces still occur, particularly in detention premises[1].
There are no national measures in place allowing the number of cases of torture and mistreatment to be inventoried. In 2014, the UN's Committee Against Torture (CAT) deplored the fact that the parliamentary commission responsible for the prison system was content with simply referring to "a dozen complaints" filed by detainees for mistreatment, without detailing their exact number nor the follow-up given[2].

Victims

The primary victims of torture and mistreatment are detainees. Despite laws in place designed to encourage parole and early release and to free up space in prisons, Uruguay has a higher incarceration rate than anywhere else in Latin America: in 2012, the country had 278 detainees for every 100,000 inhabitants[3]. In 2013, a total of 10,000 detainees were recorded. This figure is growing at an average rate of 800 detainees per year. This is the result of a policy of increasing and prolonging sentences and the recurrent use of preventive detention for which no legal limit exists (approximately 60% of detainees are awaiting sentencing)[4].

The average occupancy rate of the country's 28 prisons is 126%. In 13 of them, this rate is higher, reaching 248% in the Mercedes prison[5]. This overcrowding combined with serious disrepair and a lack of funding results in detention conditions that amount to mistreatment. In particular, increased violence among detainees has been noted, as well as a heightened risk of electrocution and fire, a lack of drinking water, food, medical care, ventilation and mattresses. The situation is made all the more shocking by its stark contrast with conditions afforded to ex-servicemen and police officers imprisoned for human rights violations under the dictatorship of 1973 to 1985: house arrest, cells equipped with cable television and a fridge, free access to phone boxes[6].

In 2012, 26.4% of detainees claimed they had experienced warden violence at least once[7]. In January 2013 in the Rosas de Maldonado prison, prisoner Daiver Larrosa died after having been shot with rubber bullets fired at close range[8].

Conditions are particularly difficult for the 700-odd minors and young adults detained (real capacity of 350)[9] in their 17 designated prison establishments. The referendum of October 2014 ensured the criminal responsibility age was not lowered to 16. However, a number of laws passed between 2010 and 2013 have contributed to the deterioration of the situation for these young people. New criminal offences, such as "attempted theft", are now punishable by prison sentences. In January 2013, the Code for Children and Adolescents (CNA) was reformed in order to allow preventive detention until sentencing for offences deemed to be more serious, as well as the establishment of prison sentences of at least a year. These detainees have highly restricted access to educational and recreational activities. A high number of them are in lockdown for 20 to 23 hours a day, subjected to invasive body searches, showered with psychotropic drugs and denied all contact with the outside world. They are also at risk of warden violence. On 5 August 2015, footage posted online showed 40 wardens at the Ceprili centre beating and humiliating a dozen detainees aged between 15 and 19.[10] The victims, families and wardens who report this mistreatment and violence face reprisal[11].

Serious failures have also been noted in psychiatric units: a lack of hygiene, overmedication and mistreatment. On 9 May 2014, a patient in Santín Carlos Rossi was found dead, strapped into a wheelchair with burn marks on the legs[12].

Homeless people, residents in low-income neighbourhoods and in particular young people stigmatised as being delinquents are subjected to frequent police attacks: intimidation, beatings, searches, raids and arbitrary detention. Nineteen-year-old Sergio Lemos from the Santa Catalina district in Montevideo, died on 9 November 2013 after a police officer shot at him nine times, believing him to be linked to a theft[13].

Finally, members of the LGBT community have also flagged violence they are subjected to. Whether by inaction or through obstructing their complaints, police officers are regularly complicit in the violence perpetrated by their fellow citizens. In some cases, they inflict this violence themselves, in particular victimising transgender people legally working in prostitution. On 11 November 2015, the Black Sheep Collective reported a fresh case of police violence against a transgender person in the town of Las Piedras[14]. In 2014, the CAT deplored the fact that of the last six cases of murdered transsexual women, only one had been solved[15].

Torturers and places of torture

The primary torturers are prison wardens, most of whom are former police officers trained to maintain order through repression. Recent measures put in place to recruit civilian wardens remain insufficient to reverse this trend. In addition, in his latest observations, the UN's Special Rapporteur on Torture expressed concern that these new wardens continue to be placed under the supervision of police officers[16]. The most frequent reports of mistreatment come from the Compen prison in Montevideo. In detention centres for minors, it would seem that wardens affiliated with the trade union of the Institute for Children and Adolescents (INAU) are the most often directly implicated. Although they are a minority, they put pressure on colleagues to stay quiet when they attack and humiliate detainees[17]. The Ser, Piedras and Burgues centres in Montevideo are the most frequently cited in cases of torture and mistreatment.

The police procedures law of 2008 made it legal to arrest without a warrant for mere monitoring reasons (identity checks, prior convictions). These new discretionary powers led to frequent cases of abuse in police operations, such as in the capital's volatile Santa Catalina district, and even in police stations.

Methods and objectives

The use of torture and mistreatment is mainly used to control, punish and humiliate. Among the most frequently-cited practices are intimidation, tear gas, forced administration of psychotropic drugs, beatings (in particular with electric prods), abusive searches and sexual violence, suspension and stress positions, and the "dry submarine".

LEGISLATION AND LEGAL PRACTICES

The legal status of torture

Uruguay is a signatory of the Inter-American Convention to Prevent and Punish Torture (1992) as well as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1986) and its option protocol (OPCAT, 2005).
However, the prohibition of torture does not feature in its constitution, and neither is the crime deemed to be a separate offence in its criminal code. Finally, although Article 22 of Law 18.026 regarding cooperation with the International Criminal Court provides a definition of torture that is relatively compliant with international standards, it applies primarily to genocide, war crimes and crimes against humanity.
In these conditions, prosecutions in the context of allegations of torture inflicted on individual civilian victims or civil society organisations are made more difficult.

Prosecution of the perpetrators of torture

Uruguay has adopted a number of measures intended to prevent violations of human rights, but the means used to apply and assess them are not sufficient to ensure their effectiveness.
In 2003, a parliamentary commission for the prison system was formed in order to supervise the institutions responsible for the administration of correctional institutions and prisoner rehabilitation establishments. In 2008, the National Institute for Human Rights and the Defence of the People (INDDHH) was formed for a number of reasons, including to produce recommendations and independent reports. In 2011, the INDDHH was also tasked with ensuring application of the national mechanism for the prevention of torture in detention premises, as provided for in the OPCAT.

The Commission and the INDDHH do not collaborate enough and lack the financial resources and independence to ensure positive and sustainable change occurs in prison centres[18]. The INDDHH was only able to visit the System for Adolescent Criminal Responsibility (SIRPA) centres thanks to funding from UNICEF, which restricts the possibilities for long-term follow-up[19].
Training sessions are in place for security force agents and medical staff in prisons with regard to torture and mistreatment as well as application of the Istanbul Protocol. Yet the CAT deplores the absence of information regarding assessments that would enable their pertinence and real impact to be measured[20].
On 22 August 2015, 26 civil servants from the INAU union (SINAU) and the SIRPA were investigated for torture after having uploaded a video showing them attacking young detainees at the Ceprili centre two weeks earlier. This is one of the very rare occasions on which Law 18.026 was applied, making this ruling a historic event[21].
Between May 2012 and August 2014, the SIRPA indicated that it had opened 47 administrative cases up for investigation for mistreatment in a number of units under its responsibility. In October 2014, only two internal investigations had been completed. Ten complaints had been filed[22].
Generally speaking, a series of obstacles continues to prevent enquiries and investigations from being opened and successful prosecutions against alleged perpetrators of torture and mistreatment being achieved. Difficulties begin from the moment a complaint is filed. Most of the population, and particularly detainees, do not know the mechanisms for reporting torture and mistreatment. According to a study by the NGO Service for Peace and Justice (SERPAJ) published in August 2012, only 6.2% of detainees who claim to have been the victims of warden violence have filed a complaint[23]. Furthermore, the insufficient number of state-appointed lawyers focus on legal proceedings against their clients and barely have the time to follow up on any potential allegations of torture or mistreatment inflicted on them[24]. The aforementioned SERPAJ study also shows that two detainees out of every ten do not know who their lawyer is[25]. Finally, prosecutors and judges remain reticent when it comes to opening preliminary investigations.
When proceedings do commence, they are often very slow to progress. Investigations can remain at the same initial stage for years.
Security force agents accused of violence, torture or mistreatment are not systematically suspended or transferred for the duration of the investigation. Prior to the World Organisation Against Torture NGO's visit in April 2015, SIRPA's management had transferred two civil servants who were accused of violence at the Ser centre. In October 2015, they were reinstated to their original roles with no further investigation[26].

Finally, promotions, transfers and penalties imposed on judges are determined by the Supreme Court of Justice with no transparency regarding the criteria used to arrive at these decisions. This points to a reward- or reprisal-based system and is harmful to judges' ability to issue independent rulings. In February 2013, the criminal court judge Mariana Mota, who was overseeing a number of cases of crimes against humanity under the 1973-1985 civil and military dictatorship, was transferred to a civil court with no reason provided.

Uruguay still struggles to face up to its past and to rule on serious violations of human rights committed under the dictatorship. During this period, around 7,000 political prisoners were systematically subjected to torture, and almost 300 people disappeared, either in the country itself or in neighbouring dictatorships[27].
The "Law Nullifying the State's Claim to Punish Certain Crimes" adopted in December 1986 continues to pose difficulty and restrict prosecutions. This law provided impunity to leaders, soldiers, and police officers for crimes committed before 1 March 1985 as long as their acts were politically motivated or carried out upon orders or instructions. In 2009, the Supreme Court finally declared it to be unconstitutional. In October 2011, the law for the "Reparation for Crimes Committed in the Application of State Terrorism until March 1, 1985" was voted in, thus paving the way for a number of complaints to be filed. However, in February 2013, the Supreme Court ruled that some of the articles of this 2011 law were unconstitutional, deeming violations committed under the civil and military regime to be impossible to consider as crimes against humanity, because the latter had not been introduced in Uruguay until 2006. In doing so, it raised the issue of non-applicability of the facts and reinstated the effects of the 1986 nullifying law by rendering practically all prosecutions impossible. This decision is based on a flawed interpretation of the principle of the non-retroactive nature of criminal law. It breaches the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity ratified by Uruguay in 2001 and the Inter-American Court of Human Rights' 2011 ruling, declaring null and void all national law designed to prevent proceedings for crimes falling within the scope of international law.
While some high profile sentences were handed down, notably those for the dictators Gregorio Álvarez and Juan María Bordaberry, since 2013 most victims risk not seeing perpetrators brought to justice. In October 2011, 26 women filed complaints of torture and sexual violence that occurred between 1972 and 1985 perpetrated by one hundred-odd soldiers and civilians (doctors and psychologists) in 20 detention centres. More than four years later, only ten of the accused men have been summoned to appear in court, and the women in question are still waiting to see if proceedings might one day begin.

[1] UN, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Juan E. Méndez,* 28 February 2013, 20 pages, p. 5.

[2] UN, Comité contra la Tortura, *Observaciones finales sobre el tercer informe periódico del Uruguay,* 10 June 2014, 11 pages, p. 3.

[3] UN, Human Rights Council, *op. cit.,* p.15-16

[4] OMCT, IELSUR, CDN-U, *La situación de la tortura en Uruguay,* April 2014, 19 pages, p. 8-9.

[5] United States Department of State, *Uruguay 2014 Human rights report,* 22 pages, p. 1-2.

[6] United States Department of State, *Uruguay 2014 Human rights report,* 22 pages, p. 2.

[7] Servicio Paz y Justicia (SERPAJ) - Observatorio del Sistema Judicial (OSJ), *Hacia una política de Estado en privación de libertad Diálogo, recomendaciones y propuestas,* August 2012, 352 pages, p. 199.

[8] "Justicia investiga presunta ejecución policial de un recluso", *Diario El Pueblo,* 27 January 2013.

[9] United States Department of State, *op. cit.,* p. 3

[10] "El video de la golpiza a jóvenes recluidos que terminó en la Justicia", *El Observador,* 5 August 2015.

[11] UN, Comité contra la Tortura, *op. cit.,* p. 6

[12] PAGOLA Florencia, "Falta de higiene, sobre medicación y malos tratos: Así son las colonias psiquiátricas en Uruguay", *Animal político,* 12 July 2015.

[13] "Familiares y amigos se reunieron en recuerdo del joven Sergio Lemos", *El País,* 4 December 2013.

[14] Colectivo Ovejas Negras, *Comunicado: frente a caso de violencia policial transfóbica,* 13 November 2015.

[15] UN, Comité contra la Tortura, *op. cit.,* p. 9

[16] UN, Human Rights Council, *op. cit.,* p. 14

[17] BARRENECHE Eduardo, "Denuncian encadenamiento y golpes a menores en INAU", *El País.*

[18] UN, Comité contra la Tortura, *op. cit.,* p. 6-7

[19] OMCT, IELSUR, CDN-U, *op. cit.* p. 4-5

[20] UN, Comité contra la Tortura, *op. cit.,* p. 10

[21] IELSUR, OMCT, *Uruguay: Procesamiento histórico de 26 funcionarios por el delito de tortura contra adolescentes en centros de detención,* 30 August 2015.

[22] *El País,* "Malos tratos a internos: el Sirpa abrió 47 indagatorias", 5 October 2014.

[23] Servicio Paz y Justicia (SERPAJ) - Observatorio del Sistema Judicial (OSJ), *op. cit.,* p. 185-187.

[24] Ludwig Boltzmann Institute Human Rights, *Atlas of torture,* November 2013, 31 pages, p. 15.

[25] Servicio Paz y Justicia (SERPAJ) - Observatorio del Sistema Judicial (OSJ), *op. cit.,* p. 185-187.

[26] Information emailed by the SERPAJ Uruguay to the ACAT, 24 November 2015. Article "Elogio de la Tortura Tortura y violencia en el Sistema Carcelario Juvenil" by Mauro Tomasini.

[27] "Secretaría de DD.HH. confirma que hay 192 desaparecidos en dictadura", *El País,* 8 July 2015.

elsewhere in the continent

COLOMBIA

Colombia has been in a permanent state of armed conflict since 1948, played out between guerrilla groups, far-right paramilitary troops and the army. Drug trafficking has been adding to the chaos since the 1970s. All parties in the conflict perpetrate human rights violations, and civilians are on the front-line: farming communities, native and Afro-Colombian peoples, political opponents, social movements and trade union members, to name but a few. According to the National Center for Historical Memory, between 1985 and 2012, 218,094 deaths (81% civilian), 25,007 disappearances and 5,712,502 displaced people were recorded. A peace process between the government and the main (marxist) guerrilla movement, the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) was initiated in November 2012. The agreement was originally set to be signed on 23 March 2016, but has since been postponed to the end of the year. Similar dialogue between the government and the other leading (guevarist) guerrilla movement, the National Liberation Army (ELN), was opened on 30 March 2016. Victims and associations working for the defence of human rights continue to deplore the failed demobilisation of paramilitary troops in 2005 and to demand measures be employed for their effective dismantlement. In 2015, 63 human rights defenders were assassinated and 682 were assaulted. In 66% of cases, 'neo-paramilitary' groups were responsible for these attacks.

Torture and mistreatment are common practice here. Yet these crimes are regularly recorded as lesser crimes (injury, abuse of authority), or ignored in favour of other crimes deemed "more serious" (extra-judicial executions, enforced disappearances). Under Colombian law, cruel, inhuman or degrading treatment do not even constitute criminal offences when committed outside of a conflict. The data available is patchy at best. The register of victims recorded 9,797 cases of torture during the armed conflict on 1 March 2016, a figure that is likely to be well below the reality of the situation. Regarding torture outside of the conflict, committed by police officers during arrests or protests, or by wardens in prisons, the figures are even vaguer. As a general rule, very few investigations are opened and result in prosecution, and impunity for torturers is the status quo.

Torture is primarily used as a weapon to crush any opposition. Protesters are also exposed to excessive use of force and violent arbitrary detention. In 2013, protests resulted in 15 deaths, 12 of which occurred as a result of a shooting, seven victims of physical torture and a victim of sexual violence, as well as 329 injured parties. The 120,000 detainees crammed into inadequate prisons, most of whom are political prisoners, face reprisal if they speak out. In many poor rural and urban areas, military and police presence is huge, and results in demonstrations of force aimed at quashing the people or maintaining discriminatory systems.

In 2014 and 2015, ACAT intervened on behalf of several types of victim. Geraldine Santander Vallejo, a transgender woman, was arbitrarily arrested and tortured by the police before being harassed and threatened following the complaint she lodged. ACAT also supports Blanca Nubia Díaz, a human rights defender who speaks out against the torture, including sexual torture, experienced by her daughter at the hands of paramilitary soldiers. Finally, ACAT supports detainees who have flagged up torture, mistreatment, harassment, and the withholding of medical treatment, such as Alexandra María Jímenez Parra, Hosman Polo Carrillo, Boris Zeider Medina Payán, Jesús Miguel Velandia León.

HONDURAS

Honduras has one of the highest homicide rates in the world. The country's ruling class, administrative system and security forces are plagued by corruption. While these issues are long-standing, they were thrust under the spotlight following the June 2009 coup d'état and under Porfirio Lobo's presidency (2010-2014). Fellow Conservative Juan Orlando Hernández has been Head of State since January 2014, and shows no sign of reversing the trend.

An array of human rights breaches serves to suppress any form of dissidence or complaint, and are executed by the civilian and military police (founded in 2013), soldiers, private security forces (close to 70,000), often working closely with organised crime units. These violations are primarily aimed at human rights defenders, historically marginalised groups (detainees, ethnic and sexual minorities, residents of poor neighbourhoods) and independent journalists.

Opponents of dispossession and exploitation of natural resources megaprojects (and in particular women and native and African-origin community leaders) are the most at risk of reprisal. Between 2010 and 2014, 101 of these defenders were assassinated. In February 2013, ACAT intervened on behalf of Yoni Adolfo Cruz Padilla and Manuel Ezequiel Guillen García, farmers and union members who were tortured and executed following opposition to agro-industrial groups. On 3 March 2016, the environmental activist Berta Isabel Cáceres Flores from the Inca community was assassinated after years of opposing the construction of a hydro-electric barrage.

Detainees are crammed into detention premises (in September 2014, 14,531 detainees were recorded for a total of 8,130 spaces), and suffer violence at the hands of their fellow detainees (85% of prisons are self-governed by gang members) and wardens. According to a study carried out by the NGO Centre for Prevention, Treatment and Rehabilitation of Victims of Torture and their Relatives (CPTRT) from December 2013 to October 2014, 6 detainees out of every 10 claim to have suffered torture during arrest, transfer, custody or prison. The national torture prevention mechanism lacks the means and institutional support to correctly exercise its mandate.

Minors and young people are the primary victims of executions, which are often preceded by torture. In May 2014, ACAT intervened on behalf of José Guadalupe Ruelas García, director of the NGO Casa Alianza, who was arbitrarily arrested and beaten for having spoken out against the situation.

Impunity here is almost absolute. The authorities do not apply the protective measures enacted by the Inter-American Commission on Human Rights and only extremely rarely do they investigate in the event of abuse. The law governing the protection afforded to human rights defenders, journalists, heads of social communication and legal staff adopted in April 2015 has still not resulted in an operational implementation plan. The criminal justice system is highly deficient. Those tasked with applying the law lack resources, safeguards in the event of threats, and control over corruption and political influence. According to the CPTRT, between 2009 and 2014 the prosecutor responsible for human rights received 253 complaints of torture but only ordered 37 indictments.

ASIA / PACIFIC

China . Uzbekistan .

Countries covered in the 2016 report

Countries covered in previous reports (2010, 2011, 2013 et 2014)

* **Population in 2015, in million of inhabitants** / Source: World Bank 2015

CHINA

CONTEXT

The People's Republic of China is a single-party dictatorial regime based on the Chinese Communist Party of China's monopoly of power. General Secretary of the Party since 2012 and President of the People's Republic of China, Xi Jinping has also been the Chairman of the Central Military Commission (body governing the armed forces) since March 2013. Although a kind of civil society progressively emerged in the country throughout the 2000s, other parties and opposition movements are still prohibited and severely repressed. China comprises 21 provinces, five autonomous regions, four municipalities and two special administrative regions.

The National People's Congress is the national legislature. The organs that head up the legal system are the Supreme People's Court and the Supreme People's Procuratorate. Yet in reality, power remains within the hands of the Politburo Standing Committee of the Communist Party. Similarly, the Ministry of Justice and the Ministry of Public Security, public bodies responsible for applying legislation, are in effect controlled by the Central Political and Legal Affairs Commission, which has power over the Procuratorate, courts and public security. This structure is reflected across all levels of the country's administrative network, in the provinces, cities and districts alike.

Since Xi Jinping's rise to power, repression of civil society has intensified, culminating in the summer of 2015, when over 300 human rights lawyers were threatened, intimidated or detained[1]. A number of laws or draft laws in violation of freedom and liberty have been adopted, such as the law on national security[2] and the Overseas Non-Governmental Organizations Management Law (Draft)[3], which strongly restrict freedom of expression and assembly, in particular.
Following the demonstrations in Tibet in 2008[4] and the riots in Xinjiang in 2009[5], repression of Tibetans[6] and Uyghurs[7] has increased and freedom of movement for members of these minorities is severely restricted. Atrocities committed against these minorities are frequent.

On 9 December 2015, the Committee against Torture in its concluding observations noted that "the Committee remains seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the [Chinese] criminal justice system, which overly relies on confessions as the basis for convictions"[8].

THE PRACTICE OF TORTURE

Torture is a practice that remains widely used across all levels of different security forces. In addition to this, the widespread practice of secret detention in detainment premises other than official detention centres increases the risk of torture or cruel, inhuman or degrading treatment.

Victims

In China, torture and cruel, inhuman or degrading treatment affect any individual suspected of having committed a criminal offence. The risks of torture or cruel, inhuman or degrading treatment are even higher when detainees belong to a “sensitive” category such as human rights lawyers, petitioners[9], dissidents, members of ethnic minorities or members of the *Falun Gong* (a spiritual practice that is prohibited in China) and those belonging to other religions considered to be clandestine. An increasing number of activists are being arrested for crimes as vague as "subversion of State power", "assembling a crowd to disturb public order" or "separatism".
Ilham Tohti, a 45-year-old Uyghur academic, was sentenced to life in prison in September 2014 for "separatism". Arrested on 15 January 2014 at his home, he was secretly detained for several weeks before his lawyer was permitted to meet with him. He was starved for two consecutive 10-day periods and his feet were bound in heavy chains for a month[10].
Several dozen human rights lawyers were subjected to multiple forms of torture when detained in relation to the legal counsel they had provided over the last few years[11]. Cai Ying, a lawyer from Hunan province, was detained for 87 days and subjected to different kinds of torture, the "hanging restraint chair" most notably[12], for 12 hours a day and sometimes even one or two days in a row[13]. In 2014, Tang Jitian, a Beijing lawyer, was beaten, starved, strung up for several days and threatened with live burial before being forced to sign a written statement after 16 days of detention[14]. Gao Zhisheng[15] was placed in solitary confinement for three years and beaten with an electric prod[16].

The case of Cao Shunli[17], the human rights defender who passed away in March 2014 after six months of detention for having attempted to travel to Geneva with a view to taking part in human rights training ahead of China's Universal Periodic Review (UPR) in October 2013, illustrates the abuse committed by Chinese security forces with regard to human rights activists. Detained in secret for the first five weeks of her imprisonment, she was systematically denied access to healthcare by the authorities. It was only upon realising that her death was imminent that they transferred her to a hospital in a serious condition. Her family were forced to sign documents authorising her "conditional release for health reasons" while she was in a coma. She died a few days later on 14 March 2014.
Other detainees who have died in official or secret detention in 2015 include the Tibetan monk Tenzin Delek Rinpoche[18] and the Catholic bishop Shi Enxiang[19], who has spent over half of his life in prison.

Torturers and places of torture

Agents of the public security ministry and bureaus (police officers, criminal and administrative detention centre wardens), agents of State security, prison wardens governed by the Ministry of Justice, cell bosses, thugs recruited by local administrations to attack petitioners: in summary, all agents entrusted with the task of maintaining order and individuals acting upon their instigation are potential cogs in the Chinese torture system.
In 2012, the Minister for Justice told the National People's Congress that China was home to 681 prisons containing 1.64 million detainees[20]. However, even if these official figures were to be trusted, they only account for a minute part of the real picture of detention in China. In addition to prisons, a number of administrative detention premises exist, which are directly reliant on the ministry and bureaus of public security, such as detention centres, “custody and education centres”[21], “drug rehabilitation centres”[22] and psychiatric hospitals for criminals suffering from psychiatric disorders[23]. The decision to imprison an individual in these premises is taken by public security agents and requires no approval from a judge. There are also a number of secret detention premises such as black jails (*hei jianyu* – 黑监狱) and premises used for "residential surveillance in a designated location", or during *shuanggui* (双规). These premises can be civilian buildings (hospitals, apartment blocks, basements) or official buildings such as detention centres, offices or military barracks.
”Black jails“ are unofficial detention premises used mainly by local and provincial authorities to detain constituent petitioners travelling to Beijing or the provincial capitals to carry their grievances. Detainees here are often deprived of food, sleep and access to healthcare. They are also beaten, threatened, intimidated and

sometimes subjected to sexual abuse. They are denied access to their lawyers and families. These prisons can be found in hotels, government offices, and residential apartment blocks.
Premises dedicated to *shuanggui* can be hotels, apartments, government offices or barracks. The *shuanggui* procedure is an internal procedure executed within the Chinese Communist Party, and as such is not subject to national law. It is often used in the event of a "breach of Party discipline" (often referring to corruption) from cadres, and can lead to the death of the detainee. The agents of the Party's Central Commission for Discipline Inspection are equipped with full powers they may execute in order to obtain confessions from the cadre in question, with the latter potentially being detained in secret detention indefinitely. In some cases, once a confession has been obtained, the detainee is handed over to the legal system for proceedings. There are no figures available concerning individuals subjected to *shuanggui,* but this would appear to be a widespread practice, especially since the beginning of the anti-corruption campaign launched by Xi Jinping[24].
Thus, despite the eradication of the re-education through labour procedure (*laojiao)* in late 2013[25], arbitrary detention remains extremely frequent in China.

Methods and objectives

The witness reports collated describe different methods of torture: beatings, notably using electric prods, truncheons, iron bars or bottles filled with water, of detainees who are cuffed and suspended from the bars of a cell window, thus preventing them from keeping their feet on the ground. Being forced to sit in the “tiger chair[26]”, the “hanging restraint chair[27]”, or the “tiger bench[28]” for several hours and sometimes even several days; threats, months spent in solitary confinement, repeated asphyxiation of the detainee using a plastic bag, chilli oil being sprayed into the detainee's face and genitals, cigarette burns or boiling water burns; prolonged exposure to glacial temperatures in winter, and sexual abuse, are all torture methods that are frequently used by the Chinese security services[29].
The rare witness accounts from people who have been tortured under *shuanggui* reveal beatings, force-feedings of human excrement, dismemberment of legs, waterboarding, and more[30].

Torture is used to extract confessions as part of an investigation or to inflict punishment on a detainee. This practice is encouraged by the legal system, as a confession is the decisive element leading to the conviction of a suspect. The number of cases they solve is key to promoting agents, which encourages them to obtain confessions by all means necessary, including torture. The use of these practices also serves to silence critics, to reprimand and punish political or religious activities, or those related to the defence of human rights.

LEGISLATION AND LEGAL PRACTICES

The Chinese authorities have publicly condemned torture on numerous occasions[31] and have modified national law to include torture.

Legal sanction

The People's Republic of China is party to a number of international treaties on the protection of human rights, having ratified the United Nations Covenant on Economic, Social and Cultural Rights, and signed the UN Covenant on Civil and Political Rights in 1998, albeit without ratifying it. The country has also been party to the Convention against Torture and other cruel, inhuman or degrading treatments since 1988, although it has refused to recognise the jurisdiction of the Committee against Torture under the terms of Article 20 of the Convention (the Committee's right to investigate).
The Chinese State has repeatedly been examined by the UN's organs and has always denied or strongly minimised the use of torture. The government has refused all visits from independent experts and special rapporteurs from the United Nations such as the Special Rapporteur on torture (prohibited from visiting since the last visit in 2005), and this despite repeated requests.

Article 35 of the Chinese constitution enshrines basic freedoms and liberties and Article 37 prohibits the illegal detention of citizens[32]. However, the forbidding of torture and cruel, inhuman or degrading treatment is not mentioned.
The definition used in Chinese criminal law does not cover China's obligations under international law. It also makes no mention of psychological torture (Criminal Law, Articles 237, 238 and 248). It limits the convicting of instigation to torture to agents operating in official detention premises. It does not extend responsibility to an agent of the State who may have known of, or approved, an act of torture. Finally, Article 50 of the Criminal Procedure Law excludes the taking into consideration of confessions obtained through torture, but does not take into account the “fruit of the poisoned tree” doctrine, considered a part of international law on torture by the United

Nations' Special Rapporteur[33]. According to this doctrine, any evidence subsequently obtained through legal means, but which originated in an act of torture must be excluded from proceedings.
The procedure of "residential surveillance in a designated location" introduced in Articles 72, 73 and 77 of the Criminal Procedure Law revised in 2012 allows for the *incommunicado* detaining of a person for up to six months in cases of crimes linked to "national security", "terrorism" or "serious corruption", and only requires the authorities to notify the detainee's family of the detention, without the location of the said detention needing to be specified. The authorities are under no obligation to inform the defence lawyer of the situation. Consequently, this procedure significantly heightens the risk of torture and cruel, inhuman or degrading treatment.
The Criminal Procedure Law sets out other regulations that aim to prevent torture such as the obligation to film interrogations in cases where the suspect may be condemned to the death penalty, a life sentence, or "other major criminal cases"[34]. However, the films in question are often interrupted or detainees imprisoned in secret until they make a confession, at which point they are then taken to a detention centre where the confessions are recorded. Furthermore, in criminal cases that do not fall into this category, the decision of whether or not to film the interrogation rests in the hands of the public security services[35].

Prosecution of perpetrators of torture

Under Article 247 of the Criminal Law police officers or detention agents risk up to three years of prison if they extract a confession by force. Perpetrators of torture who do not fall into the "police officer or agent" category, such as cell bosses, can only be prosecuted as accomplices. If the abuse results in the death of the victim or a permanent disability, the sentences are increased and can extend as far as the death penalty, mirroring the sentences defined for "intentional harm" (Article 234 of the Criminal Law) and "voluntary homicide" (Article 232).
The police also have an internal monitoring system. In theory, the police forces are monitored by the "internal supervision police" and the legal police departments[36].
The "internal supervision police" can make unannounced visits to detention centres, sit in on interrogations and have the power to order an officer be suspended or even detained. They can also request that the Procuratorate open inquiries. There are prosecutors in some detention centres. Detainees can contact them to denounce cases of abuse. However, generally speaking detainees do not know of the existence of said prosecutors, and if they do know, they are required to seek authorisation to speak with them from the cell boss or warden, who in most cases are their torturers.

The lack of a National Human Rights Commission or a regional court with the ability to issue binding judgements on the abuse of human rights in Asia severely restricts possibilities for victims seeking help. In addition, less than 20% of suspects in criminal cases have access to a lawyer[37]. The lack of independent Bars and the increase in monitoring and repressing members of the legal profession as exemplified by reforms designed to restrict their independence[38] and by mass arrests of human rights lawyers during the summer of 2015, are all elements that aim to break the main driving force opposing those who hold the power. The United Nations Committee against Torture emphasised the need for China to "establish an independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment[39]".

It is therefore very rare for torturers to be prosecuted. The police's power in the system, the absolute necessity of obtaining a suspect's confession in order to obtain a conviction and the pressure put on public security agents to close cases are all elements that explain why torture is used as an inquiry technique. According to a report carried out by Amnesty International between January and September 2015, of the 590 requests for a confession to be excluded due to the use of torture, exclusion was only granted in 16 of the cases, and the accused acquitted just once[40]. In the majority of cases, the requests were denied because the burden of proof was passed on to the accused and the latter was considered not to have provided precise enough information, despite the fact that Article 57 of the Criminal Procedure Law stipulates that the burden of proof falls to the Procuratorate.

Human Rights Watch conducted a similar analysis in the first few months of 2014 and found just one case in which police agents were convicted of having mistreated a prisoner - yet neither of them served their prison sentence[41]. In this case too, the judges placed the burden of proof on the victim.
In cases of torture under the *shuanggui* procedure, Chinese courts generally refuse to rule, stating that considering they are procedures grounded in China's Communist Party, they fall outside of Chinese law. However, most exceptionally, in 2013 six cadres from the Party's Central Discipline Committee were convicted with sentences ranging from 4 to 14 years of prison for having tortured to death Yu Qiyi, head engineer at a State company in the Wenzhou region[42].
Despite deficient provisions that aim to condemn the practice of torture in China, it remains widely used in both official detention structures and the many secret detention premises scattered across the country. The resilience of this tradition of torture in China can be explained by a complete lack of political willingness to end it displayed by the authorities. The absence of competent bodies to resort to and

the rising practice of threatening, torturing and imprisoning lawyers and activists attempting to oppose this phenomenon, are all elements that render the eradication of torture in China particularly challenging.

[1] "Un avocat opposé à la destruction des églises disparaît aux mains de la police", ACAT-France, 7 September 2015.

[2] Brice Pedroletti, "La Chine durcit sa législation sécuritaire", *Le Monde,* 2 July 2015.

[3] This law applies to all NGOs based abroad and those based in Hong Kong, Macau and Taiwan. Gilles Taine, "Chine : le pouvoir veut contrôler au plus près l'activité des ONG", *Mediapart,* 26 May 2015.

[4] Robert Barnett, "The Tibet Protests of Spring 2008", *China Perspectives* [Online], 2009/3 | 2009, uploaded on 1 September 2012, accessed on 18 November 2015.

[5] "Plusieurs dizaines de morts dans des émeutes au Xinjiang", *Le Monde,* 6 July 2009.

[6] Free Tibet, Tibet Watch, Gu-Gu Shum, *Torture in Tibet: submission to the United Nations Committee against Torture in advance of the examination of State Party report for the PRC at 56th session,* October 2015.

[7] World Uyghur Congress/Uyghur Human Rights Project, *Alternative report submission to the United Nations Committee Against Torture in consideration of CAT/C/CHN/5 – 56th Session, 9 Nov. 2015 – 9 Dec. 2015,* 2 November 2015.

[8] Committee against torture, Concluding observations on the fifth periodic report of China, §20, 9 December 2015.

[9] Often residents of rural areas and victims of forced expropriation and abuse perpetrated by local authorities, petitioners are citizens who attempt to obtain justice by relying on the traditional "letters and petitions" system, which aims to denounce the abuses of one level of government to a higher level. As the State Bureau for Letters and Calls is located in Beijing, the capital is often the final stage of a long journey during which petitioners are regularly subjected to cruel, inhuman or degrading treatment.

[10] "Prison à vie pour Ilham Tohti : 'Ils ont créé un Mandela Ouïghour'", *France 24,* 23 September 2014.

[11] China Human Rights Lawyers Concern Group, *UN international day in support of victims of torture: an overview of torture cases of lawyers in China (2006-2015),* 26 June 2015, Hong Kong.

[12] *Diaodiao yi* – 吊吊椅: A chair in which the detainee's feet are cuffed off the floor: the detainee's back cannot rest against the back of the chair, their torso is attached to a plank and their hands are cuffed to the board, rendering all bodily movement impossible.

[13] Amnesty International, *No end in sight, torture and forced confessions in China,* 11 November 2015.

[14] China Human Rights Lawyers Concern Group, *UN international day in support of victims of torture: an overview of torture cases of lawyers in China (2006-2015),* 26 June 2015, Hong Kong.

[15] "Nouvel an chinois : quelle perspective pour les droits de l'homme ?", ACAT-France, 19 February 2015.

[16] Isolda Morillo, Didi Tang, "AP Exclusive: leading China lawyer says he was tortured", AP, 24 September 2015.

[17] United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, "*China: UN experts deplore events leading to death of HRD Cao Shunli, ask for full investigation",* 18 March 2014.

[18] ACAT-France, "Soutenez la famille d'un célèbre moine tibétain pour élucider sa mort en prison", 17 August 2015.

[19] ACAT-France, "Le corps d'un évêque détenu au secret depuis 14 ans doit être rendu à sa famille", 23 February 2015.

[20] *Xinhua,* 全国共有监狱681所 押犯164万人, 25 April 2012.

[21] *Shourong jiaoyu suo* 收容教育所: their aim is to "rehabilitate" prostitutes and their clients via brain-washing and forced labour. They may be sent here for a period that varies from six months to two years upon a simple administrative decision taken by the police organs.

[22] Centres that are the same as "custody and education centres" but reserved for drug users.

[23] *Ankang* – 安康: directly under the responsibility of the Ministry of Public Security, they are sometimes used as detention premises for human rights defenders and Falun Gong practitioners. Forced administration of psychotropics drugs and the abusive use of electro-shock therapy are common here. The *Laogai Foundation* estimates the number of structures such as this at 20 across China.

[24] Pu Zhiqiang, a human rights defence lawyer, attempted to document this practice by collecting victim witness reports. His documentary can be watched on YouTube (watched on 14 December 2015).

[25] System that permits the infliction of up to four years of re-education through labour camps upon simple administrative decision for minor offences such as drug consumption, prostitution or theft. Petitioners were also frequently convicted.

[26] *Laohu yi* – 老虎椅: A metal chair in which the prisoner's arms, torso and legs are immobilised with metal rings. See the Human Rights Watch report, *Tiger Chairs and Cell Bosses, police torture of criminal suspects in China,* 2015.

[27] See note n° 10.

[28] *Laohu deng* – 老虎凳 The detainee is immobilised on a bench, and bricks are progressively added under his feet, forcing his legs to bend the wrong way around until the ties holding them down split.

[29] Human Rights Watch, *Tiger chairs and cell bosses, police torture of criminal suspects in China,* May 2015, p. 27.

[30] Harold Thibault, "Chine: quand le Parti dévore les siens", *L'Express,* 5 November 2014.

[31] The last instance of this was during the UN Committee against Torture's examination of the PRC on 18 November 2015: Nick Cumming-Bruce, "China insists to UN that it's combating torture", *New York Times,* 18 November 2015.

[32] Constitution of the People's Republic of China, Art. 35 and 37.

[33] The Office of the United Nations High Commissioner for Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 10 April 2014, A/HRC/25/60 §29.

[34] People's Republic of China's Criminal Procedure Act. law 121.

[35] *Ibid.*

[36] Human Rights Watch, *Tiger chairs and cell bosses, police torture of criminal suspects in China,* May 2015, p. 93.

[37] www.amnesty.org/en/latest/news/2015/11/china-torture-forced-confession/

[38] Chinese lawyers are now required to take an annual oath to the Party in order to be able to renew their licence every year. Under Articles 305, 306, 307 and 309 of the Criminal Law amended in autumn 2015, they are subject to prison sentences if they "disrupt the order of the court" or "falsifying evidence".

[39] Committee against torture, Concluding observations on the fifth periodic report of China, §23, 9 December 2015.

[40] Amnesty International, *No end in sight, torture and forced confessions in China,* 11 November 2015.

[41] Human Rights Watch, *Tiger chairs and cell bosses, police torture of criminal suspects in China,* May 2015, p. 103.

[42] BBC, "Yu Qiyi drowning: China party investigators jailed over killing", 14 October 2013.

UZBEKISTAN

BACKGROUND

Uzbekistan is one of the most repressive States in the post-soviet region. It secured its independence in 1991 following the breakup of the USSR. Islam Karimov became the head of State, a position which he has maintained to this day by putting in place an authoritarian regime. All opposition parties and movements are prohibited, any signs of dissidence are repressed, and any criticism of the regime's practices by human rights defenders or journalists is severely punished. Since 2011, not a single international independent NGO has been allowed to work in Uzbekistan.

Despite the ratification of international human rights conventions and the inclusion in national legislation of a range of regulations designed to protect individual freedoms, the situation in terms of fundamental rights is appalling. It has drastically worsened since the events in Andijan in 2005, when the city saw demonstrations against unemployment, crackdowns by the regime and legal action taken against 20 small-scale entrepreneurs. Elite troops and armoured vehicles were dispatched to quell the movement with massive bloodshed. Hundreds of people were killed, there was no independent enquiry following the events, and the victims are still waiting to learn the truth and secure justice. This massacre served only to reinforce the climate of repression, impunity and enforced silence that reigns in the country.

PRACTICE OF TORTURE

Over the last five years, the European Court of Human Rights (ECtHR) has issued judgements in some 20 extradition cases involving Uzbekistan, ruling that torture practices in the country were "systematic", "unpunished" and "encouraged"[1]. Yet the State's representatives continue to deny any such practices[2].

Victims

Torture in Uzbekistan affects anyone suspected of committing a crime. It is a regular method of criminal investigation. It is also used to target those accused of membership in opposition political parties, such as members and sympathisers of ERK and Birlik (two secular opposition parties) or banned religious organisations. Alleged or actual membership in an outlawed Islamic movement (Islamic Movement of Uzbekistan, Islamic Jihad Union, Hizb-ut-Tahrir, etc.) increases the risk of torture or ill-treatment in the event of detention. Muslims who practice their faith outside of the State-controlled organisations but who have no links to these movements are nonetheless arrested on charges as vague as "subversion", "attempts to overthrow the constitutional order" or "anti-governmental activities" and are subjected to torture while in detention. Human rights activists and independent journalists who are arrested are systematically tortured or subjected to cruel, inhuman or degrading treatment.

Mukhammed Begjanov, 60 years old, is a journalist and an eminent member of the opposition political party ERK. He was arrested in March 1999 and was tortured while in pre-trial detention with a view to extracting a confession and securing a sentence against him. He was subjected to electric shocks and beaten with truncheons and plastic bottles filled with water. He was also asphyxiated on several occasions with a plastic bag. He was placed in *incommunicado** detention throughout this period, and the security forces threatened to rape his wife. Following his sentencing, he continued to be humiliated, beaten and deprived of food, medical care and visits from his family. His health deteriorated considerably over the course of his 16 years in detention.

The individuals who fled the country or sought asylum abroad, are at risk of torture upon return. In several cases, the ECtHR has ruled against the return of individuals to Uzbekistan due to such risk. These rulings related in particular to people accused of belonging to Islamist parties or other outlawed groups in the country. The Uzbek authorities consistently request the extradition of individuals who have fled overseas and sometimes became refugees – in some cases by kidnapping them on foreign soil. In 2012, ACAT's litigation was crucial in securing a decision by the United Nations Committee against Torture, which stated that "the extradition by the State party [Kazakhstan] of complainants to Uzbekistan was a violation of Article 3 [ban on torture]". ACAT represented 29 individuals who were refugees or had requested asylum in Kazakhstan. As devout Muslims practising their faith outside the State-controlled Uzbek organizations, these men had been arrested, threatened, some had been tortured and decided to flee Uzbekistan. They were forcibly returned to their country in June 2011 despite the manifest risk of torture. Like the UN Human Rights Committee and the ECtHR, the Committee against Torture expressed the strongest reservations concerning the use and reliability of diplomatic assurances* issued by the Uzbek authorities, arguing that they offered no guarantee of protection from torture.

In the case of the 29 individuals extradited to Uzbekistan, ACAT received credible information that there were tortured following their return. "We were subjected to unimaginable acts during the investigation. There were all kinds of torture. In particular, they used electric chairs to electrocute us. These practices continued once we had been sentenced. [...] We were asphyxiated with plastic bags placed over our heads. The bag is closed for a long time until you're completely suffocated, and then it's reopened to keep you alive. Then it all starts again. It's horrible." Following pressure by ACAT, Kazakh diplomats visited at least 18 of the complainants in August 2012, after 14 months of *incommunicado** detention. The aim of these visits was simply to get them to sign pre-drafted declarations stating that they had not been tortured and that the conditions of their detention were good. ACAT received information revealing that the complainants had been tortured and threatened with reprisals should they refuse to sign the documents. In November 2013, during the review of Uzbekistan in Geneva, the UN Committee against Torture requested information and asked whether investigations had been carried out into the allegations of torture and ill-treatment against the individuals concerned. Uzbekistan did not provide a response.

Torturers and torture sites

The main perpetrators of torture under this system are investigators, police officers, security forces working directly under the authority of the Interior Ministry (*Ichki Ishlar Vazirligi),* penitentiary personnel and officers from the intelligence agency (*Milliy Xavfsizlik Xizmati (MXX)* – national security service, formerly the KGB).
Torture takes place on premises that fall under the jurisdiction of these authorities: police stations, offices of the internal affairs department, where arrestees are placed in pre-trial detention cells (*KPZ),* pre-trial detention units under the control of the Interior Minstry (IVS) or pre-trial detention centres (SIZO).
Torture is regularly practised in prisons, known as colonies. Some colonies in particular have been singled out, including Jaslyk, Navoi, Karshi, Angren, Kattakurgan, Chirchik and Karakul Bazar. This list is of course far from being exhaustive, as the

use of torture and ill-treatment is unfortunately routine and commonplace, occurring on a daily basis in prison colonies. The headquarters of the national security service in Tashkent and Bukhara, as well as the secret detention centre in Chirchik, have also been cited by victims.

As well as the abuse that is deliberately inflicted, living conditions generally in Uzbekistan's penitentiary facilities amount to inhuman and degrading treatment and even torture. Most prisons are overcrowded. These facilities were built during the Soviet era and have never been renovated. Hygiene facilities are lacking and in an appalling state. Food is rationed and of poor quality, and the food provided by families is often confiscated by the prison authorities. Many detainees do not have adequate clothing and have to keep the same clothes for months on end. Temperatures in the cells are very high during the summer, while in the winter the lack of heating exposes detainees to extreme cold. Added to this is poor ventilation and inadequate air circulation, humidity and serious failings in terms of healthcare (lack of access to medical care and poor sanitation), which increases the occurrence of infectious diseases, tuberculosis in particular. Forced labour is practised in prison colonies. Detainees in a state of poor health are usually exempt, with the exception of political prisoners. These conditions heighten the risk of deaths within the prison population.

Methods and objectives

Recorded testimonies provide an indication of the different forms of torture used: blows and beatings, particularly with the use of truncheons, metal rods or bottles filled with water (victims are handcuffed or hung from hooks on the ceiling); asphyxiation with plastic bags or gas masks whose air vent has been closed off; electric shocks to all parts of the body; suspension for hours on end from the wrists or feet; needles inserted under fingernails or toenails, which may also be torn off; burns using cigarettes or boiling water; stripping and prolonged exposure to freezing temperatures in the middle of winter; rape and sexual violence. All of these methods were included in the arsenal of torture techniques recorded by ACAT through victim accounts.

In recent years, ACAT has received allegations of forced sterilisation. Mutabar Tajibaeva claims to have been a victim of this practice while in prison in 2008. She filed a complaint with the UN Human Rights Committee in December 2012[3]. An investigative report by the BBC highlighted further cases in different regions, particularly in rural areas. Doctors are said to have been forced to carry out these sterilisations, by order of the Health Ministry or local health authorities, on women who were neither informed nor gave their consent[4]. The authorities have officially denied such practices.

Beyond physical violence, psychological pressure is another form of abuse: humiliation, threats of reprisals against relatives, denial of the right to visit or to exercise religious freedom, etc. Some victims are placed in isolation for extended periods, during which time they are denied access to their lawyer, families or anyone else from outside the prison. This can last for weeks or even months. There have also been cases of internment in psychiatric hospitals and the forced administration of psychotropic drugs, although less common. The journalist Jamshid Karimov is an iconic example of this. He was confined to the psychiatric hospital in Samarkand from 2006 to 2011. Human rights defender Elena Urlaeva was also forcibly admitted to a psychiatric facility on several occasions beginning in the early 2000s and again in 2014. She claims to have been forced to ingest psychotropic drugs, without knowing their names or intended use and without any explanation.

The abusive and arbitrary extension of prison sentences is a recurring practice that has been observed by ACAT in recent years in the case of political opponents, human rights defenders and journalists. Having spent up to 10 years in prison, just as their sentence is about to come to an end, these detainees are accused by the prison authorities of minor violations of prison regulations and are sentenced to additional prison terms. These extended sentences, often for several years and for absurd reasons such as "does not get up quickly enough when ordered to do so by the warden", or for "unsufficiently peeling carrots", have a devastating effect on those concerned. They have been psychologically broken by so many years in prison and then lose all hope and in some cases commit suicide in their cells.

In March 2014, human rights defender Ganikhon Mamatkhanov was due to leave prison having served a five-year sentence. His son was informed by the prison authorities that the sentence had been extended for three more years as his father had "gone to the toilet without permission" on three occasions. 61-year-old Murod Juraev, a former member of parliament, was sentenced in 1995 and had his prison term extended four times, in 2003, 2006, 2009 and 2012. The reasons for these additional sentences were ludicrous, and most likely invented: entering the dormitory without changing his slippers; exchanging tea for tobacco; smoking outside the designated area. Initially sentenced to 12 years in prison, Juraev successively served a total of almost 20 years in detention as a result of the four additional sentences. His family say he has now lost all hope of release.

Torture is used to extract confessions as part of police investigations or to gather false testimonies and information on third parties thought to belong to outlawed parties or movements. This practice is encouraged through a system that promotes officers based on the number of cases solved. The result is that an individual may be tortured to "confess" his role in a crime that has been entirely fabricated by the security forces. Such practices are also used to silence critics, crackdown on and punish political and religious activities as well as the defence of human rights, and even to kill independent members of civil society, as in the case of Abdurasul Khudoinazarov. This human rights defender and chairman of the Angren branch of the Ezgulik NGO fought corruption among the law enforcement authorities. He was arrested in 2005 on false grounds and sentenced to 9 years' imprisonment in 2006. He was violently tortured and ill-treated while in detention, driving him to attempt suicide following a hunger strike in 2008. The UN described his imprisonment as arbitrary and as an act of revenge for his activities as a human rights defender. He died in June 2014 having been refused all medical care while in prison.

LAW AND LEGAL PRACTICE

The Uzbek authorities have never publicly condemned torture and have refused to respect their international obligations to prevent and punish acts of torture. At the highest levels of State, there is no willingness to combat this phenomenon, which is now institutionalised. Uzbekistan's representatives have described as "politically motivated" reports concerning torture and human rights violations in the country, including those produced by the UN.

Legal definition of torture

Uzbekistan ratified the United Nations Convention against Torture in 1995. Article 235 of the country's Criminal Code provides a definition of torture. It is inadequate, however. It does not include acts perpetrated by an individual acting in an official capacity but who is not a State official; this includes acts carried out at the instigation of or with the consent or acquiescence of a public official (for example, a detainee who strikes a fellow detainee at the instigation of prison wardens). Nor does it provide for the liability of State officials who have knowledge of or approve acts of torture. A decision by the Supreme Court in 2008 informs the national courts that the definition given in the United Nations Convention against Torture takes precedence over national legislation.[5] Yet this ruling has never been implemented in practice. Judges, investigators and law enforcement officials are unaware of the ruling, according to Uzbek human rights defenders and lawyers.
Confessions obtained under torture are prohibited by Articles 88 and 94 of the Code of Criminal Procedure and by a Supreme Court ruling[6]. Yet such confessions continue to be used by judges handing down sentences, often as the only legal basis. Article 173 stipulates that judges who observe visible traces of beatings or other injuries must demand a forensic medical examination. In practice, however, this requirement is hardly ever implemented.

The maximum prison sentence under the terms of Article 235 is eight years' imprisonment where the consequences of the crime are "serious", and three to five years in other cases. These sentences are too lenient and are not proportionate to the seriousness of the crime.

Uzbekistan has undergone several periodic reviews by UN bodies in which it has denied or considerably understated the use of torture. The government refuses all visits by independent experts and UN special rapporteurs, as in the case of the rapporteur on torture who has been denied all access since his visit in 2002, despite repeated requests.

Punishment of perpetrators of torture

The authorities fail to launch an investigation in most cases involving torture allegations. There is neither the political nor the judicial will to prosecute State officials responsible for such acts.

Various legislative and judicial reforms have been introduced since 2010 with a view to strengthening the legal guarantees offered to persons deprived of their liberty. These reforms should make it possible to prevent acts of torture, but not only are the provisions largely insufficient, the main problem is that they are not being applied.
It is very difficult to file a complaint in Uzbekistan. There are no independent mechanisms in place to examine complaints of acts of torture perpetrated by State officials. Victims are required to contact either the superiors of those accused or the office of the public prosecutor. The public prosecutor falls under the authority of the office of the President. His role is to conduct preliminary criminal investigations while at the same time representing the State before the courts, thereby creating a conflict of interest. He cannot initiate judicial procedures for certain acts of torture while using confessions obtained through the same methods in another criminal case.

The role of defence lawyers is fraught with difficulty. The right to benefit from the assistance of a lawyer, a fundamental legal guarantee, is constantly breached in torture cases. And when the families of torture victims hire an independent lawyer, they are subjected to pressure by the law enforcement authorities to end the relationship, forcing them to use lawyers who follow the implicit rules of the system, turning a blind eye to any evidence of torture and convincing their clients to "cooperate" with the investigators. Legislative reforms introduced in recent years have threatened to undermine the independence of bar associations, which fall entirely under the authority of the Justice Ministry. Recurring reports suggest that law enforcement officials prevent independent lawyers from gaining access to clients remanded in custody or in detention and that they regularly send them to another detention centre to deflect attention. The same is true of trials: lawyers are not always notified of the date and location of hearings in an effort to distance them from proceedings. Finally, many of them have had their licences revoked and are no longer able to practice.

There is no independent mechanism in place for the inspection of detention centres. No non-governmental organisations are allowed into prison facilities. Only the International Committee of the Red Cross (ICRC) had such authorisation, but in April 2013 it was forced to end all such visits in Uzbekistan as it was no longer able to visit detainees under standard procedures. ACAT had received information in previous years that prisoners had been hidden or transferred during visits by the ICRC to several prison facilities. There were also reports that prison officials generated a climate of fear as scheduled visits by the ICRC approached by severely punishing detainees in order to dissuade them from giving testimony of violations to ICRC delegates. Collective punishments in the form of reprisals were also used against all prisoners in the colony following a visit by the ICRC.
According to official statistics, between 2010 and 2013 the authorities registered 336 complaints of torture and ill-treatment carried out by law enforcement officials. 45 individuals are said to have been prosecuted and found guilty of torture during the same period.[7] There is no publicly available information to verify these figures or which could explain why 87% of complaints were not investigated and did not lead to a conviction. Nor is there any indication of the number of prison sentences or fines handed out by judges to those responsible for torture. Similarly, no information is available about the duration of prison sentences or the number of amnesties given to those concerned.

Taken together, these measures result in near total impunity for torturers in Uzbekistan, thereby allowing torture practices to continue systematically and on a much larger scale than the token figures published by the authorities.

[1] See for example *Yakubov v. Russia* (Application no. 7265/10, 8 November 2011, para. 82).

[2] "It should be noted that the accusations concerning multiple cases of torture of detainees by the law enforcement agencies are unfounded", stated one Uzbek diplomat in November 2013, when Uzbekistan was being reviewed by the United Nations Committee against Torture. United Nations Committee against Torture, *Information received from Uzbekistan on follow-up to the concluding observations,* April 2014, CAT/C/UZB/CO/4/Add.1, para. 17.

[3] *Mutabar Tadjibayeva v. Republic of Uzbekistan,* Individual Communication to the United Nations Human Rights Committee, 18 December 2012.

[4] BBC World Service, Uzbekistan's policy of secretly sterilising women, by Natalia Antelava, April 2012; United Nations Committee against Torture, Concluding Observations on the fourth periodic report of Uzbekistan, December 2013, para. 24.

[5] Decision during a plenary session of the Supreme Court of Uzbekistan, reached on 14 July 2008 and entitled "Judicial review of criminal cases relating to the use of torture and other cruel, inhuman or degrading treatment or punishment under the terms of Article 235 of the Criminal Code of the Republic of Uzbekistan".

[6] See the decision reached during a plenary session of the Supreme Court on 19 December 2003, relating to the application by the courts of laws guaranteeing the right to a defence for persons suspected or accused of offences.

[7] Uzbekistan's reply to the list of issues submitted by the United Nations Committee against Torture, CAT/C/UZB/Q/4/Add.2, 3 July 2013.

elsewhere in the continent

SRI LANKA

Since the end of the conflict in 2009, ACAT has been deploring endemic human rights violations perpetrated by the police forces. The latter maintain a reign of torture and arbitrary detention by applying the Prevention of terrorism Act, extending the law beyond its legal framework to intimidate and detain human rights defenders.

This was the case for Jeyakumani Balendran, who was imprisoned for over a year after having claimed the truth on her missing son, who was arrested by the authorities and then disappeared. The cases of Ruki Fernando and Father Praveen Mahesan are made all the more significant of the authorities' practices, as they were arrested and detained when investigating into the conditions of Jeyakumani's arrest and detention.

The elections of 2015 were characterised by the use of death threats made to ACAT partners who supported the opposition. Nevertheless these elections served as a glimmer of hope for the people of Sri Lanka as the former President was replaced by a member of the opposition. In December 2015, the newly elected President enabled Sri Lanka to sign the International Convention for the Protection of All Persons from Enforced Disappearance and released the persons supported by ACAT. He also welcomed the recommendations made by the United Nations Office of the High Commissioner on Human Rights in its inquiry report into war crimes and crimes against humanity perpetrated between 2002 and 2011, published in September 2015. However, despite the promises made by this new government, the victims are still waiting for truth, justice and reconciliation to be initiated, torture did not ceased, and numerous cases of rape and disappearance continue to be recorded.

Considering that Sri Lanka ratified the United Nations Convention against Torture over 20 years ago now, ACAT calls on the Sri Lankan authorities to abide by their commitments and to take all necessary measures to end impunity of torturers.

VIETNAM

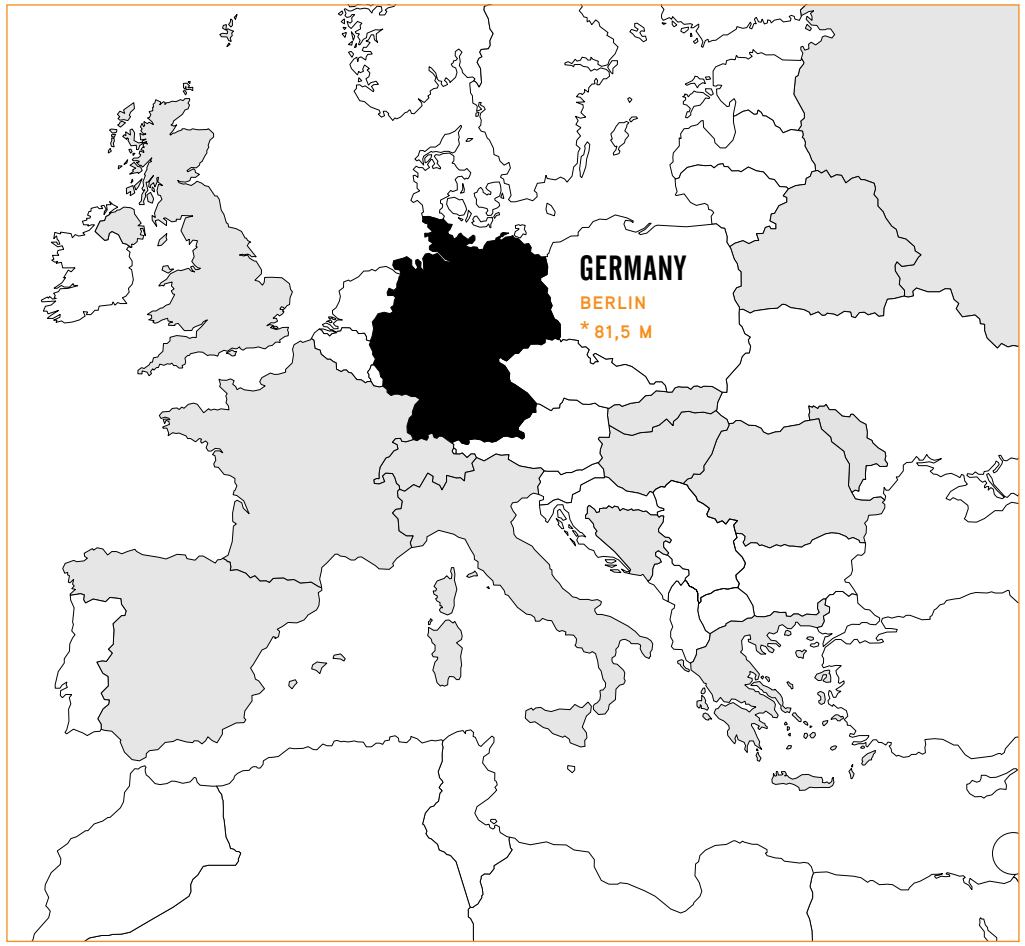
ACAT-France advocated for the improvement of the situation of several Vietnamese political prisoners who have suffered inhuman and degrading treatment and sometimes even torture. The case of Mr Dang Xuan Diêu, whose detention was deemed arbitrary and illegal by the United Nations, is emblematic of this situation. He has been arrested in 2011 during a wave of arrests of young activists. In 2013, he was sentenced to 13 years in prison. Once detained, he was repeatedly subjected to degrading treatment: humiliated and tortured, denied access to regular food intake and drinking water, and forced to live in deplorably unhygienic conditions. He went on hunger strike several times to protest against his conditions of detention. In retaliation, the Vietnamese authorities encouraged his fellow detainees to treat him as a slave.

Vietnam lately ratified the United Nations Convention against Torture in 2015. To date, the government has taken no measures to guarantee the humane treatment of prisoners.

EUROPE

Asylum: a fundamental right under threat

Germany



Countries covered in the 2016 report

Countries covered in previous reports (2010, 2011, 2013 et 2014)

* **Population in 2015, in million of inhabitants** / Source: World Bank 2015

EUROPE

Asylum: a fundamental right under threat

Europe has gradually been consolidated into a space in which human rights are protected, equipping itself with a series of ambitious instruments and mechanisms designed to promote the rights in question, and ensure they are complied with: The Council of Europe's European Convention on Human Rights (ECHR) and European Court of Human Rights (ECtHR), the Committee for the Prevention of Torture (CPT) and the Charter of Fundamental Rights of the European Union (EU).

This safe space is now under threat. Set against the backdrop of the migrant crisis, major political upheaval and a surge in nationalist movements, the Europe of freedoms is gradually being eroded to make way for a Europe where security takes pride of place. By seeking to protect their borders against illegal migration whatever the cost, the States of Europe are undermining a certain number of fundamental rights, with the right to seek and enjoy asylum first in the firing line. Many of these migrants are indeed asylum seekers seeking protection from persecution, acts of torture, and inhuman or degrading treatment in their countries of origin.

Under right to asylum legislation and in accordance with the ECHR, the EU's Charter and the Charter of the United Nations relative to refugee status, European States are obliged to comply with several key principles, and the principle of non-refoulement and the prohibition of torture and inhuman or degrading punishment and treatment in particular. The principle of non-refoulement prohibits the forcible return of a person to a place where they may be exposed to torture or cruel, inhuman or degrading treatment. The ECtHR has consistently held that this obligation is a fundamental component of the prohibition of torture and also applies if a person is deported to a country where they then risk being returned to a third country in which they risk being exposed to torture.

Yet after the route through the Balkans was locked down in early 2016, Austria adopted a law enabling it to claim a "state of emergency" in terms of migration,

as did Hungary. Under this exceptional regime, all asylum seekers of all nationalities may be turned back at the borders. Repeated cases of excessive uses of force used against migrants by police and security forces were also flagged up on the Macedonian, Croatian and Hungarian borders. In parallel to this, approximately 46,000 asylum seekers are stuck in Greece, living in inhuman conditions with no real access to either their fundamental rights (food, water, hygiene, accommodation) or the asylum process[1]. Many European States are thus now blatantly breaching the prohibition of non-refoulement and inhuman or degrading treatment, as was emphasised by the Council of Europe's Parliamentary Assembly[2].

In addition to this, the EU signed an agreement with Turkey on 18 March 2016, purportedly to put an end to illegal migration coming from the country. The Council of Europe's Commissioner for Human Rights[3] and the United Nations High Commissioner for Refugees[4] as well as many non-governmental organisations (NGOs) have already expressed their concerns regarding the content and implementation of this agreement from a human rights perspective. Under the terms of the deal, all illegal migrants arriving in Greece from Turkey whose applications for asylum are considered unacceptable or unfounded, are now to be returned to Turkey, a state considered to be a safe third country where they might apply for asylum and enjoy effective protection. Yet NGO reports[5] note cases in which Turkey has deported individuals to countries such as Syria and Iraq, as well as cases of *incommunicado* detention of migrants accompanied by mistreatment, in violation of Articles 3 (prohibition of torture) and 5 (the right to freedom and safety) of the ECHR. On this subject, it ought to be noted that in October 2015, the ECtHR submitted a decree[6] in which it considered this activity to be a violation of Articles 2 (the right to life), 3 and 5 in the cases of migrants detained in Russia being deported to Syria. It also condemned Italy and Greece in October 2014[7], after Italy was found to be automatically deporting asylum seekers to Greece, despite a Greek asylum system shown to be severely lacking and a real risk of deportation to the migrants' home countries, where they would find themselves at the risk of torture. Turkey may well find itself, like Greece, on the receiving end of the ECtHR's condemnations for refoulement and mistreatment.

Those who apply for asylum in Greece are placed in detention centres (“hotspots”) for the duration of the process, in indecent conditions with no effective consideration of the specific needs that vulnerable people, including victims of torture, may have. This treatment of asylum seekers in Greece is clearly incompatible with Articles 3 and 5 of the ECHR, as migrants must only be detained in exceptional circumstances, and in conditions that respect human dignity. The ECtHR found itself obliged to reiterate this last requirement in two decrees dated September 2015 and March 2016[8].

Furthermore, the way in which asylum applications in the fast-track system are assessed in Greece do not provide for sufficient safeguards (individual and thorough assessment, reasonable time periods, legal and linguistic support, the right to effective appeal) to ensure that individuals who do need protection are not deported, in compliance with the principle of non-refoulement.
Finally, the deal means that for every Syrian sent back to Turkey by Greece, a Syrian from a Turkish refugee camp will be settled in the EU. Under this system, asylum seekers and refugees of other nationalities are cast aside. Here too, the Human Rights Commissioner and international organisations alike flagged up a blatant breach of the principle of non-discrimination, another component that forms the bedrock of the right to asylum, protected under Article 14 of the ECHR in particular.

In the coming years, the ECtHR will undoubtedly be faced with major difficulties both in scope and severity as a result of the implementation of these new asylum policies that so clearly undermine these fundamental rights. As illustrated on several occasions, the Court remains the ultimate guarantee of protection of human rights by the member States of the Council of Europe, when all other means of recourse have been exhausted. It is however regrettable that the EU itself, unlike its member States, is not party to the ECHR, and that individuals are therefore unable to appeal to the ECtHR to rule on the EU's shortcomings in safeguarding human rights, with the deal struck with Turkey serving as a case in point, despite the fact that subscription to this convention is crucial to the effectiveness of Europe as a safe space.

[1] Amnesty International, *Trapped in Greece: an avoidable refugee crisis,* Report, April 2016.

[2] Parliamentary Assembly of the Council of Europe, Resolution 2108 (2016) *Human rights of refugees and migrants – the situation in the Western Balkans,* 20 April 2016.

[3] Statement to the Council of Europe's Commissioner for Human Rights, 21 March 2016, *The implementation of the EU-Turkey deal must uphold human rights.*

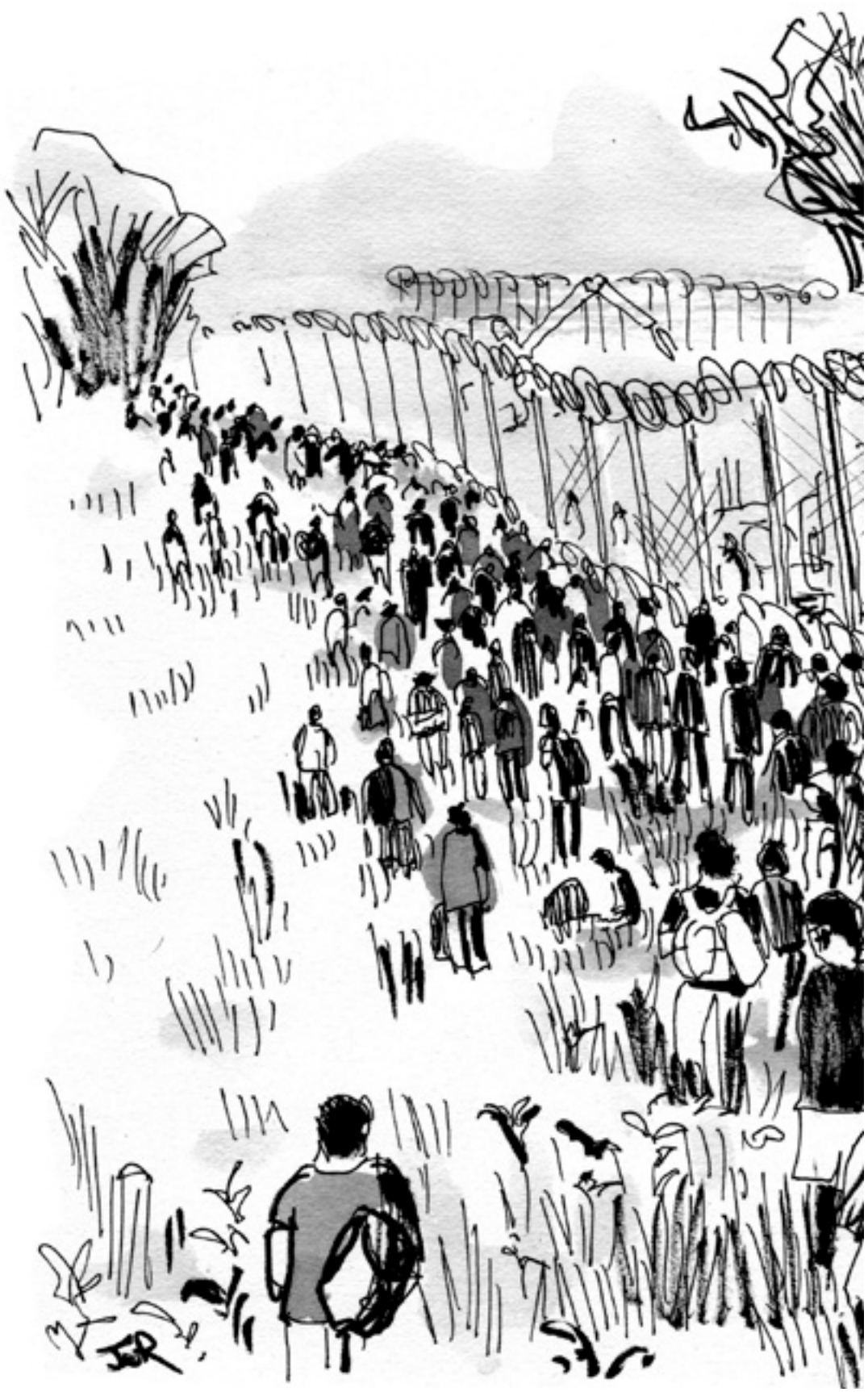
[4] UNHCR, *UNHCR redefines role in Greece as EU-Turkey deal comes into effect,* Briefing notes, 22 March 2016; *UNHCR on EU-Turkey deal: Asylum safeguards must prevail in implementation,* Press release, 18 March 2016.

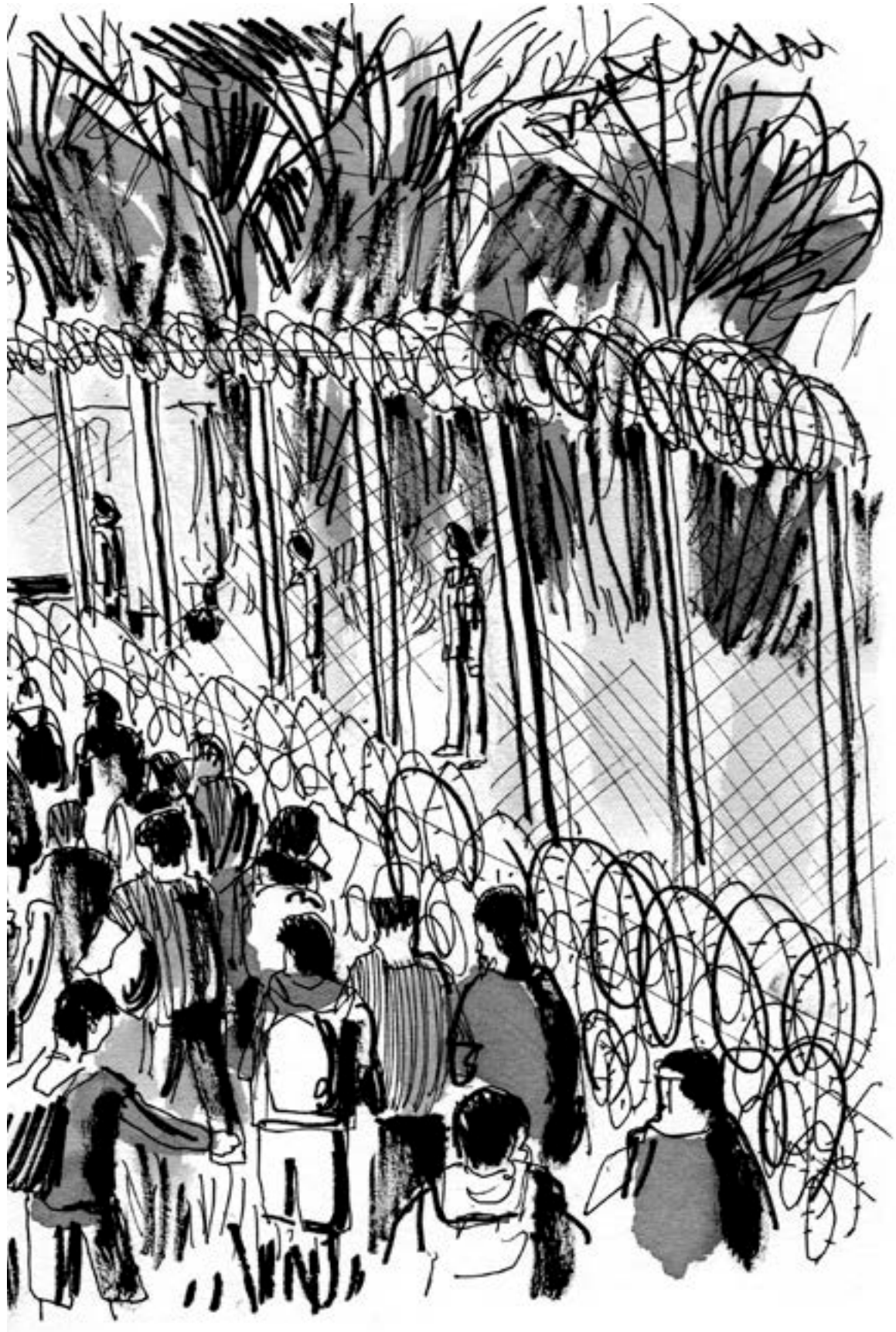
[5] Particularly Amnesty International, *Europe's gatekeeper: unlawful detention and deportation of refugees from Turkey,* Report, December 2015.

[6] ECtHR, judgement *L.M. and Others v. Russia* 15/10/2015.

[7] ECtHR, judgement *Sharifi and Others v. Italy and Greece* 21/10/2014.

[8] ECtHR, judgement *Khlaifia and Others v. Italy* 01/09/2015 and *Sakir v. Greece* 24/03/2016.





GERMANY

CONTEXT

The Federal Republic of Germany (FRG) is governed by the Basic Law of 1949 and continues to be the European Union's most populous country, with close to 81 million inhabitants. Power is split between the Federation and the 16 *Länder.* Elected for a four-year period that is renewable by the Parliament (*Bundestag)* and put forward by the Federal President, the real power is held by the Federal Chancellor. Angela Merkel has been Chancellor since 2005. She is the first female Chancellor and the first Chancellor from the former German Democratic Republic (GDR).

On an economic and social level, the consequences of the crisis of 2008 contributed to the rise of discontent within German society, which cleared the way for the rise of the extreme right and radical thought, as illustrated by the founding of the PEGIDA[1] movement in October 2014 and the hate speech promoted by this movement, featuring xenophobic rhetoric spurred on by the high number of migrants and asylum seekers in Germany.

Generally speaking, the country's human rights situation is deemed satisfactory by international and regional human rights protection bodies. However, integration of the significant Roma minority and the admission of refugees, asylum seekers and undocumented migrants remain problematic[2], and violence perpetrated against the LGBT community is on the rise[3].

THE PRACTICE OF TORTURE

The practice of torture is not endemic in Germany. Generally speaking, the situation in prisons and detention centres in Germany complies with international standards and the Government permits visits from various different independent human rights observers. However, police violence is recurrent.
Germany's responsibility was also called into question by a number of human rights defence associations with regard to its cooperation in transferring prisoners in the context of counter-terrorism measures.

Police violence and detention conditions

Police violence

In Germany, recurring police violence, in particular aimed at ethnic minorities[4], remains problematic: in 2012, 2,367 complaints of alleged police violence were examined by prosecutors[5]. Germany was prosecuted on three occasions[6] by the European Court of Human Rights (ECHR) in Strasbourg for violation of Article 3 of the European Convention on Human Rights (ECHR) and once by the UN Committee against Torture[7].
Although human rights form an integral part of security forces' training, frequent abuses of human rights as well as violence are still reported. Many of them take place during "routine" operations. These cases of violence and humiliation are widely reported in the German press and on social media and are often highly embarrassing for the German authorities.
A case that is currently causing furore is that of a federal police office from the Hanover station police precinct who allegedly abused a young Moroccan man in the autumn of 2014. He is accused of having forced his handcuffed victim to eat spoiled pork. He is then said to have shared this mistreatment with his colleagues by uploading the video on to social media. His is also accused of a second case of mistreatment of a young Afghan man. Six months earlier, this same police officer used WhatsApp to boast of having beaten a young Afghan man, of having put fingers in his nose and of suffocating him. An investigation against him and four of his colleagues is currently underway[8].
The case of Teresa Z. garnered much media attention. On 20 January 2013, she was taken to the Police 21 offices in Munich. Under the influence of drugs, Teresa Z. spat on a police officer, who hit her, fracturing her nose and right eye socket. Accused of intentional bodily harm, the officer was sentenced to a 10-month suspended sentence and a €3,000 fine.

Conditions of detention

Prison overcrowding is not an issue in Germany. Prison occupancy rates are in constant decline: on 1 September 2004 there were 97 prisoners for 100,000 inhabitants, with this rate falling to 78 prisoners for 100,000 inhabitants on 1 January 2014. In October 2015, the prison population totalled 70,103[9]. Almost a quarter of the prison population is now comprised of foreign prisoners (24%)[10]. New-build preventative detention units offer satisfactory detention conditions. Individuals placed in provisional detention are generally kept separate from common law prisoners[11].
The use of solitary confinement (*Absonderung)* is rare and used in very specific cases[12]. The legal maximum amount of time is set at four weeks per year[13], but in reality prisoners are only placed in solitary confinement for a few hours at a time. Another type of measure likely to be applied to prisoners is detention in a secure cell (*Besonders Gesicherter Haftraum – BGH).* The European Committee for the Prevention of Torture notes that in practice, the majority of these measures do not exceed 24 hours. The CPT did however note that it was crucial to provide one hour of exercise should this 24-hour period be surpassed[14].
With regard to children and young people in detention, complaints for inhuman and degrading conditions were filed against some centres such as the *Jungendhilfe* Friesenhof-Dithmarschen centre (Schleswig-Holstein). Since 2014, six complaints have been filed by its residents.

Admission and treatment conditions for undocumented migrants and asylum seekers

Germany receives more applications for asylum than any other EU country, with 40,487 new applications received in September 2015[15] – an increase of 21% in comparison to the 33,447 applications received in August of the same year. These figures represent a monthly increase of 149.7% compared to the year 2014[16]. According to a report from the BAMF (*Bundesamt für Migration und Flüchtlinge,* the Federal Office for Migration and Refugees), in the period between January and September 2015, the greatest number of asylum applications was submitted by individuals from Syria, Albania and Kosovo[17]. The hosting of refugees, asylum seekers and undocumented migrants is characterised by several major difficulties. In their annual report for 2013, the federal agency for the prevention of torture (*Bundestelle zur Verhütung von Folter)*[18] and the mixed Commission (*Länderkommission zur Verhütung von Folter)*[19] established an inventory of detention conditions for refugees, asylum seekers and migrants. These vary from one structure to the next. While the Eisenhüttenstadt and

Berlin Köpenich centres are held up as examples of good practices, the Commission nevertheless picks up on the case of one detainee in the Ingelheim centre who spent 10 days in solitary confinement with no psychiatric care, no reading permitted with the exception of the Bible or Koran, access to sanitary facilities with no privacy and support workers with zero professional training. In other centres, the absence of professionally trained detention staff has also been noted.
With respect to other centres, the federal agency for the prevention of torture notes the absence of shower dividers, a lack of leisure facilities and the absence of professional training for staff employed by private security firms. In September 2014, violence inflicted on refugees in the Burbach[20] and Essen centres by the private security firm SKI[21], a sub-contractor of the European Homecare[22] group, came to light. The latter stated that it has since ended the contracts and that the agents in question were arrested. Similar cases of mistreatment took place in the Berleburg refugee centre. All of these cases resulted in legal prosecution[23].

Other problems arise when detention takes place at a police station, mainly due to the absence of an interpreter, a lack of access to legal counsel, poor detention conditions, and the practice of using physical restraints or *"fixierung"* [24]. The Oury Jalloh case illustrates this well. Arrested on 7 January 2005, this young asylum seeker from Sierra Leone died the same day following intoxication from a fire in his cell at the Dessau police station, where he was strapped down to his bed.

According to European directives[25], foreign nationals without appropriate documentation must be placed in specialised retention centres while awaiting deportation. Yet 10 of the 16 Länder do not have such specialised centres. Refugees, asylum seekers and migrants were therefore placed in prisons, sometimes alongside common-law prisoners. The European Union Court of Justice[26] has since qualified this practice as being contrary to European law. The federal court (Bundesgerichtshof- BGH) followed the EU Court of Justice's ruling on this matter[27]. In practice, the Länder that do not have a retention centre must release foreign detainees or hand them over to another Land equipped with a retention centre[28].

Obstacles to the principle of non-refoulement

In April 2013, the *Land* of Baden-Württemberg issued a decree requiring that members of the Roma, Ashkali and Egyptian communities be individually assessed before being sent back to Kosovo. In April 2013, 127 deportations were nevertheless carried out and in July 2013, 90 individuals were sent to Serbia and the Former Yugoslav Republic of Macedonia. Forced deportations took place without any prior assessments having been carried out, and this despite fears expressed by the individuals in question regarding the risk of persecution and integration difficulties that awaited them upon their return[29]. According to the federal government, in 2014 around 10,900 people were deported from Germany and a further 3,600 turned away at the border. Approximately one third (4,770) of all cases were transfers made to other EU countries as part of the Dublin Regulation[30].

The new law modifying migrants' rights entered into force on 6 November 2014[31]. It is particularly problematic for asylum seekers from Bosnia Herzegovina, the Former Yugoslav Republic of Macedonia and Serbia, as these three countries were added to Germany's list of safe countries[32], resulting in their nationals having a much higher chance of facing dangerous deportations back to the three countries[33]. In addition, under revised German law, individuals granted refugee status must now have their cases reassessed every three years. Upon reassessment, nationals of these new safe countries will lose their refugee status and will have one month to leave the country[34]. This provision is particularly dangerous for these countries' Roma minorities, and has been decried by the German NGO Pro Asyl in particular[35].

Methods and objectives

Mistreatment perpetrated by police staff or private security firm personnel takes the form of slaps, punches, kicks and other strikes using hard objects. Mistreatment perpetrated by the police is more often than not racist in nature. Refusal of entry drives the offences committed by members of security forces.

Germany has also often been criticised by international organisations with respect to its practice of surgical castration[36]. In a 2012 report[37], the CPT recommended that the competent authorities repeal the law of 1969 that provides for voluntary surgical castration for sex offenders[38].

According to the German authorities' statistics submitted to the CPT, 29 applications for voluntary surgical castration have been submitted since 2000, 11 of which have been accepted. Between 2010 and 2012, the figures plummeted with just two surgical castrations carried out. Although the federal government understands the CPT's concerns, it has no plans to bring this practice to a halt.

Counter-terrorism and diplomatic assurances

In 2007, a temporary *ad hoc* commission formed by the European Parliament[39] shed light on a number of cases in which Germany appears to have contributed, with varying degrees of pro-activeness, to the extraordinary rendition of individuals suspected of terrorist activity to the American authorities. The German citizen Khaled El-Masri, transferred to Afghanistan as soon as he arrived in the Former Yugoslav Republic of Macedonia, claims to have been interrogated by a "German-speaking" agent[40] while detained in Afghanistan. The authorities' lack of cooperation with the German parliament's enquiry commission prevented any identifications from being made. However, it has been established that German agents twice interrogated Murat Kurnaz, a Turkish citizen living in Germany, during his detention in Guantanamo Bay, and that German citizen Mohammed Zammar's arrest was facilitated by the German federal criminal police's cooperation.
In 2010, a number of non-governmental organisations decried[41] the abusive use of diplomatic assurances by the German authorities following the adoption in 2009 of administrative provisions in application of the Law of residency, which governs migrants' entry, residency and employment in Germany. Thus, prior to approving a deportation request, the Federal Minister of the Interior must ensure that the competent authorities of the recipient country do not employ torture or other inhuman or degrading treatment. The Committee for the Prevention of Torture equally denounced Germany[42] following the ACAT's referral in August 2010 in the context of the Onsi Abichou case[43], reiterating that diplomatic assurances hold no legally binding value and do not comprise sufficient guarantees against the risk of torture[44].

LEGISLATION AND LEGAL PRACTICES

Legal sanctioning and torture

Germany ratified the UN Convention against Torture on 1 October 1990. It ratified the Convention's optional protocol in December 2008. On a European level, Germany is a signatory of the European Convention on Human Rights and almost all of its additional protocols.
Internally, the Basic Law enshrines the intangibility of human dignity on a constitutional level, and so absolutely prohibits torture or inhuman or degrading treatment and punishment or sentences[45]. The German Criminal Code condemns mistreatment or complicity in mistreatment by civil servants, extortion of confessions or

witness statements, threats or coercion[46]. In addition, the German Prisons' Act (*Strafvollzugsgesetz, StVollzG)* requires that detention conditions be as similar as possible to general living conditions.
Yet under German federal law, no definition or criminalisation of torture exists as a specific offence, despite the fact that the UN Committee against Torture had already asked Germany to correct this state of affairs in 2011[47].

Prosecution of perpetrators of torture

In 2008, the federal Minister of Justice set up the National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung der Folter)* under the UN Convention against Torture's optional protocol. This structure comprises two distinct bodies: the federal agency known as the *Bundesstelle* and the *Länder* commission known as the *Länderkommission.* The first is responsible for monitoring detention premises that fall under the jurisdiction of the Federation (the *Bundeswehr* federal armed forces detention centres, the federal police, customs authorities). The second has jurisdiction over the monitoring of the 16 *Länder* detention premises (penal establishments, police stations, psychiatric institutions, deportation detention centres and child protection units).

However, this agency lacks resources, which prevents effective investigations being led, particularly those into allegations of severe violations and breaches by the police.

As a result, around 95% of allegations of police abuse fail to lead to proceedings as they are deemed to be without basis. A number of recent reports[48] have revealed that no improvements have been seen in the context of investigations into severe violations and breaches of human rights by police officers. The investigation and legal proceedings related to the disproportionate use of water cannons during a protest in Stuttgart in September 2010, for example, was still pending in 2014. In September 2014, the federal court of justice confirmed the sentence handed down in December 2012 by the Magdeburg regional court to a police officer who was found guilty of manslaughter following the death of Oury Jalloh.

Germany has no independent federal organ tasked with leading investigations into allegations of mistreatment perpetrated by police officers[49]. Similarly, the federate States have no independent appeal system with which to investigate allegations of serious breaches or violations of human rights by police officers[50]. The Land

of Rhineland-Palatinate has an independent appeals body whose jurisdiction was expanded in 2014[51]. However, this organ's powers are limited to mediation between the police and citizens and do not encompass investigations of allegations of police mistreatment. The regions of Hamburg and Bremen set up external investigation units made up of ex-police officers responsible for investigating cases of civil servant corruption, mistreatment and homicide. Yet these units are attached to the Ministry of the Interior and are therefore not entirely independent. Some police violence that is racist in nature also reveals a lack of independence in the investigating authorities in the alleged complicity between the prosecutor's office and the police, as demonstrated by the following case: A., a Chechen asylum seeker who suffered multiple fractures upon being arrested in February 2005 for having stolen a pair of trousers and having resisted the security forces, decided to retract his appeal out of fear of retaliation against his family. The charges were dropped. Soon after, he received a letter from the State of Saxony telling him to pay compensation to the police officer[52]. The German Institute for Human Rights (*Deutsches Institut für Menschenrechte-DIMR)* has been calling for the founding of independent organs for complaints against the police for two years now.

[1] Patriotic Europeans Against the Islamisation of the West (abbreviation PEDIGA).

[2] Federal Ministry of the Interior, "*National Minorities in Germany",* May 2010, 64 pages, p. 22: according to the Federal Ministry of the Interior's report on national minorities in Germany in 2010, the number of Roma and Sinti minorities is estimated at around 70,000. However, no official statistics exist for these minorities in Germany. *Roma in Deutschland,* Gregor Grienig.

[3] Organisation for Security and Cooperation in Europe "*Hate Crimes in the OSCE Region: Incidents and Responses",* annual report for 2012, 180 pages

[4] Some reports, such as those issued by Human Rights Watch, mention ethnic profiling by security forces.

[5] www.nk.nomos.de/fileadmin/nk/doc/Aufsatz_NK_14_01.pdf.

[6] ECHR, *Jalloh v. Germany,* 11 July 2006; *Gäfgen v. Germany,* 1 June 2010; *Hellig v. Germany,* 7 July 2011. See also ECHR, *Zierd v. Germany,* 8 April 2014.

[7] CAT/C/50/D/430/2010, decision made during the Committee's 55th session (6 May-31 May 2013), *Onsi Abichou v. Germany.*

[8] Newspaper *Spiegel online,* Ermittlungen auf vier weitere Bundespolizisten ausgeweitet (Thorough investigations into four other federal police officers), 26 August 2015.

[9] Statistics from the Statistics Portal, (*Das Statistic-Portal).*

[10] Council of Europe, SPACE I 2013, p. 15.

[11] Council of Europe, SPACE I 2013, *op cit.,* p. 55.

[12] Prison Law (Strafvollzugsgesetz) of 1977, Section 103 Types of disciplinary measures (2).

[13] *Idem,* Section 103 Types of disciplinary measures (1).

[14] The CPT's report following its visit to Germany from 25 November to 2 December 2013, p. 19 et seq.

[15] Bundesamt für Migration und Flüchtlinge, Aktuelle Zahlen zu Asyl, September 2015, p. 5.

[16] *Ibidem.*

[17] *Ibidem.*

[18] Prevention system set up by Germany under the Optional Protocol to the UN Convention against Torture, operational since 2009. For more information, check the Association for the Prevention of Torture's database.

[19] The federal agency for the prevention of torture and the mixed commission are the two organs that comprise the National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter).*

[20] www.dw.de/german-police-raid-security-firm-accused-of-abusing-asylum-seekers/a-17979500.

[21] Founded in 1994 and based in Nuremberg, SKI is a private security firm with approximately 170 employees. According to the descriptions of the jobs offered in their centres, no qualifications are required.

[22] European Homecare (EHC) is a private firm founded in 1989 and specialising in management of retention centres for refugees and other "vulnerable" groups. The services it provides range from mental health support for refugees to advice and support during deportation, kids' play activities, etc.

[23] Press conference, Prozessauftakt in Essen: Wachleute bestreiten Misshandlung in Asylheim (Beginning of proceedings in Essen: wardens deny all violence in the refugee centre).

[24] This practice has repeatedly been criticised in reports from the European Committee for the Prevention of Torture. For more information, see the CPT's report following its visit to Germany from 25 November to 2 December 2013, p. 19 et seq. While the CPT has noted improvements, it nevertheless recommends that Germany systematically put in place a register containing detailed information on the use of this practice.

[25] In particular, Directive 2008/115/CE pertaining to common procedures and standards applicable in Member States with regard to the deporting of undocumented foreign nationals.

[26] CJUE 17 July 2014, joined cases C-473/13 and C-514/13.

[27] Ruling of 25 July 2014, AZ: V ZB 137/14 - Beschluss vom 25 July 2014.

[28] Article in the Frankfurter Allgemeine Zeitung, 25 July 2014.

[29] Human Rights Watch (HRW), *World Report 2014,* Events of 2013, 667 pages, p. 439.

[30] mediendienst-integration.de/migration/flucht-asyl.html.

[31] *Beschluss des Bundesrat,* Drucksache 383/14.

[32] According to EU Directive No. 2004/83 of 29 April 2004, a safe country of origin is a country that safeguards and respects the principles of freedom, democracy and the rule of Law, as well as human rights and fundamental freedoms.

[33] www.bamf.de/DE/Migration/AsylFluechtlinge/Herkunftsstaaten/herkunftsstaaten-node.html.

[34] www.bamf.de/DE/Migration/AsylFluechtlinge/Herkunftsstaaten/herkunftsstaaten.html.

[35] In a legal notice, Pro Asyl stated that members of the minority Roma communities are persecuted and subjected to gross discrimination in the Balkan states. For more information, see *Presseerklärung,* 15 October 2012, *Missbrauchsdebatte schürt Rassismus.*

[36] CPT press release, the Council of Europe's Committee for the Prevention of Torture publishes a report on Germany.

[37] 24th General Report of the CPT 2013-2014, 96 pages, p. 10-11.

[38] Article 1 of the Law on voluntary castration and other methods of treatment.

[39] The temporary commission's report on the CIA's alleged use of European countries in illegally transporting and detaining prisoners, 2006/2200 (INI).

[40] ECHR, *El-Masri v. Former Yugoslav Republic of Macedonia,* 13 December 2012, § 29.

[41] Amnesty International, "Accords dangereux: la confiance accordée par l'Europe aux "assurances diplomatiques" contre la torture", 2010, p. 17 et seq.

[42] www.acatfrance.fr/app/items/print/communique-de-presse/l-acat-fait-condamner-l-allemagne-par-le-comite-contre-la-torture-de-l-onu.

[43] Upon travelling to Germany on business, Onsi Abichou was arrested by the police on 17 October 2009 as a result of an international arrest warrant issued by Tunisia for drug trafficking. The ACAT lodged an appeal with the Committee for the Prevention of Torture, with the latter requesting that Germany suspend deportation proceedings on 25 August 2010. In violation of this request, the German authorities extradited Abichou that very same day. Incarcerated as soon as he arrived in Tunisia, he requested that the two life sentences pronounced by the Tunisian courts in his absence, on 27 June 2009, be reviewed. After a new life sentence ruling on 11 December 2010, based solely on confessions obtained through the torturing of one of his alleged accomplices, he was finally acquitted and released in February 2011 following the Tunisian uprising of January 2011.

[44] Statements and press releases from the ACAT-Germany, in particular that dated 14 July 2013 entitled *Pressemitteilung: Deutschland verstieß gegen die Anti-Folter-Konvention* (Press release: *Germany violates the Convention against Torture)* or the press release dated 26 November 2011 entitled *ACAT Deutschland appelliert an Außenminister Westerwelle Rechte eines ausgelieferten französisch- tunesischen Staatsburgers sichern (The ACAT-Germany calls on Foreign Minister Westerwelle to intervene in the case of a Franco-Tunisian citizen).*

[45] Article 1, § 1 of the Basic Law rules that: "The dignity of a human being is intangible. All public powers are obliged to respect and protect it". Article 2, § 2 adds that "Every human being has the right to life and physical integrity". The protection accorded under Article 1 is expanded upon in Article 104 § 1 to include prisoners as the beneficiaries of the following protection: "Arrested persons must not be mistreated, neither morally nor physically".

[46] Section 340, § 1, Section 343, Section 241, Section 240.

[47] See the findings of the CAT dated 12 December 2011, CAT/C/DEU/CO/5.

[48] Notably Amnesty International, Report 2014/2015, 493 pages, p. 72-73.

[49] Amnesty International, Report 2013 "Enlightenment: human rights violations must be investigated".

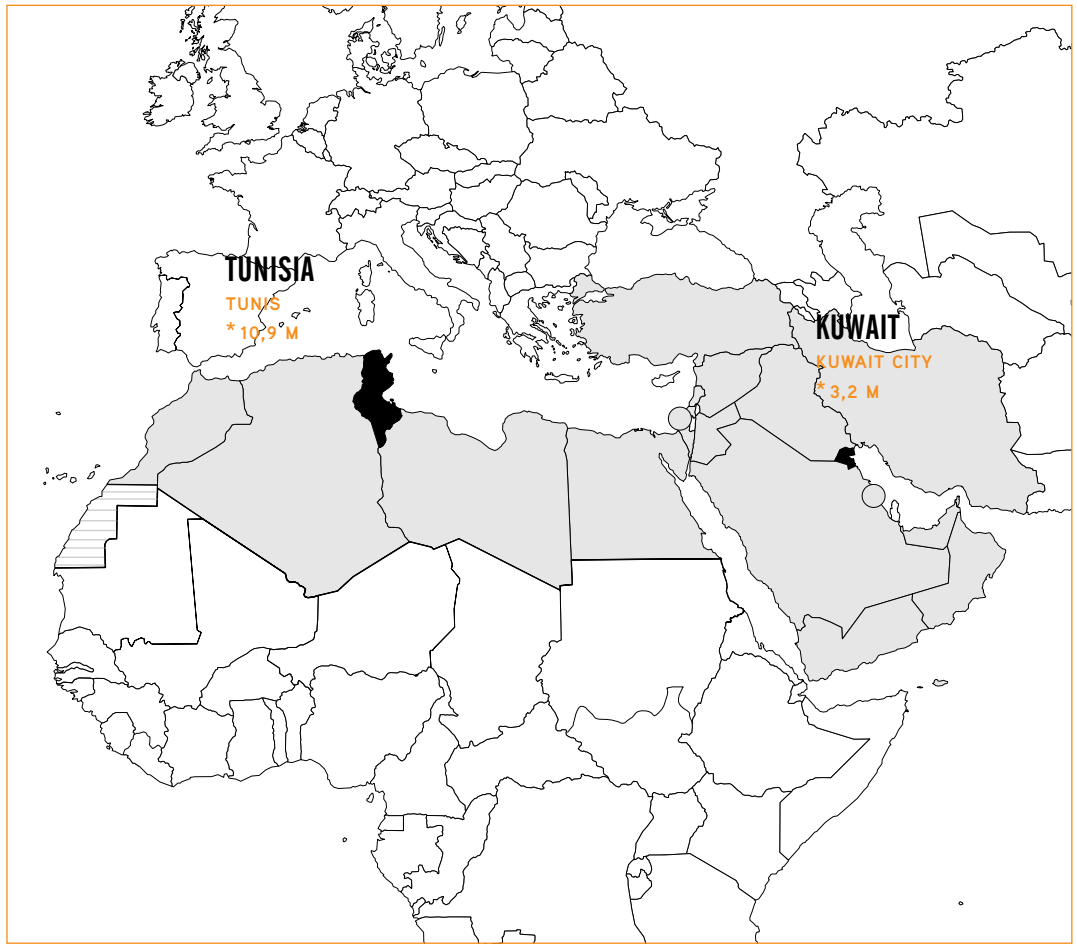
[50] Amnesty International, Report 2014/2015.

[51] www.derbuergerbeauftragte.rlp.de/icc/assisto/nav/75e/75e56f98-5304-7417-acc6-d14c1847c614&class=net.icteam.cms.utils.search.AttributeManager&class_uBasAttrDef=a001aaaa-aaaa-aaaa-eeee-000000000054.htm

[52] Amnesty International, Report 2010 "Täter Unbekannt", p. 44 et seq.

MAGHREB / MIDDLE-EAST

Kuwait. Tunisia.



Countries covered in the 2016 report

Countries covered in previous reports (2010, 2011, 2013 et 2014)

* **Population in 2015, in million of inhabitants** / Source: World Bank 2015

KUWAIT

CONTEXT

A member of the Organization of the Petroleum Exporting Countries (OPEC) and independent since June 1961, Kuwait is a petroleum-producing country and one of the richest in the world. Home to close to 3.5 million inhabitants of which 85% are Muslim (two thirds Sunnis of the Maliki school[1] and one third Duodecimal Shiites)[2], the country is characterised by gross social inequality[3] and the exclusion of an entire section of the population, the *Bedoon*[4].

On a political level, Kuwait has a democratically elected government yet it is first and foremost a hereditary constitutional monarchy[5] ruled with an iron fist by the Emirs of the House of Sabah[6] and where the three executive, legal and judicial bodies are in reality governed entirely by the royal family. In this kingdom, criticism of the royal family or of other authorities of the State or Islam constitutes a criminal offence.
In order to quash the hope born in the Arab Spring, in January 2011 the Emir Sabah Al-Sabah awarded each citizen of Kuwait a healthy payout, with the exception of the *Bedoon.* Yet despite them being prohibited, between 2011 and 2012 Kuwait saw a number of demonstrations and protests, sometimes encompassing thousands of participants, demanding in particular democratic reforms, the alternation of power and Prime Minister Nasser Al-Sabah's resignation. These movements were extremely severely repressed by the authorities, who intensified arbitrary arrests, detention and violence in response to any form of opposition.
A number of Kuwait's families still bear the scars left by the invasion of Kuwait by Iraq (2 August 1990 – 26 February 1991). Twenty-five years after the conflict, many families are still searching for their lost parents. No enquiries to determine the truth and seek justice have been opened.
In June 2015 the Imam Sadiq's mosque was attacked, resulting in 27 deaths and 227 injured parties[7]. Responsibility for the attack was claimed by the Islamic State. In response, Kuwait adopted a new anti-terrorism law on 1 July 2015, infringing on the right to personal privacy and becoming the first country in the world to subject its citizens to DNA testing[8].

Women are now permitted to work in the vast majority of jobs and notably in public service roles. They have been permitted to work as judges since 2013. However, in practice, they continue to face discrimination on a number of levels. Local and international NGOs regularly draw up inventories of violations of human rights such as attacks on freedom of opinion, expression and the right to protest, as well as arbitrary arrests and detention and sometimes even summary executions, yet they have very little data concerning torture and mistreatment.

THE PRACTICE OF TORTURE

The information available to us does not afford us an overview of the general practice of torture in Kuwait. Torture in the country is barely documented. The vast majority of information gathered concerns cases of police violence and mistreatment perpetrated during the repression of protest or in the context of the fight against terrorism.

Victims

Kuwait systematically represses all opposition, from human rights defenders, political opponents and representatives of the *Bedoon* minority to some targeted categories of the population such as members of the LGBT[9] community and individuals suspected of being LGBT, journalists, bloggers and representatives of the Shiite minority.

Over the last few years, human rights defenders engaged in taking part in international human rights events, observing peaceful protests or sharing messages on social media have regularly been mistreated by security forces.

The case of Nawaf Al-Hendal[10], a renowned human rights defender in Kuwait, is a good illustration of the situation: in January 2015, Nawaf Al-Hendal was informed that an arrest warrant had been issued for him by the security services of the Ministry of Home Affairs[11] for having posted tweets deemed "offensive" on his Twitter account regarding the recently deceased King of Saudi Arabia, Abdallah Ben Abdulaziz.
On 20 March 2015, this human rights defender made a speech on freedom of expression and opinion at the 28th session of the United Nations Human Rights Council, and denounced harassment of human rights defenders and bloggers by the authorities.

On 23 March 2015, he was arrested during a peaceful gathering at the Al Erada square in front of Kuwait City's National Assembly. He is said to have been beaten by the security forces and arrested along with 17 of his fellow countrymen, a group which included a lawyer and a man who was dragged out of his wheelchair upon being arrested. Special forces attacked suddenly, using sticks and batons to beat the protesters who had gathered at the square to demand the abolition of the practice of withdrawing citizenship, the protection of freedom of expression and assembly as enshrined by the Constitution, and the release of all detained political opponents. They were detained for several days in the Department for Criminal Investigation's premises in Al-Samiya before being interrogated[12].

Denied all rights by the state, the *Bedoon* are the stateless people of Kuwait and have intensified demands for rights since 2011. In parallel to this, repression has intensified and they are regularly subjected to violence, mistreatment and even torture, whether upon being arrested or detained. In January and February 2014, dozens of *Bedoon* people were arrested for having taken part in protests in attempts to receive nationality. Many of them have claimed to have been subjected to torture whilst in detention[13]. In March 2014, Abdullah Atallah, Abdulhakim al-Fadhli, and his brother, Abdul Nasser, *Bedoon* rights activists, were arrested, beaten and said they had been hung by the feet and sometimes left in complete darkness in their cells for hours at a time. One of them was threatened with rape during his interrogation[14].

In 2007, the arrest and presumed torture of two Kuwait journalists triggered uproar in the country and the national authorities began cracking down to fight state corruption, considering that in this case, civil servants implicated in the arrest and mistreatment of the journalists had been corrupted.
The police arrested Bashar Al-Sayegh and Jassem Al-Qames, two journalists at the Al-Jarida newspaper who were accused of having published insulting comments about the Emir Sheikh Sabah Al-Ahmed Al-Sabah. Qames told how detectives assaulted him in his car on the way to the police station, confiscating his mobile phone, camera and wallet. He said that one of the detectives forced him to remove his shirt and blindfolded him. At the police station, Qames said he was interrogated, beaten and insulted. He also said that he was forced to sign a document whilst blindfolded[15].

Migrant workers who have no official status in Kuwait are regularly subjected to mistreatment by their employers, who are not prosecuted.

Torturers and places of torture

The most frequently used premises for mistreatment and torture are on-site at protests, premises used to arrest terrorism suspects, detention centres and other secret detention centres. The perpetrators during protests are the police themselves. Anti-terrorist units as well as special forces are also regularly accused of frequently using torture and mistreatment during arrests and suspect interrogation. Other witness statements report violence and mistreatment committed by security forces or the police at checkpoints and in detention premises. During Kuwait's last universal periodic review, a local organisation, the KABEHR[16], expressed concern regarding the continuous practice of torture in detention centres.

Methods and objectives

Mistreatment and torture are often used with a view to quashing any demands and outcry from the population. In addition, security forces are regularly regarded as suspect and accused of using torture and mistreatment to obtain confessions from suspects and more particularly within the context of the fight against terrorism[17].
Little information is available on the methods of torture used. However some witness statements report systematic beatings, threatening loved ones with violence, hanging by the feet for several hours, solitary confinement for hours and even days in pitch-black cells, sleep deprivation and starvation.
On 16 September 2015, 23 members of the Abdaly cell appeared before the judge Mohammed Al-Duaij, accused, along with three other men on the run, of belonging to Lebanon's Shia militia, Hezbollah, and of collaborating with Iran and Hezbollah to organise attacks against Kuwait. The men categorically denied the allegations made against them and claimed to have suffered systematic torture including repeated violent beatings designed to force them to confess. The security forces are said to have threatened some of the accused with death and the arrest of their wives and daughters if they didn't sign the confessions[18]. A deputy of the opposition, Mr Ashour, called on the authorities to open an enquiry following the allegations of torture made by the presumed members of Hezbollah. He asked the Minster of Home Affairs to set up an enquiry commission[19].
On 24 October 2015, suspects in the Al-Sadeq mosque bombing told the Court of Appeal that they were innocent and that they had been tortured[20]. According to the witness statements taken, they were arrested without arrest warrants and the reasons for their arrest were not shared. Lawyers were not permitted to sit in on the interrogations[21].

Finally, Kuwait frequently extradites individuals to countries in which they run the risk of being tortured. On 2 November 2015, 20-year-old Egyptian student Omar Abdulrahman Ahmed Youssef Mabrouk was extradited to Egypt where he ran the risk of being tortured and tried by a military tribunal[22].

LEGISLATION AND LEGAL PRACTICES

Legal sanctioning and torture

Kuwait signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in March 1996, albeit with reservations[23] in the application of this Convention. It did not ratify the Rome Statute of the International Criminal Court, nor the Optional Protocol to the Convention against Torture.

Kuwait's constitution prohibits the use of torture and states that: "*No individual shall be subjected to torture or degrading treatment*"[24]. However, the legislation gives no precise definition of torture that complies with the definition provided by the Convention. In effect, the provisions in force contain no definition of torture and do not stipulate punishment or sentences that match the severity of these acts[25].
Articles 53, 159 and 184 of the Criminal Code of Kuwait prohibit torture and other cruel, inhuman or degrading treatment. However, despite legislative reforms, Kuwait's legislation gives no definition of torture and the sentences stipulated under the Code of Criminal Procedure do not match the severity of the crime. From 1998, the Committee against Torture had recommended that Kuwait "*plan to include in the Criminal Code a clear definition of the crime of torture*". In 2011 with Kuwait's second appearance before the Committee against Torture, the Committee expressed its concern that the provisions in force contained no definition of torture and did not set sentences in line with the severity of these acts.

In Kuwait, the maximum prison sentence applicable for unlawful arrest, imprisonment or detention is a three-year prison sentence or a 225-dinar fine. The prison sentence can be extended to seven years if these acts are accompanied by physical torture or death threats (Art. 1 and 4 of Kuwait's Criminal Code).

Prosecution of perpetrators of torture

Perpetrators of torture are almost never prosecuted in Kuwait and even less so if the victims are political opponents or *Bedoon*[26]. When local or international human rights defence organisations bring certain cases to the authorities' attention, no enquiry is ever opened. In its 2011 report to the Committee against Torture, Kuwait stated that over 500 complaints were filed with the authorities and over 300 had been processed. However, no further information was ever given.
In January 2011, the death of Mohamed Ghazi Al-Maymuni Al-Matiri, a Kuwait citizen arrested for having sold alcohol and tortured to death by the police[27], resulted in the resignation of the Minister for Home Affairs, in stark contrast to when victims are *Bedoon* or political opponents, when enquiries are not led with the same fervour. Back then, all details of the case had been made public, and we learnt that the authorities had threatened the coroner, pushing him to alter his autopsy report which demonstrated proof of torture.

Suspects are generally quick to be told the reasons for their arrest and their right to request the presence of a lawyer. Yet the Criminal Code allows suspects to be detained for four days during which the suspect may not know the reason for their arrest, and during which the authorities may deny all visitations from a lawyer or family member. During this time, lawyers are permitted to carry our procedural tasks, but may have no direct contact with their client.
Perpetrators of violence and, even less so of torture, are rarely prosecuted, even when the victims dare press charges.

On 19 October 2014, Kuwait City Court issued its verdict in the Sulaiman Bin Jasim case, in which the human rights defender was arrested on 18 April 2013 while observing a protest in the Al-Andalu district of Kuwait City. Violently attacked by special forces agents who shot at him using flash-balls, he was then detained and released on bail on 21 April 2013. He lodged a complaint against the special forces, yet his application was rejected as the investigators claimed they were unable to identify the attackers. He was accused of having taken part in an unauthorised protest and of having disobeyed orders given by the police forces, which carries a sentence of up to three years in prison. After having been postponed and delayed on numerous occasions, the case was finally brought before a court on 12 October 2014. During the hearing, Sulaiman Bin Jasim's lawyer requested the presence of the sole witness in order to continue the cross-examination, yet this was denied and the trial was postponed to 19 October 2014, the date on which the final ruling was to be made. Suleiman's lawyer was therefore denied the opportunity to present a real defence, which is in violation of the right to a fair trial. On 19 October, he was finally sentenced to one month in prison. The very next day, he appealed the decision.

Despite recommendations from international and regional bodies, Kuwait still does not possess a national human rights institution. Nor has it accepted the United Nations Committee against Torture's competence to carry out enquiries[28]. In 2013, the Arab League decided to establish the seat of the Arab Court of Human Rights in neighbouring Bahrain. However, conditions under which individuals may appeal to the court are highly restrictive, meaning it is unlikely that Kuwait's citizens may lodge an appeal in the event of a violation of human rights.

[1] This school emerged in Medina and focuses on the life of the Companions of Mohammed and the practice of the people of Medina, with the latter being the descendants of the prophet's companions.

[2] Duodecimal Shia refers to the group of Shiites who believe in the existence of the twelve imams. 90% of Shiites are duodecimal and are consequently a majority in Shia schools of thought. They are the majority in Azerbaijan, Bahrain, Iran and Iraq, and form the majority Muslim community in Lebanon.

[3] A/HRC/29/17, 13 April 2015, Report of the Working Group on the Universal Periodic Review, Kuwait.

[4] The *Bedoon* (literally meaning "those with no rights") are a community of 130,000 stateless people who are native to Kuwait yet have no right to official documents, and birth, death and marriage certificates in particular.

[5] Article 4 of the Constitution of Kuwait.

[6] Kuwait is governed by the Emir Al-Sheikh Sabah al-Ahmad al-Jaber al-Sabah, the Prime Minister is the Emir Al-Sheikh Jaber al-Mubarak al-Hamad al-Sabah.

[7] Human Rights Watch (HRW), 26 June 2015, Kuwait: Deadly Attack on Mosque, *Response of Authorities Will Test Commitment to Rights*.

[8] HRW, 20 July 2015, *Kuwait: New Counterterror Law Sets Mandatory DNA Testing Violates Right to Personal Privacy,*.

[9] Homosexuality is completely prohibited and carries a seven-year prison sentence. In 2013, officials from the Ministry for Health called on authorities to implement testing in the arrivals sections of airports in order to identify LGBT individuals.

[10] Founder and director of Kuwait Watch, a human rights defence NGO.

[11] Under Article 4 of Law 31 (1970) on crimes pertaining to State security.

[12] Gulf Center for Human Rights, 24 March 2015, *Kuwait: Nawaf Al-Hendal arrested after speaking at 28th session of UN Human Rights Council*.

[13] english.al-akhbar.com/blogs/subaltern/torture-kuwait-who-deserves-it.

[14] Al Akhbar, 21 March 2014, *Kuwait: Security crackdown on Bedoon community renews tensions*.

[15] Reporters Without Borders, 21 August 2007, Un journaliste accusé d'avoir "porté atteinte à la personne de l'Émir" pour des propos tenus sur un forum, Al arabiya, 21 August 2007, Outcry over Kuwaiti journalists' torture claims.

[16] The Kuwaiti Association of the Basic Evaluators of Human Rights, Kuwait, June 2014, Submission to the summary of stakeholders' information, UPR Kuwait 2015.

[17] Alkarama, 4 July 2008, Kuwait: Torture and ill-treatment of Mr. Al-Dhafeery, Al Akhbar, 4 March 2013, Torture in Kuwait: Who Deserves It?.

[18] Kuwait Times, 16 September 2015, *Abdaly suspects deny all charges, allege torture*.

[19] Kuwait times, 17 September 2015, *MP Ashour urges probe into "Abdaly" cell torture claims*.

[20] Kuwait Times, 25 October 2015, *Mosque bombers retract confessions, deny charges*.

[21] www.amnesty.se/upload/apps/webactions/urgentaction/2015/09/17/517245315.pdf.

[22] On 19 November 2015, the Alkarama reported on two United Nations special procedures concerning Omar Abdulrahman Ahmed Youssef Mabrouk's case. Al Karama, 23 November 2015, Kuwait: Student Extradited to Egypt at Risk of Torture and Trial by Military Tribunal.

[23] Reservations concerning the application of Article 20 and the provisions of paragraph 1 of Article 30 of the Convention on the competence of the Committee, notably with regard to receiving individual disputes.

[24] Article 31 (2) of the Kuwait Constitution.

[25] The maximum sentence for unlawful arrest, imprisonment or detainment is a three-year prison sentence or a 225-dinar fine and imprisonment of just seven years if these acts are accompanied by physical torture or death threats (Art. 1 and 4).

[26] Alkarama, June 2014, Submission to the summary of stakeholders' information, UPR Kuwait 2015.

[27] He had been burnt with a blowtorch and raped

[28] Article 20 of the UNCAT Convention

"Torture is no ordinary crime, it is a crime committed by obedience. It is not inflicted in rebellion against authority, but on the contrary, in compliance with its instructions."

Herbert C. Kelman

TUNISIA

BACKGROUND

Tunisia held parliamentary elections in October 2014 and a presidential election during the months that followed, continuing on the path towards democracy which began four years ago with the departure of former President Zine el-Abidine Ben Ali on 14 January 2011. This learning curve has been beset by errors and governmental instability, but there have also been encouraging reforms, the most important of which was the adoption of a new constitution on 27 January 2014. Along with other positive advancements, the new text improves the balance of power between the President and the head of government, who has been granted further prerogatives. It also enshrines in law equality between men and women, provides the legal foundation for a new Constitutional Court, lays out the framework for the independent Higher Council of the body of magistrates, which is no longer controlled by the executive, and guarantees fundamental freedoms. This lays the foundations for a new democracy, yet much work remains to be done in order to ensure that the provisions of the new constitution will not be purely symbolic.

It is in implementation that problems continue to arise. Not a day goes by without the media highlighting the problem of terrorism, and not a week goes by without the Interior Ministry reporting a new wave of arrests. Yet few journalists are willing to denounce what goes on behind the scenes in the fight against terrorism: the arbitrary arrests, the raids by ultraviolent police officers and the acts of torture during interrogations. Indeed, such heavy-handed measures appear to be met with the approval of a considerable proportion of Tunisia's population. Although there can be no denying the threat of terrorism, the fear is that Tunisians will have a short-term memory and fail to perceive the danger of signing a blank cheque for the police to ensure their safety.

With all too few exceptions, security officials responsible for offences prior to the revolution have held onto their jobs. The same is true of the magistrates who largely helped cover up their crimes. This raises questions about the desire of the authorities to truly eradicate torture and impunity.

PRACTICE OF TORTURE

Victims

The use of torture is less systematic than before the revolution, but it continues to be employed frequently against victims with diverse backgrounds. As under the Ben Ali regime, the primary victims are practising young Muslims with Salafist profiles suspected of belonging to terrorist groups. Since the fight against terrorism was re-initiated at the beginning of 2012, dozens and perhaps even hundreds of Tunisians have been tortured while in police custody, including minors, who are not protected from such abuse despite their young age.
Wassim Ferchichi[1], a 15-year-old minor living in Tunis, was arrested in Kasserine on 2 January 2013, on his way to a meeting with the intention of joining a jihadist group hidden in the area of Chaambi Mountain. He was brought to the premises of the national guard in Kasserine, where he alleges he was subjected to various forms of abuse for a period of two days until he agreed to sign documents in which he confessed to his involvement in a terrorist movement. Two days later, the young man was transferred to the antiterrorist brigade in Laaouina. His parents were not allowed to see him until 6 January, four days after his arrest. The officials in Laaouina asked his father to sign statements dated 4 January to make it appear that he had attended his son's interrogation, as required under law.

Antiterrorist brigades have also recently been arresting family members of wanted suspects in order to force them to give themselves up. Brothers, mothers and spouses of suspects have been arbitrarily detained and in some cases psychologically and physically ill-treated and even tortured before finally being released.

As in the past, individuals suspected of committing common law crimes continue to be frequently targeted by acts of ill-treatment and even torture if they refuse to confess. Zyed Debbabi[2] was arrested on 17 September 2013 on charges of trafficking and consuming illegal drugs. Judicial police officers from Ben Arrous tied him up in the so-called roast chicken position*, kicked him and beat him with truncheons and burned him with cigarettes until he agreed to sign a confession. The young man was eventually acquitted and released on 25 April 2014, after seven months in pre-trial detention. His torturers received no sanctions and were not even the subject of any proceedings.
Since the revolution, a large number of young men arrested for common law offences have died in police stations in suspicious circumstances which have yet to be cleared up by the judicial authorities[3].

Security forces sometimes resort to extreme violence in the streets and in police stations as part of operations to maintain law and order. The victims are suspected of participating in demonstrations or clashes in public places.
On 10 September 2013, M.A. was returning home from work when he passed close to the scene of a fight between youths from two housing estates. Police officers, most of whom were masked rapid response agents, were pursuing the youths and spraying them with teargas at the time. A group of around 15 officers approached M.A. in the street and beat him with truncheons, causing a compound fracture in his right arm. They then abandoned him in the street, half unconscious.

Over the last two years, rappers[4], bloggers and young activists[5] thought to have voiced hostile views of the Interior Ministry have been subjected to violence by security officials. Azyz Ammami, a well-known Tunisian blogger, was arrested on 13 May 2014 during a road check while travelling by car with a friend. The police officers recognised him and told him to step out of the car so they could search him in the hope of finding drugs. When he refused to be searched, they subjected him to multiple kicks and punches on the head and body while insulting him in front of his friend. They found nothing on him and so further insulted and beat him. They arrested the two young men, who were placed in provisional detention before finally being cleared a few days later.

Torture victims as well as friends and family who file complaints against those responsible face the risk of harassment, ill-treatment and even torture at the hands of the accused or their colleagues[6].
Finally, ACAT has received information about several cases of individuals being tortured simply because they had a disagreement with a public security official or a friend or family member[7].

Mourad Limem was involved in a traffic accident on 30 July 2012. A few days later, he was summoned to the traffic police station in Moncef Bey to give testimony as a victim in the accident. Inside the station, he was verbally and then physically assaulted by plain-clothes officers in the presence of the person responsible for the accident, who it turned out was a friend of the station chief. He tried to run away but the officers stopped him. He was beaten once again in the office of the police colonel. Finally, the victim was placed in police custody on charges of assaulting a member of the police force.

Torturers and torture sites

Arrests, interrogations and acts of torture carried out as part of the fight against terrorism can be associated as much with the police as the national guard, both of which fall under the authorities of the Interior Ministry. Each of these two bodies include an intelligence and investigative department with authority over a national unit for investigations into terrorist crime, which is made up of investigators who operate with the assistance of an anti-terrorist brigade (BAT) which in turn carries out arrests and transfers suspects to interrogation centres. The anti-terrorist police unit is based in the Gorjani centre, while the national guard operates out of Laaouina, both suburbs of Tunis. BAT officers and the investigators based in Gorjani and Laaouina almost systematically subject detainees to acts of torture, beginning at the time of arrest. Dozens of BAT officers burst into the home of the suspect, often in the middle of the night and ransack the premises, terrorising and sometimes assaulting family members present.

This is what happened to 25-year-old Zied Younes[8], who was arrested in his home during the night of 19-20 September 2004, at around 1:30 AM. According to his testimony, BAT officers from Gorjani threw his mother to the ground and stepped on her as he tried to explain to them that she suffered from high blood pressure and diabetes. They then held a pistol to his temple and ordered him to take them to the home of a suspected accomplice.

The violence continues and even intensifies during police custody in interrogation centres. A large number of detainees are kept locked up at the Gorjani or Laaouina interrogation centres throughout their time in custody, where they are subjected to torture day and night, in most cases for several days, until they agree to sign a confession which they are usually not even allowed to read. Some are transferred every evening to the detention centre in Bouchoucha (Tunis), where they spend the night. There they are often ill-treated, considered as terrorists, and, like all those remanded in custody, kept in deplorable conditions of detention as a result of overcrowding and a lack of access to medical care[9].

The statutory three-day duration of police custody is usually extended to six days by the public prosecutor, in accordance with the law. Since the revolution, the authorised duration is rarely exceeded. However, during the six days provided for in the legislation, detainees are not entitled to any assistance from a lawyer and are subjected to the arbitrary control of their torturers. The abuses end a day or two before the suspect is brought before the pre-trial hearing, to ensure that any wounds can begin to heal.

Sami Essid was arrested by the anti-terrorist brigade in Laaouina on 20 August 2014 and was then tortured while in custody until he was forced to sign a confession[10]. He claims he was slapped many times, deprived of sleep, water and food, exposed to the hot sun for hours on end, and subjected to a punishment known as *falaqa**. He also suffered from hallucinations and so believes he was drugged. These acts of torture were stopped during his last two days in custody, allowing the traces to disappear.

As well as specialist anti-terrorist units, officers from the regular police force and national guard also regularly perpetrate acts of ill-treatment and even torture on police premises against people suspected of common law offences who have been placed in custody, but also in public places at the time of arrest or as part of operations to maintain law and order.

Wajdi and Haythem Ben Alouch, two brothers suspected of consuming and trafficking illegal drugs, were arrested during the night of 2 March 2014 by officers from the Tunis narcotics brigade. According to their lawyer, during their first night in custody, officers removed their clothing, beat them with sticks and kicked them all over their body and in the face, and threatened to rape them with a baton in order to secure signed confessions.

Finally, although less common than during the period before the revolution, prison wardens are also responsible for acts of ill-treatment and torture against prisoners in an effort to assert their authority or in order to punish those considered disobedient.

Mahrane Mathlouthi is currently serving a five-year prison sentence for a common-law crime. At the prison in Mornaguia, he intervened to prevent fellow prisoners from raping one of his friends. Some of the wardens kicked, slapped and beat the detainees with truncheons. Mahrane and his friend spent eight days in solitary confinement. In May 2014, along with several fellow detainees, he was transferred to Mahdia prison, where they were all beaten by prison wardens upon their arrival.

Methods and objectives

The torture methods most commonly used by members of the security forces are as follows: slapping, kicking and punching; beatings on all parts of the body using truncheons, iron bars, pipes or the butt of a weapon; suspension in the "roast chicken" position; lashes on the soles of the victim's feet (*falaqa**); shocks using electric batons; cigarette burns; rape using batons; threats of death and rape made against the victim or family members; deprivation of food, water, sleep and medical care.

Many detainees arrested under anti-terrorist legislation have reported that they

were forcefully immobilised for hours on end, kneeling or standing against a wall until they fainted; failure to comply would result in beatings.
The abuses perpetrated in police custody are designed to force the detainees to sign a confession or hand over information. They usually end once the interrogator gets what he wants. The main aim of torture in prisons, public places or in the context of a dispute between a citizen and a security officer is to punish the victim for his behaviour.

LAW AND LEGAL PRACTICE

Legal condemnation of torture

In 1988, Tunisia ratified the United Nations Convention against Torture and recognised the competence of the Committee against Torture to examine individual complaints.
On 29 June 2011, the Tunisian State ratified the Optional Protocol to the Convention against Torture, thereby agreeing to put in place an independent national preventive mechanism (NPM) with authorisation to visit places of detention. More than three and a half years later, the NPM has yet to be put in place due to a lack of suitable candidates for certain posts.
It was more than 10 years after it ratified the Convention that the Tunisian government introduced the crime of torture to its criminal code (Article 101(b), which was added under law No. 89/1999). This article was amended after the revolution by decree-law no. 106 (22 October 2011), ostensibly to reinforce the crackdown on the torture phenomenon. The result is a definition of torture that strays even further than the previous one from the international definition contained in the Convention against Torture.
The new version of Article 101(b) stipulates that "The term torture refers to any act through which physical or moral pain or acute suffering is intentionally inflicted on a person for the purposes of obtaining from that person or from a third party information or a confession concerning an act which one of the parties has committed or is suspected of having committed". Intimidation or harassment of an individual or a third party for the same purposes is also considered to be an act of torture. The definition also includes pain, suffering, intimidation or harassment inflicted for any reason based on racial discrimination.
The definition of torture adopted in 1999 already included a specific list of objectives for which acts may be carried out, in contrast to the definition contained in the Convention against Torture, which does not give an exhaustive list of the objectives behind torture. The new definition adopted in 2011 is even further removed from the international definition insofar as it considerably restricts this list of objectives. Pain or suffering inflicted for the purposes of punishment are now no longer considered to constitute torture. This excludes from the scope of the article acts of violence perpetrated in prison, as well as those inflicted by police officers, for example following a dispute with a citizen, provided the objective is not to obtain a confession or other information. Furthermore, prior to the 2011 reform, pain or suffering inflicted "for any reason based on any form of discrimination" were considered to constitute acts of torture, whereas this discrimination must now be racial in nature, thereby excluding discrimination on religious grounds, for example towards Salafists, a much more common form of discrimination. However, the list of acts that can be described as torture was extended by the 2011 reform. Intimidation and harassment were added to physical or moral pain or acute suffering, which goes well beyond the acts sanctioned by the Convention against Torture.

Article 101(b) now stipulates that "any public official or other official working in a public capacity who orders, incites, authorises or ignores torture in the course of or in connection with their duties shall be considered as a torturer". The sentence for this crime is eight years' imprisonment plus a fine of 10,000 dinars (around €4500). Article 101-2 adds aggravating circumstances, and the following paragraph contains clauses relating to exoneration and reduced sentences to encourage denunciation of this crime[11].

Acts of torture carried out before the introduction of Article 101(b) to the criminal code in 1999 should not in theory be sanctioned on the basis of this legislation, in accordance with the principle of the non-retroactivity of criminal laws. However, this principle appears to be undermined by Article 148-9 of the new constitution, which provides that in the case of crimes subject to the mechanism of transitional justice (see below), which include torture, "the non-retroactivity of laws, the existence of a prior amnesty, the force of res judicata, or the statute of limitations on a crime or sentence" cannot be relied upon in court.

Punishment of perpetrators of torture

On 15 December 2013, the constituent national assembly passed a law on transitional justice. This law led to the creation of a committee of truth and dignity (IVD) made up of 15 members, whose main role is to investigate electoral fraud, corruption and

serious human rights violations[12] perpetrated by or with the acquiescence of State officials between the arrival to power of Habib Bourguiba in 1955 and the promulgation of the law in December 2013. Once the case has been investigated, the committee transfers the file to special chambers set up within Tunisia's courts of first instance and overseen by magistrates who did not take part in political trials under the Ben Ali regime.

The IVD was established in May 2014, and these special court chambers were created four months later, although they have not yet begun their work. The legislation grants the committee no more than five years from the date of its creation to determine the truth about violations perpetrated over a period of nearly 60 years, rehabilitate the victims, compile and protect the archives, and suggest reforms with a view to ensuring that such repression will not be repeated. This is a colossal mandate, only part of which relates to the committee's highly important investigative work into serious crimes. We will need to wait a few years before drawing any conclusions about this process of transitional justice.
Until such time as the IVD and the special chambers begin their work, it is up to the civil, and in some case military[13], courts to provide justice to the victims of torture. So far, they have achieved very little. There has been one single conviction for the crime of torture, perpetrated in 2004, since the revolution. In that case, the accused parties were given a suspended sentence of just two years in prison, following an appeal.

Some courageous magistrates are currently trying to conduct serious investigations into complaints made by torture victims, despite the omertà imposed by the all-powerful security forces. However, such positive signs are not sufficient to be truly encouraging. The registered complaints of acts of torture committed both during the 1990s and 2000s and after the revolution are all too rarely investigated, and when they are the investigation is often undermined by irregularities which in some cases reflect the manifest intentions of police officers or pre-trial judges to protect those responsible and their accomplices within the body of magistrates and doctors. In several cases, the investigating magistrate has done no more than arrange a brief meeting between the victim and the accused, before deciding to end the investigation due to a lack of proof or to effectively abandon it without even seeking medical expertise or listening to witnesses[14].
In some cases, the senior police authorities have refused to hand over the names of officers present on the day the torture is alleged to have taken place. When the police officers responsible are identified, they have sometimes simply refused to appear when summoned by the judge. Several victims have also reported being approached by their torturers and encouraged to withdraw the complaint. Others experienced more brutal tactics involving threats and police harassment[15]. The situation facing victims, most of whom are economically and socially marginalised, is particularly fraught. It is easy for the authorities to fabricate false accusations to have them arrested and put pressure on them to give up their search for justice.
Finally, in the few cases where the pre-trial investigation was completed, the judge understated the gravity of the offence, describing it as an act of violence rather than a crime, thereby ensuring that those responsible are given a lesser sentence.
These inadequate achievements in the fight against impunity can probably be explained in part by the large number of cases, which the judicial authorities are unable to process in a timely manner, but also and perhaps above all by the fact that the vast majority of magistrates remain unchanged. They are not accustomed nor do they have the courage to investigate crimes committed by security officials who have held onto their jobs or hold positions of influence. This further emphasises the need to raise questions about the role of those magistrates who have accepted confessions obtained under torture and turned a blind eye to the abuses committed. Among those currently investigating acts of torture, we can be certain that many have been guilty of such complicity.

[1] ACAT-France, *Un mineur victime de torture,* urgent appeal dated 4 June 2014.
[2] ACAT-France and TRIAL, *Justice en Tunisie : un printemps inachevé,* 2014, pp. 20-21.
[3] ACAT-France, *Tunisie – Justice : année zéro,* 2015, p. 26.
[4] Human Rights Watch, *Tunisia: Rappers sentenced to prison,* 5 September 2013.
[5] Observatoire pour la protection des défenseurs des droits de l'Homme, Plusieurs défenseurs des droits humains agressés par les forces de l'ordre et victimes de poursuites abusives, communiqué dated 1 October 2014.
[6] ACAT-France, *op. cit.,* p. 15.
[7] Kapitalis, *Le calvaire de Yacine, agressé par un policier à Hammamet,* 15 August 2014.
[8] ACAT-France, *Une nouvelle victime de la lutte antiterroriste,* urgent appeal dated 6 October 2014.
[9] Human Rights Watch, *Cracks in the System: Conditions of Pre-Charge Detainees in Tunisia,* 2013, p. 33.
[10] ACAT-France, *Torturé au nom de la lutte antiterroriste,* urgent appeal dated 25 October 2014.
[11] ACAT-France, *op. cit.,* pp. 37-42.
[12] Crimes of torture, enforced disappearance, voluntary homicide, sexual violence and death sentences handed down at the end of unfair trials.
[13] ACAT-France, *op. cit.,* pp 20-21.
[14] ACAT-France, *op. cit.,* pp. 27-28.
[15] ACAT-France and TRIAL, *op. cit.;* see the cases of Ramzi Romdhani, Slim Boukhdhir, Sidqî Halimi and Zyed Debbabi.

elsewhere in the continent

BAHRAIN

The human rights situation in Bahrain is worrying, and ACAT is forced to regularly repeat its calls for the situation and support for victims to be improved. Bahrain continues to apply a policy of systematic repression of human rights' defenders, political opponents and other individuals deemed to pose a threat to the regime. Since the beginning of the 2011 wave of peoples' protests, arbitrary arrests, unfair trials, deprivation of nationality and heavy-handed dispersion of protests have been common practice. Set against this backdrop, torture has been erected as a way of maintaining power and control.

The case of Mohammed Ramadan and Husain Ali Moosa is typical of the system. On 16 November 2015, the Court of Cassation confirmed the death sentences they received a year prior, based on confessions obtained by torture. The two accused parties were arrested in 2014 and tortured in a bid to extract confessions that they took part in a bomb attack in February 2014. During his interrogation, Husain Ali Moosa claims he was suspended from the ceiling for three days and beaten with sticks. Mohammed Ramadan says his hands were handcuffed behind his back and he was punched, kicked and beaten with a cable. He was forced to remain standing and was beaten each time he attempted to sit. Officers allegedly insulted and humiliated the two detainees, and threatened to rape their sisters and wives. In their trial, the two accused men retracted their confessions and claimed they had been tortured. Rather than open an inquiry, the judges sentenced them to death. In cooperation with other international NGOs, ACAT demanded that justice be secured for these victims. The United Nations and European Union also called on the Bahraini authorities - in vain.

ACAT regularly takes action against the widespread impunity here. On 29 June 2011, the country's Sovereign adopted a decree ushering in the Bahrain Independent Commission of Inquiry (BICI) tasked with leading inquiries into the events that occurred in February and March of 2011. In its report published in November 2011, the BICI (comprised of eminent independent and international lawyers) drew up an unflinching and objective overview of all serious breaches of human rights committed by the government. To date, most of the recommendations issued by the BICI remain unimplemented, and impunity is still the status quo. The vast majority of complaints of torture are not processed, and on the rare occasions they are, they give way to biased inquiries and derisory sentences.

Among the victims mentioned in the BICI's report, ACAT supports the 13 Bahraini human rights defenders and political opponents who were arrested, tortured and sentenced in 2011, and who remain in prison despite the United Nations' condemnations.

MOROCCO

Morocco has made progress in the fight against torture, although these developments remain symbolic. In 2015, the State ratified the Optional Protocol to the Convention against Torture providing for the implementing of a national prevention mechanism. In addition, several complaints of torture have resulted in investigations being opened. Yet these inquiries remain few and far between and unsatisfactory, doing little to eradicate the persistent practice of torture. Perpetrators enjoy the benevolence of the authorities who have intensified measures of reprisal against victims who file complaints over the past few years, as illustrated by the case of Wafaa Charaf, who was sentenced to two years in prison for "*false allegations and verbal assault of a police officer*" after having filed a complaint of torture. The Ministry of the Interior also filed a complaint for public insult, defamation and other charges against ACAT, Adil Lamtalsi and Naâma Asfari, two victims on whose behalf the association had filed complaints of torture.

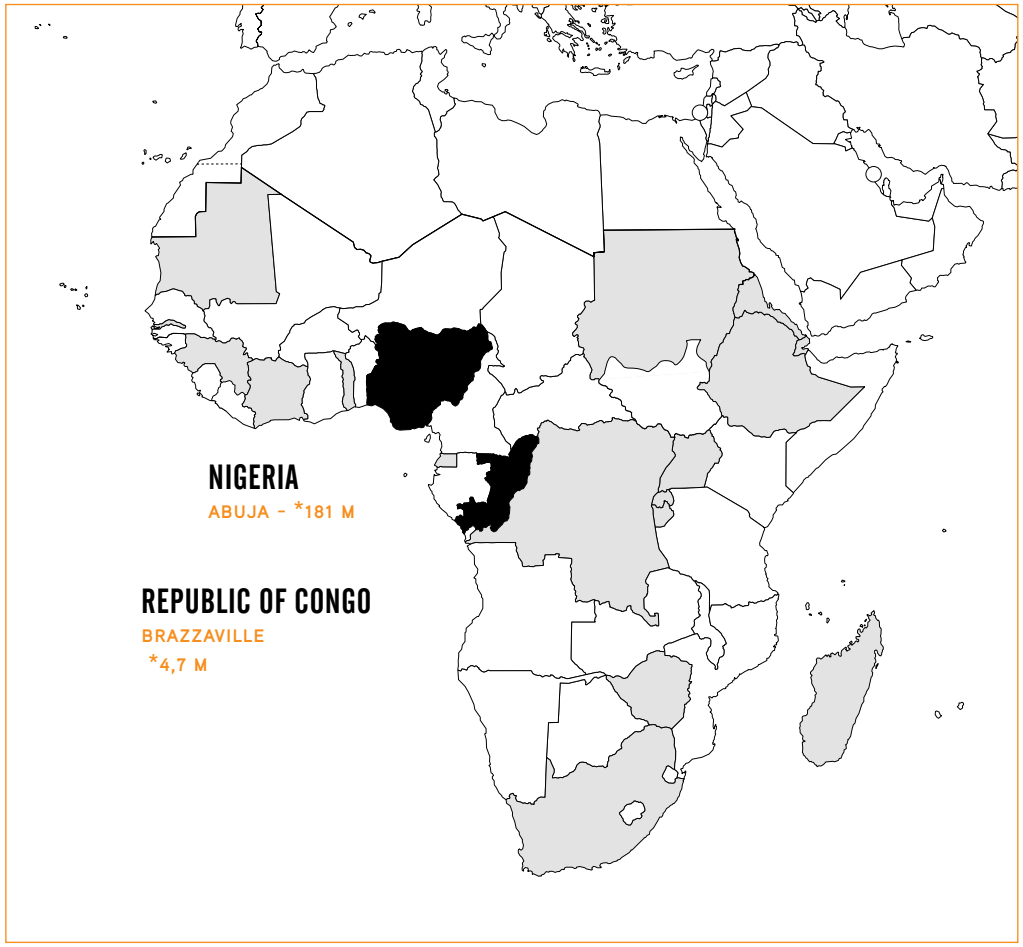
In the first quarter of 2015, ACAT rallied against the adoption of an Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between France and Morocco. This text contains provisions that hinder access to the French legal system for victims of crimes, including torture, committed in Morocco. In particular, it undermines confidentiality in investigations and provides for the French justice system deferring to the jurisdiction of the Moroccan justice system. Although the Protocol was ultimately adopted by the Parliament, the campaign led by NGOs drew the attention of magistrates to the inherent dangers of the text.

ACAT continues to support defenders of human rights and activists fighting for independence in Western Sahara, with both groups blighted by consistent repression carried out by the security forces. The association intervened on behalf of Leila Leili, a member of the Sahrawi Association of Victims of Grave Human Rights Violations (ASVDH), who was a victim of cruel, inhuman or degrading treatment on 18 August 2014 at Casablanca's airport upon returning from the Sahrawi refugee camps in Tindouf (Algeria). Female police officers insulted, beat and undressed her by force before carrying out a body cavity search. Leila Leili then went to the police station where officers refused to record her complaint.

Since 2010, ACAT has also supported Gdeim Izik prisoners, incarcerated on the basis of confessions obtained by torture following their arrest as part of the dismantlement of the Gdeim Izik Sahrawi protest camp. In addition to activist rallying and advocacy action, ACAT is providing Naâma Asfari with legal support, filing a complaint for torture on his behalf in France and before the United Nations Committee against Torture.

SUB-SAHARAN AFRICA

Republic of Congo . Nigeria .



Countries covered in the 2016 report

Countries covered in previous reports (2010, 2011, 2013 et 2014)

* **Population in 2015, in million of inhabitants** / Source: World Bank 2015

REPUBLIC OF CONGO

CONTEXT

The Republic of Congo is a Central African country ruled with an iron fist by Denis Sassou Nguesso, who has been in power for over thirty years[1]. In 2014, he embarked on a race against the clock to establish a new constitution. His aim was to be able to run for president in 2016, which the constitutional framework in force at the time prevented him from doing[2]. In October 2015, in breach of Congolese law and the country's international commitments[3] and in a highly tense political climate, the Congolese authorities adopted a new constitution tailored to suit the current president following a referendum that yielded questionable results.
Denis Sassou Nguesso's hunger for power maintains a permanent climate of political tension in the country, which already resulted in serious violations of human rights in October 2015 (repression of opposition rallies with excessive use of force and lethal weapons) and runs the risk of triggering many more to come.

THE PRACTICE OF TORTURE

Torture in Congo is a blatant reality. Reports from human rights defence associations regularly publicise witness accounts from torture victims. Yet the Congolese authorities see these reports as mere fantasy and a desire to harm the country, made up by dissidents and supported by enemy countries. In their own words, "fewer and fewer cases of torture are being reported"[4] by the law enforcement agencies.

Victims

The routine use of torture potentially endangers all persons arrested and kept in custody in the country. Most of the victims of torture are young, poor men suspected of having committed common law crimes. Citizens of other African countries, particularly those from the neighbouring DR Congo and Rwanda, are regularly harassed and bullied by the security forces. In inflicting this abuse, the security forces sometimes use physical violence.

Cases of torture involving common law prisoners are only rarely documented by human rights' defence associations, except in cases where the victims and families rally together and appeal to the courts or when the torture results in death.
In January 2015, the Congolese Observatory for Human Rights (OCDH)[5], a partner of the ACAT, publicised its annual report[6]. The report presented around twenty cases of torture that had been documented and processed by the association between 2013 and 2014. Below are a few examples of torture perpetrated in 2014: 22-year-old Gaël Mboutou was beaten by police officers before witnesses in the Nganda Ma Luc bar in Pointe-Noire, on 17 February 2014. He was then taken to the Mpaka police station and tortured to death[7]. Rwandan citizen Joseph Nkundimana was tortured on 14 November 2014 upon being arrested at the "Texaco roundabout" in Brazzaville. He was also subjected to violence in the police car taking him to the Mfoa central police station[8].

Racism towards citizens of the Democratic Republic of Congo (DR Congo) living in the Republic of Congo is blatant, and inflicted on vast swathes of society. As part of the "Mbata ya bakolo" operation[9] designed to combat criminality and reduce illegal immigration, between April and September 2014 the police forces inflicted physical and sexual violence on a number of DR Congo nationals[10].

A number of people were beaten by police officers upon their arrest. According to a Red Cross official: *"The boy's throat was swollen, as if someone had tried to strangle him. The police officers had beaten him bloody. Another boy had been burned with an iron on the back and stomach"* [11]. At least four young girls and women were raped by the police. On 25 April 2014 around midnight, ten police officers in ski masks broke into a private home belonging to DR Congo nationals in Brazzaville and raped a girl of 5 and gang-raped a young girl of 13. "*You are Zaïroises, you must go back home and leave everything you have here. We're going to kill you.*" Lydia, 34, DR Congo national living in Pointe-Noire[12]. After having threatened her, the Congolese police began beating her and her four female friends. They then raped the women one at a time.

According to Amnesty International, the police violence committed within the context of this operation is generalised attacks likely to constitute crimes against humanity[13].

Due to President Denis Sassou Nguesso's desire to change the constitution to maintain his position of power, from 2014 the political and security situation began to consistently deteriorate and the authorities commenced a campaign of reprisal against dissident voices. A number of meetings and gatherings planned by the opposition were prohibited or obstructed, in a number of cases, using violence. The use of torture against opponents and their sympathisers increased, notably those from the Republic Front for the Respect of the Constitutional Order and Democratic Transition (FROCAD)[14].

In April 2015, more than a dozen sellers of DVDs that included promotional videos in favour of not changing the constitution, were arrested by police officers in various locations in the town of Pointe-Noire for "*offences against the Head of State and incitement to revolt*". Many of them were mistreated while detained. Three DVD sellers appear to have died during their brief detention period at the central police station of Pointe-Noire, including 28-year-old Régis Batola, who died on 13 April 2015. The police officers are believed to have left his body in the morgue after having attempted in vain to take him to a hospital[15].

Between 17 and 21 October 2015, a number of marches organised by opponent civilians were systematically repressed by security forces in a number of the country's towns and cities. Soldiers are thought to have been sent out armed with war weapons to prevent marches and gatherings, despite the fact that the country was neither "*in an emergency state*" nor "*under siege*". Over twenty people were killed in Brazzaville and Pointe-Noire after having been shot with real bullets by the security forces. A dozen other protesters were injured by bullets in similar circumstances. Dozens of people were arrested and kept in arbitrary detention. A number of them were subjected to violence upon arrest or during detention. This was the case for Simon Massamouna, who was questioned by plain-clothed policemen in the Vindoulou district in Pointe-Noire on 20 October 2015. He was forced into a police vehicle after having been physically attacked. In detention, he was hit in the face with a pistol among other objects. Four hours later he was released with a swollen face and skull and missing two teeth[16].
Even in France, Congolese authorities have no qualms in using violence against potential opponents. On 9 October 2015, Andréa Ngombet – a young online activist and member of the opposition[17] – was beaten inside the Congolese Embassy in Paris after having spoken out against the changes to the Constitution. *"Two agents from*

the consulate grabbed me and although I didn't put up a fight, they held me to the ground and one of them smashed my face down. I instinctively protected my neck. My eye and nose were injured [from kicking] and I began to bleed heavily"[18].
Independent journalists who denounced political violence in 2014 were punished too. In the night of 9 to 10 September, two days after having published photos of injured opponents on Facebook, Elie Smith was violently attacked in his home by five armed men, dressed as civilians but carrying police ranger weapons[19]. His sister was gang-raped while the journalist was threatened with death. The photos published by the journalist had angered the police's representative[20].

Torturers and places of torture

According to the Congolese authorities, police officers and gendarmes follow torture-specific modules as part of their training. *"Yet, the results achieved still do not meet expectations",* said these same authorities in February 2014[21]. In reality, the police work with individuals "*who have no training in exercising their responsibilities"*[22]. "*There is no permanent training programme in place for security forces"*[23]. The technical committee for the dissemination of international humanitarian law and human rights, established in 2011, is not operational due to insufficient funding. Representatives of public law enforcement only have a vague idea of the Constitution's content on torture. Equally, they have little knowledge of the basic rules and procedural safeguards surrounding arrests, interrogations, custody and detention.
Agents working for public law enforcement very often know no other method of investigating than torture. The civil war that took place from 1997 to 1999 left indelible scars on the structure of public administration in the country. In terms of the criminal police, most trained officers lost their jobs at the end of the war, jobs that were given instead to former militia of Denis Sassou Nguesso, the victor, thus allowing the latter to "recycle" his soldiers back into the police system.
Some chief officers in the police system are believed to have taken part in committing acts of torture. The General Director Jean-François Ndenguet, for example, was directly involved in the "Disappeared of Beach" case (over 350 forced disappearances of young men in May 1999)[24].
In April 2015, the Congolese authorities hesitantly admitted to the Committee against Torture that "there may be cases [of torture] in police stations, but not in prisons"[25].
In reality, torture is a common practice within police stations, particularly in the Groupement de Répression du Banditisme (GRB) [anti-organised crime squad][26].
In prisons, detainees also face violence committed by prison staff or by fellow prisoners following instructions given by members of prison staff[27].

Violent interrogations are commonplace in the cells of the Directorate-General for Security (DGST), located in the basement of its building in Brazzaville[28].

Congolese soldiers deployed in external operations also commit acts of torture. On 24 March 2014, a MISCA (International Support Mission to the Central African Republic) vehicle was ambushed by shooting from anti-balaka fighters in Boali, causing the death of a Congolese soldier and injuring four others. A group of 40 Congolese soldiers then surrounded the home of a local anti-balaka chief, the self-proclaimed general Maurice Mokono. A boy who had attempted to warn the general was killed by gunfire. At least eleven Central Africans who were in the general's home, including four women and a child, were arrested, along with the general himself. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), who rolled out on-the-ground investigations on three different occasions, the Congolese contingent were guilty of the torture and extrajudicial executions of these eleven people. The OHCHR has stated that it has precise witness statements relating to these facts[29].

Methods and objectives

Torture is used as a method of extracting confessions or punishing recalcitrant detainees and those considered to be dissidents. It is used in particular during custody, in interrogations and upon transferring prisoners to detention premises.
In common law cases, detainees are subjected to psychological and physical cruelty following which they often end up acknowledging the crimes they are accused of. These confessions are frequently used as proof before the courts, as "*there currently exists no legislative or regulatory provisions prohibiting the use of information obtained through torture",* according to the ACAT-Congo[30].
The torture methods used are fairly basic: beatings (using fists, boots, firearms, truncheons, belts, whips, pieces of wood, crowbars), stress positions (handcuffing detainees to an iron bar suspended mid-air for several hours), psychological pressure (sleep deprivation by spraying detainees with cold water in the middle of the night and "*driving suspects out to a graveyard, blindfolding them and putting them in a deep hole")* [31].
On 30 April 2013, Samson Moungoto, suspected of complicity in the robbery of a laptop, was arrested by officers from the Diata police station in Brazzaville. During custody on 1 May he was stripped, his hands and feet cuffed, and suspended between two posts via a thick iron bar placed between his legs. He was then beaten, including with a crowbar. The torture lasted around three hours[32].

Torture is also used to hold foreigners to ransom. On 4 June 2014, Ruzindana Silas, a 59-year-old Rwandan refugee, was arrested early in the morning in his shop in the Mikalou district of Brazzaville by agents of the 3rd company of the response unit and was taken to the Kibelila police station. A police officer is said to have told him: "*If you don't get your money out, we're going to torture you".* Ruzindana Silas was stripped before being beaten by both police officers and fellow detainees. He was suspended "*upside down, hands twisted behind".* He was released late in the morning after his spouse provided 100,000 FCFA[33].

In a number of cases of torture resulting in the death of detainees, the police officers attempt to muddy the facts and minimise reality.

It isn't rare to see police station records showing no mention of arrested persons having been to the station or having been detained there. When the OHCHR opened enquiries in an attempt to find Bouzeze Milandou Chardin, arrested on 26 December 2013 in the south of Brazzaville, the organisation noticed that the Mampassi police station records showed no record of a Bouzeze Milandou Chardin ever having been taken to or held in the station, suggesting that the latter had never been detained on the premises[34].

This practice is in breach of the law. The criminal proceedings code requires all judicial police officers to "*record on the statement of the grounds for holding in custody, for all persons in custody, the date and time on and at which they were taken into custody as well as the date and time on and at which they were either released or taken before a competent court or detained with an arrest warrant"*[35].

LEGISLATION AND LEGAL PRACTICES

The legal status of torture

On a national level

According to the Constitution adopted in October 2015, "all acts of torture and cruel, inhuman or degrading treatment are prohibited" (Article 11). "As the guardian of individual freedoms and liberties, the judiciary ensures compliance with this principle under the conditions set out by the Law" (Article 11) and "Any individual, any agent of the State, any agent of the local authorities and any public authority guilty of an act of torture or cruel, inhuman or degrading treatment, whether on their own initiative or under instruction, shall be punished in accordance with the Law" (Article 14).

Torture is a crime that is punishable under the criminal code as aggravating circumstances leading to murder (Article 303) and independently as intentional serious bodily injuries (Article 309 to 312) and crimes against decency (Articles 330 to 333)[36]. Yet it is clear that even in this criminal code, no definition or specific incrimination exists for torture. The same applies to the criminal proceedings code.

According to the Congolese authorities, plans to reform the codes are underway and should have been finalised by December 2015[37]. The Congolese authorities have committed to using this "*wide-scale reform"* as an opportunity to create a specific infraction for torture that fully encompasses the definition provided in the Convention against Torture. Draft legislation is said to already have been completed. This process began in 2008. In the eight years since, no text has been published.

On an international level

On an international level, the Republic of Congo ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in August 2003. It signed the Convention against Torture's optional protocol in September 2008, but remains to ratify it.

It submitted its initial report to the United Nations' Committee against Torture[38] in February 2014, a decade late. This is a basic 23-page document that contains no statistics or real examples of what the Congolese authorities are actually doing to combat torture in their country.

In April 2015, the Committee against Torture spent two days examining torture in the Republic of Congo. It was quick to strongly express its concerns for the "*many allegations of torture and mistreatment carried out in most of the country's detention premises".* During this examination, the Congolese authorities stated that they were investigating the possibility of ratifying the Convention against Torture's optional protocol. They also indicated that they had started to look at "*recognising the competence of the Committee against Torture in receiving and examining communications submitted by individuals under Article 22 of the Convention"*[39].

Prosecution of the perpetrators of torture

The right to file a complaint is afforded to all individuals claiming to be the victims of torture. To this effect, complaints may be lodged directly with judiciary police officers, the prosecutor's office or investigating magistrates.

In reality, victims of torture rarely file complaints, because of a lack of knowledge of the possible avenues of recourse, out of fear of reprisal, because of a lack of confidence in the justice system, and also because of a lack of financial means.

To this date, no case of torture documented in the last few years by Congolese human rights defence associations have resulted in proceedings. The rare com-

plaints filed by victims or their families have never resulted in any real legal investigation and the perpetrators of torture have never been put on trial. At the most, they have been issued with administrative sanctions. Impunity has therefore remained the status quo for decades.

Should a torture victim one day see justice done, the State currently does not provide compensation funds or rehabilitation or recovery programmes for the victims. This situation of impunity also affects acts of torture inflicted on foreign nationals in Congo and abroad.
The Congolese authorities offer no concrete legal assistance to the victims: Law No. 001/84 of 20 January 1984 concerning the establishment of the legal assistance in question remains to be instated 32 years later, due to a lack of implementing legislation that would render it operational.
The Congolese authorities have not put in place any means to prevent acts of torture within law enforcement bodies. No detention premises surveillance mechanisms capable of preventing torture exist in the country. Associations are regularly denied access to jails, notably those falling under the remit of the Directorate-General for Security (DGST).

When no court is seized, the National Commission for Human Rights (CNDH)[40] is empowered to conduct investigations upon its own initiative or upon individual or collective citizen request into any allegations of violations of human rights. The CNDH has the power to make recommendations to the Ministry for Justice, but not to directly take cases to court for the latter to commence legal proceedings. In reality, the CNDH has never taken up cases of torture and does not exercise its responsibility of surveillance of detention premises. It "*does not fulfil its functions and does not show the independence required for its proper functioning*"[41].
The associations that support victims of torture are often accused of being opponents or of serving foreign interests. Their work is rarely taken into consideration by the Congolese authorities, and their lack of funding prevents them from providing long-term and regular support and follow-up of victims.
To date, victims of torture are essentially left to their own devices.
The competent judicial bodies appear to never investigate acts of torture committed by agents of the security forces of their own volition, even when the facts are known, publicised or denounced by human rights defence associations.

Makoundi Kasuki was violently beaten in the street by police officers on 26 May 2012. He died two days later in the Ouenze Mandzandza police station. He was provided with no health care despite the violence he was subjected to. The death certificate drawn up at the municipal morgue of the Brazzaville health and university centre (CHU) states that Makoundi Kasuki died as a result of the beating he received. No enquiry was led by the justice system[42].
Destin Mpikinza and Prudent Kikeni were tortured on 14 October 2013 by police officers from the anti-organised crime squad (GRB) followed by agents from the Directorate-General of Security (DGST). No enquiry was led by the justice system[43].

The few complaints filed by victims of torture are handled by police officers or gendarmes, who are often not competent in processing facts relating to torture and lack independence of action with respect to the hierarchy. The upper echelons of the security forces cover for torturers. As a result, a great many complaints never make it past the preliminary investigation stage.
Staff responsible for applying the law is insufficient in number, resulting in complaints being processed slowly at best, and being ignored at worst. According to the Congolese authorities, a lack of magistrates is the primary cause for slow proceedings. In addition, the judicial bodies are seriously lacking in independence from the executive powers, and do not dare to rule against members of the defence and security forces. As a result, a number of complaints of torture remain pending.
Bill Baku was arrested by the police for "*failure to execute the clauses of a contractual agreement*" and was taken to the Brazzaville central police station on 2 February 2013. During detention he was subjected to acts of torture that led to his death on 6 February 2013. Despite the fact that his body bore traces of violence, no proceedings were commenced to determine the cause of death. According to the victim's parents, the complaint filed with the Public Prosecutor's office remains missing[44].

When the courts attempt to summon police officers or gendarmes suspected of torture, the latter frequently fail to attend with the "*tacit complicity of hierarchical superiors and the legal system which impede proceedings*"[45]: Antoine Moungoto was tortured to death by police officers in Mongo on 20 July 2013. The prosecutor of the Republic commenced proceedings and asked the victim's parents to file a complaint. No follow-up occurred. The police officers, the presumed perpetrators of this crime, were simply transferred to other areas of the country[46] where they continue to exercise their duties as police officers with no repercussions.

In its initial report submitted to the Committee against Torture on February 2014, the Republic of Congo indicated that torture is increasingly being punished by the hierarchy[47]. In April 2015, the Congolese authorities told the Committee against Torture that 18 police officers "whose deviant behaviour was in breach of human rights and public liberties" had been struck off and referred to the Prosecutor of the Republic

for criminal prosecution. No further information was provided. Because of a lack of any specific documentation, the Committee against Torture stated in its concluding observations given in May 2015[48] that it was unable to vouch for the veracity of these statements.

In September 2015, a joint investigation commission comprised of officials from the Republic of Congo and the Democratic Republic of Congo (DRC) was said to have been formed to investigate allegations of violations of human rights committee during the *Mbata ya bakolo* operation[49]. In reality, this commission only existed on paper. To date, no judicial enquiry has been opened by the Congolese courts with a view to bringing the police officers responsible for crimes under national law during this operation to justice. Only disciplinary sanctions have been issued. According to the police, *"the only known and recorded instance of divergence"* was the theft of telephones: Nine non-commissioned officers were said to have been struck off[50] with eighteen others sanctioned with 35 days of arrest for theft and extortion[51].

Following the publication of the report by Human Rights Watch (HRW)[52], in June 2014, the human rights division of the International Support Mission to the Central African Republic (MISCA) announced the opening of an enquiry into allegations of abuse committed by Congolese soldiers. The head of the MISCA, the general Jean-Marie Michel Mokoko, provisionally suspended the unit commander in the town of Boali and listed 20 soldiers as being incriminated[53]. In a press release dated 4 June, the Congolese Minister for National Defence declared himself to be "*aligned with any process taken to uncover the truth"*[54].

The Office of the United Nations High Commissioner for Human Rights (OHCHR), which was able to gather damning witness statements against Congolese soldiers following three on-the-ground enquiries[55], called on the Congolese authorities on numerous occasions to shed light on these events through an impartial, effective and transparent enquiry[56]. Despite these repeated requests, "*no enquiry has been opened by the competent authorities, either within or outside of the country"*[57].

According to a Congolese human rights defender, "the impunity enjoyed by perpetrators of acts of torture and the inaction of the authorities on the matter has led to the acts being normalised, rendering them almost legitimate. A reduction in the use of torture must first and foremost begin with awareness of its inhuman and illegal nature, and this across all decision-making levels and within the executing bodies"[58]. It is therefore difficult to see true political willingness to end this practice within the Republic's presidency and therefore within the government and the public administration system. The survival of the status quo partially relies on impunity, violence and the persistent use of torture as a way of stifling any attempt at opposition.

[1] After having led the country from 1979 to 1992, Denis Sassou Nguesso became president yet again in 1997 following a successful military coup against the elected president Pascal Lissouba.

[2] The constitution of 2002 restricted eligibility to candidates aged 70 and under (Article 58) and established that no head of State may run for office more than once (Article 57). In addition, it specified that the number of presidential terms permitted could not be revised in the constitution (Article 185).

[3] Under Article 23 of the African Charter on Democracy, Elections and Governance, no "revision of the constitutions that violates the principles of alternating political power" is permitted; The Bamako Declaration on the practices of democracy, rights and freedoms in the francophone community of the Organisation Internationale de la Francophonie (OIF) requires States seeking to modify their Constitution to "ensure that the adopting and contents of the changes receive broad national consensus".

[4] Republic of Congo, Initial report to the Committee Against Torture, February 2014, page 14.

[5] The Congolese Observatory for Human Rights (OCDH) was created in 1994. Its scope encompasses the defence, protection and promotion of human rights. Winner of the French Republic's 2006 human rights award, the OCDH is a member of the International Federation for Human Rights league (FIDH), the World Organisation against Torture (OMCT), the InterAfrican Union of Human Rights (UIDH) and has Observer status in the African Commission on Human and Peoples' Rights (CADHP) of the African Union.

[6] OCDH, Annual report 2015, January 2015.

[7] OCDH, Annual report 2015, January 2015, Pages 20-22.

[8] OCDH, Annual report 2015, January 2015, Pages 15-16.

[9] "The slap of the elders" in the local language. Between April and September 2014, at least 179,000 DR Congo nationals were deported from Congo.

[10] Amnesty International, "Operation Mbata ya bakolo: mass expulsions of foreign nationals in the Republic of Congo".

[11] Thousands return to DRC amid Brazzaville crackdown on migrants, IRIN, 7 May 2014.

[12] Amnesty International, "Operation Mbata ya bakolo: mass expulsions of foreign nationals in the Republic of Congo", July 2015.

[13] Amnesty International, "Operation Mbata ya bakolo: mass expulsions of foreign nationals in the Republic of Congo", July 2015.

[14] Political coalition encompassing sixty political and civil organisations from the opposition, established in February 2015.

[15] Rencontre pour la Paix et les Droits de L'Homme (RPDH), Congo-Brazzaville : déni du droit à la vie et atteintes graves aux libertés fondamentales, 25 April 2015.

[16] Diocesan Commission Justice et Paix de Pointe-Noire and RDPH, Position paper, 10 December 2015.

[17] One of the founders of the "*Touche pas à l'article 57" [Hands off Article 57]* collective, a reference to Article 57 of the 2002 Constitution, and of the #Sassoufit online media campaign (a play on the French term "ça suffit", meaning "enough is enough", and Sassou, the name of the current president of Congo. See Afrikarabia, Congo-Brazzaville : les Sassoufistes se mobilisent sur la toile, January 2015.

[18] Witness statement from Andréa Ngombet recorded by the ACAT.

[19] See: "*Congo : Reporters sans frontières indignée par la violente agression du journaliste Elie Smith et de sa sœur"*, Reporters sans frontières (RSF), 12 September 2014.

[20] See: "*Congo : Reporters sans frontières indignée par la violente agression du journaliste Elie Smith et de sa sœur"*, Reporters sans frontières (RSF), 12 September 2014.

[21] Republic of Congo, Initial report to the Committee Against Torture, February 2014, page 22.

[22] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 3.

[23] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 6.

[24] For more information on the "Disappeared of Beach" case, see the FIDH "Case of the Disappeared of Beach in Brazzaville" report, July 2004.

[25] Office of the United Nations High Commissioner for Human Rights, "The Committee against Torture considers report of the Republic of Congo", 23 April 2015.

[26] OCDH, Annual report 2015, January 2015, Pages 24-26.

[27] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 20.

[28] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 14.

[29] OHCHR, "Centrafrique, l'ONU s'inquiète du sort de 11 personnes enlevées par des troupes de la République du Congo", 5 June 2015.

[30] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 7.

[31] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 25.

[32] OCDH, Annual report, January 2015, Pages 22-23.

[33] OCDH, Annual report, January 2015, Pages 14-15.

[34] OCDH, "Disparition forcée de M. Bouzeze Milandou Chadrin à Brazzaville: Forte présomption des geôles privées en République du Congo", 15 September 2014.

[35] OCDH, "Disparition forcée de M. Bouzeze Milandou Chadrin à Brazzaville: Forte présomption des geôles privées en République du Congo", 15 September 2014.

[36] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 23.

[37] To date, the project remains in progress.

[38] Republic of Congo, Initial report to the Committee Against Torture, February 2014.

[39] Office of the United Nations High Commissioner for Human Rights, "The Committee against Torture considers report of the Republic of Congo", 23 April 2015. Article 22 of the Convention states that: "A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration."

[40] Created under Law No. 5-2003 of 18 January 2003 regarding the allocation, organisation and functioning of the CNDH.

[41] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 5.

[42] OCDH, Annual report 2015, January 2015, pages 37-38.

[43] OCDH, Annual report 2015, January 2015, pages 24-26.

[44] Congo Brazzaville: Répression des libertés et impunité des violations des droits humains, OCDH, 7 December 2013.

[45] ACAT-Congo, FIACAT, "Joint alternative report on the application of the Convention against Torture by the Republic of Congo", March 2015, page 3.

[46] OCDH, Annual report 2015, January 2015, pages 26-28.

[47] Republic of Congo, Initial report to the Committee against Torture, February 2014, page 14.

[48] Committee against Torture, "Concluding observations on the Republic of Congo's initial report", 28 May 2015.

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[56] OHCHR, Zeid Ra'ad Al Hussein réclame des enquêtes plus approfondies sur des violations des droits de l'homme par des forces internationales en République centrafricaine.

[57] United Nations, "Centrafrique: l'ONU s'inquiète du sort de 11 personnes enlevées par des troupes de la République du Congo", 5 June 2015.

[58] Witness statement from a Congolese human rights defender.

NIGERIA

BACKGROUND

The Federal Republic of Nigeria, a West African nation made up of 36 States, has the continent's highest population, with 177 million people from 389 different ethnic groups. Since it achieved its independence in 1960, Nigeria, which is divided between a Muslim majority to the north and a mainly Christian population to the south, has regularly suffered from inter-communitarian, inter-religious, political and social violence linked to the fight for control at a local level and the associated financial stipends. The north of the country is currently being held ransom by an extremely violent armed insurrection led by the Islamist group Boko Haram[1]. The increase in the acts of violence perpetrated by this armed group (attacks, village invasions, kidnappings and civilian massacres) since 2009 has provoked an armed response by the government. The state of emergency declared in May 2013 in Adamawa, Borno and Yobe States, combined with government-led operations in the fight against Boko Haram, have in turn led to grave human rights violations, including more systematic use of torture against suspected Islamists. The country as a whole is experiencing high levels of crime, rooted in the widespread poverty that is the result of endemic corruption at all levels of power and within the administration[2].

PRACTICE OF TORTURE

The use of violence is a deeply rooted phenomenon within the Nigerian security forces, who rely on torture indiscriminately and almost systematically at the time of arrests, during interrogations and in places of detention. In 2007, the United Nations special rapporteur reported that torture was commonplace. From 2009 onwards, things became even worse in the north of the country as a result of the internal armed conflict against Boko Haram.

Victims

Every day, Nigerian citizens are tortured and subjected to ill-treatment as they are arrested at road checks, remanded in police custody or incarcerated in prisons. The poor are the most vulnerable as they are not in a position to pay off security officials, pay for the services of a lawyer or rely on acquaintances with "influence".
Anyone who travels on the country's roads or is visibly engaged in economic activity is at risk of racketeering at the hands of police officers. And if they refuse to pay the bribe demanded, they may be arbitrarily arrested, illegally detained or even subjected to violence. Those suspected of committing crimes (armed robbery, kidnapping, murder, etc.) are particularly exposed to the risk of torture at the time of arrest and in police custody.

On 17 September 2013, a young man named Diolu (26) was arrested in his home in Port Harcourt, in the south of the country, by five police officers. He was not informed of the reason for his arrest. Diolu was taken directly to the station of a police unit responsible for the fight against kidnappings. That evening, while he was being interrogated, he was tortured into signing a document of which he was completely unaware of the content. He was tied to a rope and left hanging. He was beaten all over his body with machetes and metal pipes[3].

People who are incarcerated in prison for common law crimes or offences, whether awaiting trial or already sentenced, are detained in conditions (crowded cells, stifling heat, lack of hygiene, poor access to care, drinking water and appropriate food, etc.) that amount to a form of ill-treatment. This is true of all civilian prisons across the country.
Those suspected of terrorism, radical Islamism or simply opposing the incumbent authorities are also widely subjected to acts of ill-treatment and torture during the organised crackdowns on demonstrations and protest movements, particularly in those States affected by political tension that is fuelled by a combination of communitarian, religious and land-related problems.
Cases involving torture are increasingly reported in Adamawa, Borno and Yobe States in the north of the country, where Boko Haram is present. The security forces almost systematically torture anyone accused of links with the armed Islamist group. In 2013, according to Amnesty International[4], thousands of people arrested in the north of the country and held in various detention centres were tortured by members of the defence and security forces. 15-year-old Suleiman Ali was arrested by soldiers in March 2013 along with 49 other young men suspected of belonging to Boko Haram. He was brought to the Sector Alpha detention centre in Damaturu, where he was beaten by soldiers using rifle butts, truncheons and machetes. They poured melted plastic over his body. He was forced to walk and roll on broken glass and watch the summary executions of fellow detainees. One month later, Suleiman was released along with 31 other detainees. In the days that followed, 30 of them died as a result of their injuries. Suleiman survived and provided a witness account of the violence[5].

Nigerians who are forced to leave their homes as part of expulsions ordered by the federal authorities are often the victims of physical assault on the part of security officials who accompany the government's special units during such operations, especially if they try to resist or prevent the demolition of their homes. In Abuja, the nation's capital, and in Port Harcourt, the capital of Rivers State, the public authorities regularly evacuate and destroy slums as part of sanitation or urban planning policies.

In a country where violence against women remains widespread, State officials routinely perpetrate rape and other forms of sexual abuse on detainees and prostitutes subjected to checks at night. This violence is simply considered as a "perk" by some patrols[6].
Street children, thought to number more than one million, and those accused of witchcraft are often subjected to violence. Members of civil society (human rights defenders, journalists, trade unionists and leaders of student groups) are regularly intimidated and harassed by law enforcement officials. Mr Justine Ijeomah, who chairs the Human Rights, Social Development and Environmental Foundation (HURSDEF), was beaten, attacked and threatened with his life by police officers from the Swift Operation Squad (SOS) in Port Harcourt on 16 November 2012. He had gone to the SOS station having been informed that a member of his association had just been arrested by an anti-kidnapping police unit and taken to the Port Harcourt station. When he asked for an explanation for his colleague's arbitrary arrest, the station chief became angry and replied: "I can eliminate you and nothing will happen". Another officer intervened, beating and slapping him and pushing him against a gate several times. One of the officers is then reported to have threatened to shoot him, saying "nothing would happen", that he would root out defenders within the association and that he could kill them whenever he liked. Mr Ijeomah had to be treated for his injuries and go into hiding for a period for his safety. Three months previously, on 3 September 2012, the association' lawyer, Aselm Lawson Kpokpo, had been beaten with the butt of a rifle by another SOS officer[7].

Torturers and torture sites

A large number of security officials are guilty of ill-treatment and acts of torture. They include representatives of the Special Anti-Robbery Squad (SARS), the State Security Service (SSS), the National Drug Law Enforcement Agency (NDLEA), the Economic and Financial Crimes Commission (EFCC), the Nigeria Security and Civil Defence Corps (CDC), the Federal Road Safety Commission (FRSC), and the Nigerian Armed Forces (NAF). However, the main perpetrators are the Joint Task Force (JTF) – which includes military troops and police officers who were deployed to the north of the country in June 2011 to combat Boko Haram – and the Nigeria Police Force (NPF).
This federal organisation, which is controlled by the President of the Republic, is the country's largest employer, with more than 370,000 police officers on its payroll. These officers regularly arrest citizens for the sole purpose of demanding bribes based on unfounded accusations relating to various offences.
Members of Boko Haram also regularly use torture against those they kidnap and take as prisoners.

Some of the acts of torture perpetrated by Nigerian defence and security forces, in particular physical blows and beatings, are inflicted at the time of arrest. In order to humiliate their victims, police officers have developed the practice of "parading" them in public places where they are insulted and have food and other objects thrown at them by passers-by. The most intense torture sessions are conducted by the Criminal Investigations Departments (CID) and Special Anti-Robbery Squad (SARS), two police units with torture chambers and the necessary equipment at their disposal, and in some cases a designated "OC torture" (officer in charge of torture). The torture chamber at the police station in the city of Enugu, for example, has been dubbed the Theatre due to the speed with which suspects agree to confess when threatened by an officer nicknamed "Okpontu" (*manicure* in the Igbo language), who is known to dig his nails into the bodies of detainees.
If the victim dies during the arrest, the law enforcement officials usually describe the death as a result of a "shootout with an armed robber". If the death takes place in police custody, they allege there was an "escape attempt". Statistics on such incidents are hard to come by, but in November 2007, the Inspector General of Police (IGP), Mike Okiro, reported that the police had killed 785 "armed robbers" in 100 days[8].
In the fight against Boko Haram, it is well-known that three detention centres are used to house suspected members or supporters of the armed Islamist movement: Giwa military barracks in Maiduguri, the Sector Alpha detention centre in Damaturu,

nicknamed "Guantanamo", and the SARS detention centre in Abuja, known as the "abattoir". Between January and March 2014, around 150 prisoners' bodies were sent from Giwa to the morgue at Maiduguri State hospital. None of the bodies bore traces of bullet wounds[9]. They were emaciated and showed signs of physical abuse.

Other torture sites include penitentiary facilities, the prison in Port Harcourt in particular, as well as illegal cells set up in official buildings but which are not intended to house individuals under arrest, army buildings in particular.

Methods and objectives

Torture is such a common practice among Nigerian security forces that they have named some of their techniques: "J5" for suspects deprived of sleep and forced to remain upright or in a painful position without moving; "suicide" for victims who are suspended from the ceiling upside down with a rope tied around their ankles or handcuffs used to bind their arms crossed behind their back ("Chinese handcuffs"); "third-degree" refers to the combination of various physical restraint techniques; "German cells" is whereby several detainees are locked for days or weeks on end in a tiny cell without light, ventilation or enough room to lie down and in which they finally suffocate; and "VIP treatment" for shots fired at the victim's legs. Suspects of armed robbery are often subjected to this type of abuse prior to their interrogation and then, in most cases, executed and dropped off in public morgue.

The following practices are also commonplace: burns, crushing fingers, extracting nails and teeth using plyers, waterboarding*, sexual violence, confinement with snakes, rats, cockroaches or mosquitos, teargas or pepper gas sprayed in the victim's eyes or nose, or genitals in the case of women, and death threats. In response to increased surveillance by local human rights NGOs, new torture methods are emerging which are designed to leave no trace on the body of the victim: fabric is wrapped around the ropes used to tie up detainees so as to avoid skin abrasions, tourniquets are used on the upper arm to cut off the blood flow, and plastic film is used to completely cover detainees, in some cases leading to death[10].

Torture sessions sometimes take place in the presence of other detainees, minors in some cases, and can last several days. Prisoners may even be forced to inflict acts of ill-treatment and torture on themselves.
The NPF has significantly increased staff numbers since 1999, with an average of 20,000 new recruits annually. Due to a lack of adequate resources – the allocated police budget is largely embezzled through internal corruption –, this policy of mass

recruitment has had a negative impact on the quality of policing: the NPF now includes many unqualified, undertrained and underequipped officers (and even former criminals). They are underpaid and so tend towards corruption and racketeering.

Budget restrictions, combined with poor management, have reduced the police force's capacity to carry out investigations on the strength of evidence based on ballistic expertise or DNA analysis. Because technical and material resources are limited, police officers rarely examine crime scenes and in some cases do not even travel to the site. This means that crimes are "solved" based on the "sixth sense" of police officers and confessions, which are the foundation for more than 90% of criminal proceedings in Nigeria and which are mostly extracted under torture. Information and statements obtained in this way are regularly admitted by the courts as evidence, although this runs counter to Article 28 of the legislation governing evidence. Moses Akatugba discovered this to his detriment in November 2013. He was sentenced to death by hanging based on a confession extracted under torture in November 2005, when he was just 16 years old. He was suspected of having stolen a telephone. The police officer who had led the investigation did not give testimony in court and the victim's allegations of torture were never investigated.[11] Moses is still in incarceration. Torture is also used to humiliate and punish individuals, particularly in the context of political repression.

LAW AND LEGAL PRACTICE

Legal condemnation of torture

Nigeria has ratified the Convention against Torture as well as the Optional Protocol, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights, all of which prohibit torture and ill-treatment.
Under domestic legislation, Section 34(1)(a) of Chapter IV of the 1999 Constitution[12] prohibits torture and inhuman or degrading treatment but fails to provide a definition, and torture is not criminalised under Nigerian law.
The Criminal Code does not recognise torture as a criminal offence. In 2012, a draft law proposing to outlaw torture and recognise it as an offence was brought before parliament, but the text has yet to be examined despite many assurances.
The country's Sharia Criminal Code, which is applicable in 12 of the northern States, provides for the use of corporal punishment (beatings, flogging, amputation and stoning), which constitute acts of torture.

Punishment of perpetrators of torture

In practice, there is no properly functioning mechanism for registering complaints or monitoring police activities internally, and law enforcement officials are able to commit human rights violations with total impunity.

The law allows citizens to file complaints orally or in writing with a high-ranking officer in the case of alleged police brutality. If they do not receive a satisfactory response, they can take their case to the Inspector General of Police or the Public Complaints Bureau (PCB), part of the public relations department in each State police force. They can also contact the Human Rights Desk (HRD), located in the premises of the federal administration, or the Provost Department of the federal police headquarters[13]. Since 2001, there has been a Police Service Commission (PSC), which is responsible for investigating abuses by police officers. In the event of legal proceedings, special Investigating Police Officers (IPOs) lead the investigation in collaboration with the public prosecutor. The Provost Department can impose disciplinary sanctions, but ACAT has not found statistical data on any such sanctions taken against police officers for engaging in torture practices.

The National Human Rights Commission (NHRC), first set up in 1995 to investigate allegations of human rights violations and make (non-binding) recommendations to the federal authorities, has not been allowed to work effectively due to interference from the executive, which oversees operations.

In March 2011, President Goodluck Jonathan promulgated a law that modified the commission in a way that would ostensibly safeguard its independence and financing and make its decisions applicable. Unfortunately, the commission's members are not allowed to visit certain detention centres under the control of the army or special police units. In July 2009, Nigeria established a National Committee against Torture (NCAT), its national torture prevention mechanism. So far, this mechanism has not been given independence either operationally or in legal terms. Due to a lack of public financing, its members work on a voluntary basis, and the committee is unknown to Nigerians.

In Nigeria, victims of violence perpetrated by State representatives very rarely file a complaint. In general, they are unaware of the existing legal remedies available, fear reprisals, lack the resources to pay for a lawyer, and do not have faith in the judicial system, which is marred by delays and corruption. The vast majority of torture allegations do not go to trial and are not even the subject of preliminary investiga-

tions. Only wealthy or influential individuals can ensure that an investigation will be launched and are in a position to pay or avoid the often illegal taxes demanded at each stage of legal proceedings. No information or statistics are available on ongoing or past proceedings involving torture allegations, any disciplinary sanctions taken, or damages awarded to the victims. The judicial system in Nigeria does nothing to combat or prevent torture.

The political authorities never fail to remind international bodies of their commitment to take all necessary measures to definitively bring an end to the use of torture in the country. But in reality, they have shown no will to remedy this problem. On the contrary, in the context of the armed conflict against Boko Haram, the appetite for the use of illegal violence on the ground seems to be tolerated if not encouraged. Most official representatives continue to deny the existence of intentional torture practices in Nigeria. Some have admitted it, like Mohammed Abubakar, chief of police from 2012 to 2014. On 13 February 2012, he was the first to recognise the failings within the police force: "Justice has been perverted, people's rights denied, innocent souls committed to prison, torture and extra-judicial crimes perpetrated, and many people are detained in our cells because they cannot afford the bail monies we demand"[14]. Mr Abubakar ordered the release of all those detained without just cause in police stations across the country as well as the dismantling of all police road checkpoints, used by officers to extort money from drivers. In 2014, Mohammed Abubakar was replaced by Suleiman Abba. Between 2012 and 2014, there was no significant decline in the use of torture within the NPF and no prosecutions of police officers responsible for acts of torture and/or ill-treatment.

[1] Chatham House, *Nigeria's Interminable Insurgency? Addressing the Boko Haram Crisis*, September 2014, 38 pages.

[2] Nigeria is ranked 136th in the Corruption Perception Index (CPI) drawn up by Transparency International, out of the 175 countries studied in 2014.

[3] Amnesty International, "*Welcome to hell-fire": torture and other ill-treatment in Nigeria*, 14 September 2014, 69 pages.

[4] Amnesty International, *Stop torture: Country profile: Nigeria*, 13 May 2014, 10 pages.

[5] Idem.

[6] Amnesty International, "*Welcome to hell-fire", op. cit.*

[7] Frontline defenders, Nigeria: Human rights defender Mr Justine Ijeomah in hiding following physical assault and threats by police, 23 November 2012.

[8] Human Rights Watch, *Nigeria: Investigate Widespread Killings by Police*, 19 November 2007.

[9] Amnesty International, *Nigeria: More than 1,500 killed in armed conflict in North-Eastern Nigeria in early 2014, 31 March 2014*, 31 pages.

[10] Amnesty International, *Stop torture, op. cit.*

[11] Amnesty International, *Nigéria: Moses Akatugba, passé à tabac, contraint à avouer, condamné à mort, 18 December 2014.*

[12] Federal Republic of Nigeria, *Constitution*, 1999.

[13] Federal Republic of Nigeria, *Nigeria's 4th Periodic Report on the implementation of the African Charter on Human and Peoples' Rights*, August 2011, 109 pages.

[14] AFP, *Nigeria : le nouveau chef de la police dénonce les exactions de ses hommes*, 13 February 2012.

elsewhere in the continent

ANGOLA

The Angolan authorities have been on a tireless quest for international respectability since the end of the civil war in 2002. Having become a geo-strategic regional power, the country's track record on human rights is, however, worrying: security forces use violence on a regular basis, and impunity is notoriously high. Since December 2003, tens of thousands of undocumented Congolese women and young girls in the region have fallen prey to sexual violence perpetrated by soldiers and police officers during deportations. During the second World Francophone Women's Forum in Kinshasa in March 2014, ACAT deplored the gravity of this phenomenon and called on the Congolese authorities to unconditionally condemn this violence.

Political opposition movements comprised of politically-minded young people and artists are also suppressed and subjected to violence by the authorities. Since March 2011, a number of peaceful protests for a political alternative have culminated in the arrests of a number of their participants and organisers, such as the musician Luaty Beirao, who was arbitrarily arrested before going on hunger strike on 21 September 2015 that resulted in him being hospitalised on 27 October. Three other young activists, Alonso Matias, Albano Bingo and Benedito Jeremia, for whom ACAT also began working in October 2015, were arrested and tortured. In March 2016, Luaty Beirao and his 15 friends were sentenced to two to eight and a half years in prison. These techniques are frequently employed, and a huge number of young people who took part in organising protests were intimidated, kidnapped, beaten and tortured by armed men in civilian dress, who appear to have been agents of the State security forces.

Finally, human rights' defenders as well as human rights' defence organisations are also targeted. The cases of José Marco Mavungo and Arao Bula Tempo are illustrative of this state of affairs. Arrested for having organised a protest against breaches of human rights, they were kept in detention despite the fact that a jury found the charges brought against them to be groundless in March 2015. On 14 September last, despite a lack of evidence, magistrates sentenced José Marcos Mavungo to six years in prison. ACAT has spoken out against the injustices of the trial and has put its name to the decision taken by the United Nations' working group on arbitrary detention, which is demanding for their immediate release. Yet ACAT deplores the deafening silence from the international community. With Angola one of southern Africa's petrol giants, business would appear to take priority over human rights.

BURUNDI

With a deteriorating political and security climate that has been sweeping through the country since 2010, torture and mistreatment are commonplace in Burundi. The government began applying pressure in 2013 to allow the sitting President, Pierre Nkurunziza, to run for office a third time, despite this being illegal under the Constitution. The general public rallied together against the President running for office on 21 July 2015, yet Pierre Nkurunziza nevertheless became President once more on 20 August.

In 2014, ACAT intervened to defend Bob Rugurika, a Burundi journalist deemed too independent. Fearless in his quest to criticise the public authorities, Rugurika was arrested and put on trial for having implicated high-ranking officials in the murders of three Italian nuns. Released on 22 February 2015, Bob Rugurika is one of the emblematic figures of the repression that is used by the state to quash its opponents. Over the last two years, a number of opponents have been arbitrarily arrested, questioned and sentenced in unfair trials. A number of journalists and human rights defenders have faced intimidation and legal proceedings.

On 3 August, Pierre Claver Mbonimpa, the country's best-known human rights defender, miraculously survived an attempted assassination by shooting. Shot in the face and neck, he was taken to Belgium for treatment, where he is now recovering from his injuries. Three months later, on 6 November, his son was assassinated in Bujumbura after having been arrested by the security forces. That same month, Burundi's Ministry of the Interior suspended 10 associations following allegations of incitement to violence. ACAT-Burundi was among these associations that had organised protests following the President's decision to run for office a third time. ACAT-Burundi's chairman was forced to flee abroad for several months beforehand due to threats he had received.

ANALYSIS OF THE PHENOMENON OF TORTURE

THE 40-YEAR FIGHT AGAINST TORTURE: AN ASSESSMENT OF THE PROGRESS MADE

NATIONAL PREVENTIVE MECHANISMS: ROLE AND DEVELOPMENTS

VERONICA FILIPPESCHI, OPCAT advisor at the Association for the Prevention of Torture (APT)

The year 2006 marked a landmark for the prevention of torture worldwide with the entry into force of the first global treaty focused solely on prevention, the *Optional Protocol to the UN Convention against Torture (OPCAT).* That same year, the first national body[1] established under the treaty started to carry out its preventive mandate. Today[2], ten years later, national preventive mechanisms have been formally created in 64 of the 80 States parties to the OPCAT, at least on paper. It is therefore possible to take stock of their contribution to protect persons deprived of their liberty from torture and ill-treatment, and to identify the challenges ahead, bearing in mind their relatively short time of existence and the evolving nature of their preventive work.

How did it all begin: the history behind national preventive mechanisms

It took 25 years for Jean-Jacques Gautier's original idea of a universal system of visits to places of detention to become a reality. Inspired by the positive effects of the visits conducted by the International Committee of the Red Cross to prisoners of war and political prisoners, in the 70s Gautier launched the proposal of an international treaty establishing a system of regular and unannounced visits to places of detention as a way to prevent torture and ill-treatment in the first place.

While Gautier's proposal was initially put on hold during the drafting of the UN Convention against Torture, his idea advanced quickly at the European level, resulting in 1987 in the adoption of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the creation of the *European Committee for the Prevention of Torture (CPT).* The experience and success of the CPT, composed of independent experts from all member States of the Council of

Europe, with a mandate to visit all places of detention, was instrumental to create a new momentum for Gautier's original idea of a universal system of visits to places of detention. Gautier's idea became a reality on 18 December 2002, when the OPCAT was finally adopted by the UN General Assembly.
The drafting and adoption process was not only a lengthy one but, above all, it was highly controversial. The initial draft envisaged the establishment of an international mechanism with unrestricted access to all places of detention. And this was indeed one of the main points for disputes within the Working Group established in 1992 with the task of drafting an optional protocol to the UN Convention against Torture. The negotiations went on for many years but no agreement was reached between those supporting the establishment of a powerful international body and those trying to limit its powers arguing that such a strong mechanism would infringe the States' sovereignty.

And then, all of a sudden, something happened that set a new course. In 2001, Mexico presented a new proposal which was key to give new impetus to the Protocol. Elizabeth Odio Benito, former Chair of the OPCAT Working Group, refers to it as a "brilliant idea": "It was as if the sky had opened. I quickly realised: this is the solution. [...] The national mechanisms were the great solution"[3]. The Mexican proposal introduced the obligation for States to establish domestic bodies, the so-called national preventive mechanisms (NPMs), to complement the work of the international body. The NPMs idea was suggested for the first time by the Association for the Prevention of Torture (APT) during a preparatory meeting of the Latin American Group, which decided to take this idea forward. Mexico presented it officially and submitted the APT draft to the Working Group, with the support of the Latin American States.

Those favouring the Mexico proposal argued that States had the primary responsibility for the protection of human rights and that *national preventive mechanisms* would be in a better position to prevent torture and carry out regular visits to places of detention, given their permanent presence in the country. On the other hand, some States expressed concern that the establishment of national bodies would weaken the role of the international mechanism. Others mentioned the risk for those national bodies to be mere window dressing or alibi bodies that would cover up States violations. Finally, other States raised the issue of financial implications associated with the establishment of national preventive mechanisms[4].
One year later, a compromise text presented by Costa Rica, the Chair of the Working Group, was presented for a vote at the UN Commission on Human Rights, a very unusual procedure for the adoption of an international human rights treaty. Finally,

the OPCAT text was adopted by the UN General Assembly with 127 States in favour, 4[5] against and 42 abstentions, and it entered into force on 22 June 2006, following the 20th ratification.

The role of national preventive mechanisms
Fifteen years have passed since Mexico made its proposal to the OPCAT Working Group and what was initially regarded with reluctance, if not criticism, turned out to be a unique feature. With the OPCAT, for the first time national bodies established by the States under an international human rights treaty have been given a key role in monitoring the implementation of international standards relating to the protection of persons deprived of liberty from torture and ill-treatment. Today, NPMs are considered as the *front line of torture prevention*[6]. They are based in the country and, therefore, they are in the position to regularly monitor the situation of persons deprived of their liberty and contribute to positive changes on the ground.
But NPMs don't work in isolation. They are at the heart of the global system of preventing torture established by the OPCAT and their mandate is strengthened as anchored in an international treaty. As part of this system, they are in close contact with the *UN Subcommittee on Prevention of Torture (SPT),* the independent international body created by the treaty to visit places of detention in any State party and provide advice to States and NPMs. The SPT can visit any place of detention in any State party to the OPCAT and, following its visits, submit a confidential report that States can decide to make public. If the report is made public, the NPM can follow up on its recommendations and refer to it to reinforce its own recommendations to the authorities. In addition to its operational function, the SPT also provides advice to States and NPMs on the implementation of the OPCAT. In recent years, the SPT has tried to enhance its advisory role, in particular through the development of specific guidelines and tools and the establishment of direct contact with States and NPMs in the field – within and beyond its official visits – and during its sessions in Geneva. At domestic level, NPMs engage in constructive and sustained dialogue with State authorities. They also exchange with other NPMs from different countries. NPMs are, or should be, an integral part of the institutional landscape of a state, complementing the work carried out by existing bodies, such as complaints mechanisms and National Human Rights Institutions, and cooperating with a wide range of relevant actors, including civil society.

NPMs may take different forms, according to the specificities of each country. However, all NPMs, no matter their structure, need to comply with some fundamental requirements provided by the OPCAT. The most important one, and perhaps the

most difficult to fully comply with, is independence as, on the one hand, NPMs are set up and funded by the States but, on the other hand, they need to keep a distance and act independently from the state authorities. States parties to the OPCAT need to ensure that their NPMs operate without any interference from the authorities. NPMs' personnel should be appointed following a public procedure involving all relevant stakeholders and should be personally and institutionally independent from the authorities. But independence is not enough. NPMs' personnel should possess a multidisciplinary expertise and should be representative of the wider society, ensuring gender balance and representation of ethnic and minority groups. States should also provide the NPMs with adequate resources to carry out their mandate.
In accordance with the OPCAT provisions, NPMs should have unrestricted access to all places of deprivation of liberty at any time and to all relevant information related to persons deprived of their liberty and to the functioning of those places. In order to gather first-hand information, they should have the power to conduct private interviews with persons deprived of their liberty, as well as with any other person that they consider relevant, such as authorities and family members. NPMs' members and personnel should also be entitled the privileges and immunities necessary to be able to carry out their functions independently.

The state of the art: figures, developments and trends

At the time of writing[7], NPMs have been officially appointed in 64 of the 80 States parties to the OPCAT, and more countries are in the process of setting up their NPM. *The majority of NPMs can be found in Europe and Central Asia,* which is also the region with the largest number of States parties to the treaty. In Latin America, most of the States that are parties to the OPCAT have already appointed their NPMs. In Africa, only a few States parties have officially designated their preventive mechanisms. In Asia Pacific and Middle East and North Africa the number of States that have joined the OPCAT is still very limited and the same for the number of designated NPMs[8].
But what do NPMs look like? The OPCAT provides the key requirements and powers that each NPM should fulfil, but it does not specify their organisational form. Therefore, *States are free to determine the best structure for their NPMs,* analysing the specific characteristics of their national context in light of OPCAT requirements. They can create a completely new body, or several ones, or they can confer the NPM mandate to one or several existing institutions.
The process of determining the NPM varies from one country to another and the experience has demonstrated that the way it is conducted has an impact on the perception of the NPM and, ultimately, on its effectiveness. Therefore, it should always be open and transparent and should be conducted with the participation of a wide range of relevant stakeholders[9]. This has been indeed the case in many countries, where the process to identify the most appropriate structure for the NPM has taken several years, sometimes starting even before the ratification of the treaty, and has involved a wide range of national actors, including authorities from the executive, legislative and judiciary branches, civil society and international bodies. In Paraguay, for example, a working group tasked with drafting an NPM proposal and comprising representatives of state institutions and civil society was set-up immediately after the ratification of the OPCAT. The open, transparent and participatory nature of the process that led to the adoption of the NPM legislation in Paraguay was described as a model by many, including by the SPT upon its first visit to the country in 2009[10].

In those States where the designation of the NPM has been, instead, the result of a unilateral decision by the government or the result of a process led by international organisations, it has led to several challenges at the time of implementation. In Sweden, for example, in 2005 the government decided to designate two existing institutions as NPM, the Parliamentary Ombuds Institution and the Chancellor of Justice, without amending their existing legislations nor granting them additional resources, in spite of their objections. This unilateral decision resulted in the delayed implementation of the NPM, as both bodies refused to take on the mandate. It was only in 2011 when one of the two designated bodies, the Ombuds Institution, started to perform the NPM mandate, following amendments to its founding legislation and allocation of additional resources[11]. Another example is provided by Mexico, where the government unilaterally designated the existing National Human Rights Commission as NPM. The decision was taken in spite of the result of a consultation process funded by the European Union and led by the Office of the United Nations High Commissioner for Human Rights, which involved a wide range of state and civil society representatives. The consultation concluded that a new mechanism with the involvement of the National Human Rights Commission, the state human rights commissions and civil society would be the most appropriate option. As a result, since the beginning of its work as NPM, the cooperation between the National Human Rights Commission and civil society has been quite difficult.
Although each NPM has its own particular features, it is nevertheless possible to identify some common trends regarding their structure. The majority of NPMs that have been appointed so far are existing or new national human rights institutions, either national human rights commissions headed by a number of members, or Ombuds Institutions headed by a single person. Most of them have created a specific unit within the institution with dedicated staff to perform the NPM tasks. Many States have decided to create a completely new institution composed of one or several members to carry out the mandate of the NPM.

Due to their particular federal structure, some States such as Argentina and Brazil have opted for the creation of a national system for the prevention of torture, comprising NPMs at the federal level complemented by local preventive mechanisms at the state or provincial level, which are either created specifically for this purpose or designated to form part of it. Interestingly, in both countries the establishment of local preventive mechanisms preceded the establishment of the NPM at the federal level.

Other States with a decentralised structure and/or existing oversight bodies, such as the United Kingdom, the Netherlands and New Zealand have decided to designate multiple institutions to assume the NPM mandate, each with a specific geographic and/or thematic mandate. In these cases, one of the designated bodies is also appointed as the NPM coordinator.
Finally, some countries have chosen the so-called *Ombudsman Plus model* for their NPM. It refers to Ombuds Institutions having concluded a formal agreement with civil society organisations to carry out visits to places of detention together, as part of the NPM mandate. However, in practice, this model is a reality *only in Europe and Central Asia* and, although a few years ago it seemed a preferred option for several countries, today the trend, also outside the region of Europe and Central Asia, has shifted towards the establishment of advisory bodies to the NPMs. The composition and specific functions of these advisory bodies varies from one country to another. However, all bodies include representatives of civil society organisations, and in some cases also other institutions. They do not conduct monitoring visits to places of detention with the NPM, but their role is to provide advice to the NPM in the implementation of its mandate, thus avoiding the challenges associated with the formal involvement of civil society representatives in the NPM visits.

Although on paper 64 States have appointed their NPMs, in reality not all of them are operational. The NPM designation is just the beginning of an on-going process and, in some instances, once the NPMs are designated, it often takes a long time before they start functioning, due to delays in selecting and appointing their members, especially for new specialised institutions, as well as in defining the organisational structure of the institution. In Tunisia, for example, the law establishing a new institution as NPM was adopted in October 2013 and, at the time of writing[12], NPM members have not been selected yet. The call for candidates was renewed several times, due to lack of applications for certain professional categories, and the preselection process took more time than expected due to the lack of consensus and quorum. Another example is provided by Brazil, where the NPM was designated by law in August 2013 but its members were officially appointed only in March 2015.

In other countries, however, both the selection of the NPM members and the definition of the organisational structure of the NPM have taken place immediately after the ratification of the OPCAT or, in some instances, even before the State officially deposited the instrument of ratification to the United Nations. Switzerland, for instance, established its NPM – a new specialised institution – by law in March 2009, before depositing the instrument of ratification to the United Nations. The process to select the NPM members started immediately after the NPM designation and was finalised in October 2009. In the Czech Republic, the Ombuds Institution was officially designated and started to work as NPM in January 2016, before the State deposited the OPCAT ratification instrument in June 2006.
At the time of writing, 54 NPMs are functioning and, even among them, there are many differences when it comes to the implementation of their mandate. Many NPMs have been working for several years and have developed an extensive experience, while others have just started their monitoring activities. Finally, in some cases, NPMs have just been designated and, therefore, are at the stage of raising awareness about their mandate, planning and developing their strategy and working methods.

The unique features of national preventive mechanisms

National preventive mechanisms are not the only domestic bodies, with permanent presence in the country and deep understanding of the context, which work to protect persons deprived of their liberty from torture and ill-treatment. A wide range of actors plays an important role in the prevention of torture at the national level, such as the judiciary, national human rights commissions and Ombuds Institutions[13], parliamentary bodies and civil society organisations. All these actors are fundamental and complement the work of NPMs. What makes NPMs unique is a combination of existing and new elements.

NPMs are the only domestic bodies specialised in torture prevention, which *are established by the State but act independently from the state authorities,* and whose mandate is anchored in an international treaty. Their preventive mandate is different from the work of other national institutions. The OPCAT provides the NPMs with unrestricted access to any place and situation where persons are or may be deprived of their liberty, ranging from prisons and police stations to psychiatric institutions, care homes for children and elderly people, migrant centres, deportation flights, etc. They can access those places and any facility and premise within those places, without asking for permission. And they can carry out visits at any time: during the day, at night or during the weekends. When visiting places of detention, they conduct private interviews to persons deprived of their liberty and also talk to

the staff. Visits to places of detention are central to the mandate and credibility of the NPMs, as they allow NPMs to gain first-hand knowledge and information which form the basis of their recommendations to the authorities and the dialogue with them. But visits are not an end in themselves.

The mere fact of having access at any time has undoubtedly an important deterrent effect and NPMs can often contribute to immediately correct problems affecting detainees as a result of the visit. But, more importantly, visits allow NPMs to examine all aspects of detention and identify the factors and the situations that increase the risk for persons deprived of their liberty to be ill-treated or tortured. They include the legal and administrative measures applied within the place; the material conditions; the regime of detention and the activities within the place; the medical care; the organisation and management of detainees and staff; and the relations between staff and detainees. NPMs are also best placed to identify shared attitudes within the places and to question existing patterns which could violate the rights of persons deprived of their liberty.

Another unique feature of the NPMs' preventive approach is the focus on cooperation and constructive dialogue with the authorities in order to improve the conditions and treatment of persons deprived of their liberty. Cooperation is not a synonym for complaisance though. It means entering into critical dialogue with the authorities and developing a constructive working relationship with them, based on mutual respect, in order to assist them to find solutions to the problems encountered.

Finally, although visits to places of detention are crucial to the work of NPMs for the reasons mentioned above, their preventive mandate goes beyond visits. It involves a systemic analysis of the whole range of factors that might lead to torture and ill-treatment, not only the ones identified within places of detention, but also the ones related to the functioning of the judicial system, deficient public policies and legislation, and the socio-economic ones. That's why NPMs conduct a wide range of activities beyond visits, such as raising awareness and advocating at the national, regional and the international level, as well as promoting legal and policy reforms with a view of strengthening the protection of persons deprived of liberty from torture and ill-treatment. By understanding the systemic factors that have an impact on the situation of persons deprived of liberty, NPMs can identify the risks of torture and ill-treatment and seek to mitigate them through recommendations to the relevant authorities.

Effectiveness: room for improvement

When it comes to put their preventive mandate into practice, NPMs face a number of challenges which can undermine their capacity to ultimately improve the situation of those deprived of their liberty, in one word their effectiveness. NPMs' effectiveness is a combination of multiple and interrelated elements which are undoubtedly a primary responsibility for States under the OPCAT. But NPMs also have a responsibility in the way the carry out their mandate.

The drafters of the OPCAT had already identified the risk for NPMs to be influenced by the States. Fifteen years later, this risk is faced by a number of NPMs in all regions. The independence of NPMs from the institutions which establish and fund them, as well as from the institutions that they are meant to monitor, is essential to be able to prevent torture and, more broadly, to safeguard the rights and dignity of those deprived of their liberty. States have the obligation to ensure that NPMs are independent. They need to conduct an open and transparent process to designate the NPM, provide an OPCAT compliant legislative basis to the NPM, appoint independent personnel and allocate the adequate resources to the institution. The responsibility of the State is not over once the NPMs are set up, the "NPMs operation is continuing obligation for States"[14]. But NPMs' members and personnel are also responsible to act independently and keep certain distance from the state authorities. They need to be transparent and accountable in their work, as the way NPMs are perceived has a direct impact on their effectiveness.

Preventive monitoring by NPMs is a demanding and specialised task which requires regular presence in all places of deprivation of liberty, specific expertise and dedicated personnel, in order to be effective. Although adequate funding for the NPM is a State obligation arising under the OPCAT, in reality many existing NPMs cannot fulfil their mandate effectively as they are not granted with the necessary financial and human resources, not only at the moment of establishment, but also over the years. The lack of resources limits their capacity to visit all places of detention and properly follow up, and to perform all range of other activities that their preventive mandate would entail.

Under the OPCAT, States have the obligation to consider the recommendations of NPMs and enter into dialogue with them over their implementation. However, NPMs' recommendations are not binding and the majority of NPMs face challenges in ensuring that their recommendations are implemented by the authorities. These challenges are related to the lack of resources available to the authorities but, more often, to the lack of political will to change the practice of deprivation of liberty. On their side, NPMs also have a responsibility in the quality of their recommendations, the way they formulate and follow up on them with the authorities, and in assessing their implementation.

Finally, some NPMs still focus on their visits and monitoring mandate and face challenges in playing a broader preventive role and adopting a systemic approach. This would include effective monitoring of places of detention but also advocating and promoting changes in policies and legislation to strengthen the protection of persons deprived of liberty. The objective is to understand and address the root causes and the whole range of factors that might lead to torture and ill-treatment, with a view of creating an environment where torture is not likely to happen.

Enhanced protection of persons deprived of liberty

In only a few years of existence and despite the challenges that some of them still face, NPMs have made – and continue to make – important contributions to the protection of persons deprived of their liberty from torture and other ill-treatment.
The only fact that external and independent bodies have access to any place where persons are deprived of their liberty, ranging from prisons and police stations to less traditional places such as psychiatric institutions and social care homes, and make the situations experienced by persons held in those places visible is a major change in many countries. It is extremely important as it helps developing a culture of transparency and accountability in those places. Only when places of detention are subject to independent external scrutiny, it is possible to identify habits, cultures and shared attitudes and therefore prevent abuses from happening in the first place or from reoccurring.

National preventive mechanisms dedicate large part of their work to examine the material conditions of detention, whose quality is of utmost importance in safeguarding the human dignity of each person deprived of his or her liberty. In this regard, all of them have contributed to positive changes as a result of their recommendations arising from visits. These include improved living, food and hygienic conditions, as well as the closing of places of detention, or premises within those places, due to their poor conditions. But the work of most NPMs goes beyond that and has also contributed to improve or put an end to practices related to detention which are in breach with international, regional and national human rights standards and violate the rights and dignity of persons held in detention. In France, for example, following the repeated recommendations[15] issued by the NPM, *Contrôleur général des lieux de privation de liberté,* on the need to strictly apply the prohibition under national and international law of the presence of penitentiary staff and the use of restraint on women during labour or gynaecological consultations, the prison administration sent a letter to all prisons referring to the incidents reported by the NPM and recalling the rules to be applied strictly.

NPMs have also engaged in policy and legislative processes related to deprivation of liberty, leading to important changes in a number of areas, including policing and penitentiary reform, justice for children, alternatives to detention and mental health. In some instances, the findings of NPMs have also been used for proceedings before national courts.
Finally, due to their extensive expertise and knowledge, in many countries NPMs actively participate in public debates and bring the realities of detention to the attention not only of the authorities but also of the media and the society at large, thus contributing to change the public perception towards persons deprived of their liberty and to reduce the acceptance of torture.

This is a decisive stage for all NPMs and for the whole OPCAT system, of which they are a central component. Many NPMs find themselves at a turning point. They have gradually acquired extensive experience in their first years of existence, especially related to monitoring places of detention and formulating recommendations to the authorities, and have contributed to positive changes in the protection of persons deprived of their liberty. With more and more NPMs being established and functioning worldwide, it is also a critical moment for all of them to interact and benefit from each other's experience.
While some of them have already engaged in a process of self-reflection in order to identify the changes that they have contributed to and the adjustments needed to improve their work, it still remains a pending task for the majority of existing NPMs. A systematic thinking about their work, with a view to contribute to sustainable changes and have an impact in the long term on the protection of persons deprived of their liberty, is crucial to move from emerging to reference actors in the prevention of torture and ill-treatment.

[1] The Czech Republic designated the Public Defender of Rights (Ombuds Institution) as NPM in January 2006. To make the institution compliant with the OPCAT requirements, amendments were brought to the Law on the Czech Public Defender of Rights (Act n° 381/2005 amending the Act of the Public Defender from 01 January 2006).

[2] 22 March 2016.

[3] Opening speech by Elizabeth Odio Benito at the Regional Forum on the OPCAT in Latin America, Panama City, 30 September 2014.

[4] Manfred Nowak ad Elizabeth Mc Arthur, *The United Nations Convention against Torture. A Commentary*, Oxford University Press, 2008, pp.920-921; Association for the Prevention of Torture and Inter-American Institute of Human Rights, *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* A Manual for Prevention, 2005, pp. 47-48.

[5] Marshall Islands, Nigeria, Palau and United States of America. For the complete voting record on the OPCAT, see Official Records of the 77th plenary meeting of the UN General Assembly on 18 December 2002, UN Doc. A/57/PV.77.

[6] Statement by Malcolm Evans, Chair of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the 70th session of the UN General Assembly, Third Committee, Item 72(a), New York, 20 October 2015.

[7] 22 March 2016.

[8] Europe and Central Asia: 40 OPCAT States parties and 39 NPMs. Latin America: 15 OPCAT States parties and 13 NPMs. Africa: 15 OPCAT States parties and 7 NPMs. Asia Pacific: 6 OPCAT States parties and 3 NPMs. Middle East and North Africa: 4 OPCAT States parties and 2 NPMs.

[9] UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on National Preventive Mechanisms, UN Doc. CAT/OP/12/5, 9 December 2010, § 16.

[10] UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit to Paraguay, UN Doc. CAT/OP/PRY/1, 7 June 2010, § 56.

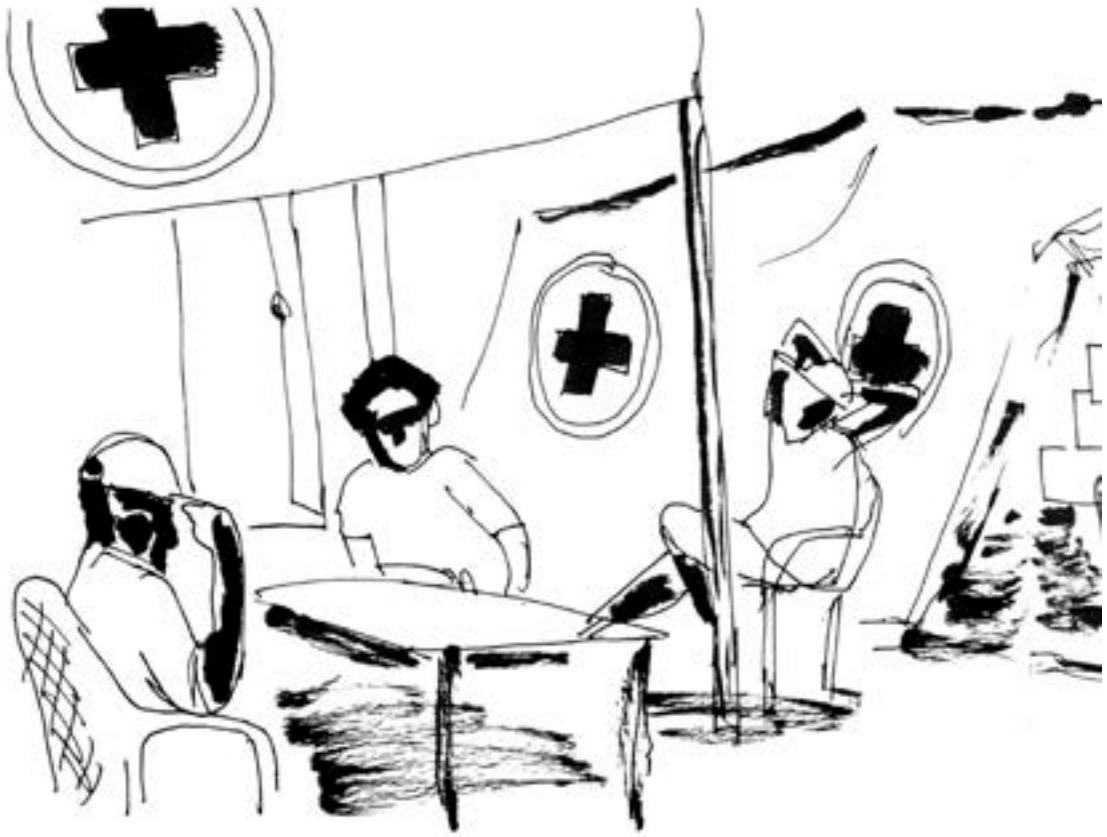
[11] UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit to Sweden, UN Doc. CAT/OP/SWE/1, 10 September 2008, §§ 19-42.

[12] 22 March 2016.

[13] Ombuds Institutions are oversight bodies, usually headed by a single person. Most are complaints-handling bodies and they have traditionally focused on maladministration. However, many Ombuds Institutions are now accredited as National Human Rights Institutions and have a broader mandate to promote and protect human rights alongside their traditional complaints-handling role. Ombuds Institutions vary in name: they may be called, for instance, *Defensor del Pueblo* in Spanish speaking countries or *Public Defenders* in parts of Central and Eastern Europe.

[14] UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on National Preventive Mechanisms, UN Doc. CAT/OP/12/5, 9 December 2010, § 15.

[15] See the opinions of the NPM, *Contrôleur general des lieux de privation de liberté,* on persons deprived of liberty in health establishment, *Avis relatif à la prise en charge des personnes détenues au sein des établissements de santé* (16 July 2015), and on women deprived of liberty, *Avis relatif à la situation des femmes privées de liberté* (18 February 2016).

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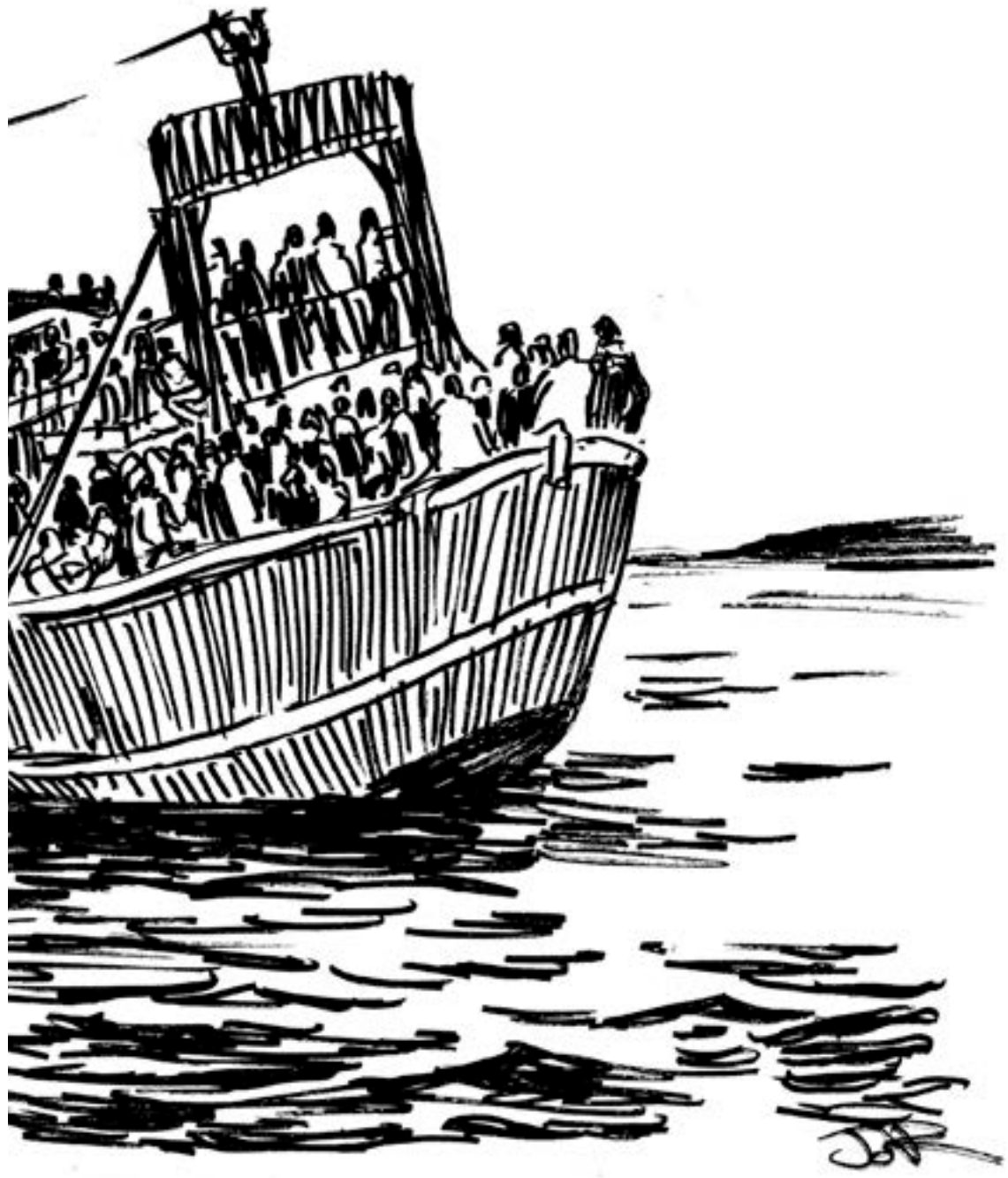

THE ROLE OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

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The European Committee for the Prevention of Torture (CPT)[1] is the preventive mechanism of the Council of Europe (COE) for the protection of people who are deprived of their liberty to protect them against torture and other forms of ill-treatment. Part of the mandate of the COE includes human rights, democracy and rule of law (*In UN Language: Principes du droit)*[2]. The CPT has visited all 47 COE member states.

The following contribution takes up three major issues in the work of the committee. The first section offers an overview on the legal basis, mandate and working methods. The second part looks at a theme which has increased in importance since last year's terrorist attacks in France and other countries: How does the Committee deal with cases of terror suspects and convicted terrorists? The third section addresses the cooperation between the CPT and National Prevention Mechanisms (NPMs) established under the Optional Protocol to the United Nations Convention against Torture (OPCAT). Concluding remarks will highlight a few key issues for the years to come in the work for the prevention of torture in Europe.

The CPT's legal basis, mandate and working methods

- **Legal basis**

The CPT works on the basis of the European Convention against Torture (ECPT)[3] ratified by all Member States of the Council of Europe. The Convention is based on Article 3 of the European Convention on Human Rights (ECHR) of 1950 which states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The ECPT governs the organization and powers of the CPT. Its mandate is not limited to "torture", but also includes "inhuman or degrading treatment or punishment".

In addition, the Committee covers situations of neglect such as underfunding and lack of trained staff which can also lead to security threats as well as to human rights violations, such as unjustified threat or use of force by staff towards prisoners and lack of control over (threats of) violence between inmates.
For each State Party, the Committee of Ministers of Council of Europe elects one member from a list of three candidates for a four-year term. Members are independent and do not represent the country to which they have been appointed. They come from the legal profession (judges, state attorneys, defence lawyers etc.), medical profession (general practitioners, forensic doctors, psychiatrists, etc.), police force and other professions. The Committee is supported by the CPT Secretariat, which currently employs 25 members of staff. The CPT's website publishes reports on country visits and government responses for all State parties that authorise the publication of said reports (see below)[4].

• Working methods

The CPT is an investigative authority, not a court like the European Court on Human Rights. Its work focusses on monitoring general aspects of detention or similar institutional arrangements, i.e. patterns, dynamics and trends. It does not take up individual cases[5]. It works on the basis of the principles of cooperation and confidentiality. The principle of cooperation means that the focus is on the protection of people deprived of their freedom, and not on a condemnation of states. The work is geared towards informing the government of the results of its visits after reviewing the situation on the ground (findings), and to formulating specific recommendations to improve the situation. Confidentiality means that correspondence, interviews, documentation, draft reports, etc. are treated as confidential. In accordance with the ECPT, reports are only published when State Parties grant permission to do so[6]. Some 90% of all reports have been published.

During visits, the delegation followed by the entire Committee assess its findings on the basis of standards published by the CPT and other standards that refer, among others, to relevant Council of Europe, EU (where applicable) and UN standards[7]. On the basis of the ECPT, CPT delegations have three important powers:

› **1.** unlimited access to all facilities where people are deprived of their liberties, including the right to move freely within them;

› **2.** to interview persons deprived of their liberty, and of any other person who can provide relevant information;

› et **3.** access to all documents.

Under the ECPT, interviewees are protected by confidentiality, and as a result, the Committee regards reprisals as a violation of the state's obligation to cooperate under the ECPT. It intervenes whenever it receives credible information about such action and devoted a special section to this issue in its 24th General Report in 2014. It named the following countries where, in varying degrees, there has been intimidation and reprisals, such as Armenia, Azerbaijan, Bulgaria, Greece, Hungary, "the former Yugoslav Republic of Macedonia", the Republic of Moldova, the Russian Federation, Spain and Ukraine[8].

Visits carried out by CPT delegations are usually composed of two or more members, accompanied by staff from the CPT Secretariat and, if necessary, by experts and interpreters. The CPT visits the States Parties at regular intervals, approximately every four to five years ("periodic visits"). In addition, ad hoc visits based on specific priority themes or institutions take place, e.g. with a focus on psychiatry, remand prisons or juveniles in prisons. As mentioned earlier, the main focus of the visits are cases of deliberate abuse by staff and excessive violence against inmates, but also violence between prisoners, a widespread phenomenon, and issues of neglect of inmates. In addition to visiting countries, the CPT has started observing deportation flights, such as those from the Netherlands to Nigeria, from the United Kingdom to Sri Lanka, from Italy to Nigeria and from Spain to Colombia and the Dominican Republic[9].
During the visit, the Committee may make an "immediate observation", an instrument which is often used[10]. The report contains findings as well as recommendations, comments and requests to receive more information on specific issues. The Government is invited to send a detailed response to the overall report.
Should the cooperation with a state party prove insufficient during a longer time and no improvement has taken place over a longer period of time, the Committee more recently propose and holds high-level talks with that government at the highest possible political level. When a serious situation nevertheless continues it can issue a public statement setting out its concerns[11]. It has done this two times with regard to Turkey, three times concerning the Russian Federation (Chechen Republic), once on Greece and on Bulgaria.

Every year, the CPT announces its periodic visits for the next year. For 2016 these will be Azerbaijan, Italy, Latvia, Liechtenstein, Lithuania, the Netherlands, Portugal, the Russian Federation, Spain and United Kingdom[12]. In addition there will be ad-hoc visits. In more than 25 years, CPT has carried out 370 visits to the 47 Member States of Europe. These included more than 2,500 police facilities[13] and 1,100 prisons, 350 detention facilities for foreigners under aliens legislation and 400 psychiatric and social homes. 300 reports have been published[14].

An important concern for the CPT is the possibility to visit areas with no de facto control of the central government[15]. On rare occasions CPT visited Abkhazia/Georgia, Kosovo/Serbia (under UNMIK and later) and Transnistria/Moldova. Up to now, it was unable to pay any visit to Nagorno-Karabakh/Azerbaijan, South Ossetia/Georgia[16] and Northern Cyprus.

The fight against terrorism and the implementation of CPT's mandate

Violent attacks of terrorist groups have resulted in many states to serious crimes such as assassinations, abductions and maiming of civilian population.
In the wake of September 11, 2001 various forms of legally questionable and clearly illegal forms of state action against terrorist suspects emerged, including abductions of suspects, holding them in secret prisons, torture, extraordinary renditions; moreover very few countries pursued an official policy of targeted killings of suspects outside an armed conflict context.

The CPT, with its much more limited mandate looked in detail at arrest and detention of terror suspects in a number of countries. Obvious examples are United Kingdom (IRA), Spain (Eta), Turkey (PKK) and the Russian Federation (Chechnya). The basic approach was and is not to call for an exceptional regime for members of such groups, but to apply CPT standards in general including often recommendations by the Council of Europe, United Nations and other relevant bodies[17].

Another concern is the practice of isolation of inmates as a result of disciplinary measures or for the safety of the institution concerned if the inmate appears to constitute a danger for himself or for other people or isolation of remand (Note for editor: prisoner under investigation) prisoners often up to 23 hours a day. Such measures might be necessary in the circumstances, but they should be adopted according to procedures based on law and not by arbitrary decision by a few officers or the management. *Incommunicado* detention in Spain of up to 13 days is another practice criticized by many human rights bodies, but continues to this day. CPT has repeatedly commented on safeguards in the context of incommunicado detention[18].
Furthermore the Committee has taken a position on minimum requirements for the size of cells[19], solitary confinement of prisoners (not more than two weeks for a given offence and probably lower), on fixation of prisoners (only for the minimum time necessary to calm down the prisoner)[20] and on the management of hunger strikes[21].

Discussions about safety measures for terrorists prisoners is a very difficult topic because there is a tendency by state institutions to decide such conditions by category of inmates rather than by an individual assessment of the actual dangerousness of the person concerned which can very much differ from one prisoner to another. The CPT all the time argues for an individual risk assessment.
When it comes to complaints about torture/ill-treatment by such prisoners it is often very difficult to talk to authorities and the management of institutions about them. This is because there is a general closed reaction considering every type of complaint as entirely unfounded, conceived only as lies, because terrorists would always try to put blame on the state as part of their political struggle. While it is known for many years that this can and has been part of the strategy of certain terrorist groups it is also true that very often state agents have resorted to threats and acts of ill-treatment and torture[22]. All this makes verification of the facts of the complaint even more important and requires clear findings and recommendations whether complaints have been sufficiently investigated by independent bodies. Immediate access to a lawyer is another key issue because a lawyer often serves an important prevention function.
All the CPT approaches and rules just mentioned are *general* rules applicable to *all* prisoners, not to a specific category of prisoners. They are particular relevant in the context of this special group of prisoners because it is considered to be dangerous and hence prisoners end up often in a high security prison or in a high security prison section.
Another category of state measures which have become public through investigative journalism since 2005 was the cooperation between the United States Central Intelligence Agency and certain European governments which, despite some public statement emphasising their lack of knowledge, collaborated with the former to abduct and let terror suspects captured by US agencies be transferred to their home countries for interrogation/torture or to secret prisons in three EU member states, Poland, Romania and Lithuania. The CPT has addressed Romania and Lithuania on these issues[23]. It also sought authorization to visit Camp Bondsteel in Kosovo (then under UNMIK administration) under the control of NATO, authorization which it received in 2004, but which became only effective in 2007. Publication of the visit report has not been authorized.

The role of the CPT and NPMs in Europe

With the Optional Protocol to the UN Anti-Torture Convention, state parties entered into an obligation to set up National Preventive Mechanisms (NPMs). The

Subcommittee on Prevention of Torture to the UN Committee against Torture (SPT) was established. It undertakes monitoring visits as well as visits to advise NPMs on their work[24]. NPM work is focused on systematically visiting detention centers and similar institutions in their own country. In January 2016 NPMs functioned in 37 out of 48 European countries (according to the UN SPT website).
This has naturally changed the dynamics of the prevention of torture "arena", with many national monitoring mechanisms of different resources, size etc. coming to the fore whereas before that the "arena" involved State parties, the CPT and – always – Non-Governmental Organisations. As a consequence, many meetings, exchanges and training sessions took place between NPMs and CPT members to share experiences, enhance a common understanding of issues while respecting different institutional settings and contexts within which actors work. A newsletter was created with the support of the Council of Europe[25].
In its visits reports, CPT looks at the functioning of NPMs focusing on the mandate, the degree of independence and the budget[26]. By now three main actors – the international mechanism under SPT, CPT as the regional visiting mechanism and many NPMs in Europe work closely together to ensure constant exchange on applicable standards, methods and reporting. After extensive discussion internally and externally the CPT has set out its views in 2014. An important step in that direction was undertaken on the occasion of the 20th anniversary of CPT in Strasbourg, as representatives from the three areas met for a symposium, and most recently in March 2015 to mark the 25th anniversary of the CPT.

I will now list some of the major points in the relevant chapter of the 22nd General Report of the CPT:

29. The effectiveness of efforts to assist States in Europe to prevent torture and other forms of ill-treatment will in future depend to a large extent on the quality of the interaction between the Committee and these mechanisms…

33. CPT is attentive to whether a given mechanism, whatever its form, meets the key requirements as laid down in the OPCAT and subsequently elaborated upon by the SPT in its Guidelines on NPMs. Those requirements include the functional independence of the mechanism and of its personnel, adequate resources, experienced and diversified membership, as well as a mandate and powers which are in accordance with the OPCAT (Articles 19 and 20) and clearly set out in a constitutional or legislative text. It should be noted in this regard that the degree of interaction between the CPT and a given NPM will inevitably depend to a large extent on the Committee's perception of that mechanism's real level of independence.

34. When the CPT encounters situations in which the above-mentioned requirements do not appear to be met, it will raise the matter with the national authorities. For example, the Committee has commented in several visit reports on the apparent inadequacy of the resources placed at the disposal of the NPM in the country concerned. …By acting in this way the CPT hopes to provide concrete support to NPMs, many of which are still at an early stage of their development and trying to make their mark. …

38. On substantive issues, the CPT has gradually developed its own set of "measuring rods". This has been done not only on the basis of the Committee's empirical findings during visits, but also in the light of some key reference points, such as Council of Europe recommendations relating to the deprivation of liberty and the case law of the European Court of Human Rights, as well as relevant UN human rights instruments and related jurisprudence. These general criteria provide a basis for assessment and the recommendations contained in CPT reports.

39. Equally, the precise manner in which one goes about the business of visiting the different types of places of deprivation of liberty should be the subject of a continuous sharing of experience and knowledge, so as to promote as far as possible consistent methodologies. The CPT could make available internal tools it has developed in this area.

41. A visit by the CPT, whether periodic or ad hoc, is a key moment for relations– and more specifically cooperation – between the Committee and the NPM in the country concerned…

42. Before a periodic visit gets underway, the information gathered by the relevant NPM and its conclusions and annual reports can be invaluable to the CPT for the purposes of identifying the main themes of the visit and the particular places that should be visited. There needs to be continuous communication between the Committee's secretariat and NPMs, increasing in intensity in the months preceding the visit. The publication by the CPT, at the end of each year, of the list of countries in which a periodic visit will take place in the following year should facilitate this process. Of course, information received from an NPM might also trigger an ad hoc visit by the CPT…

52. The possibility has been mooted of NPM members joining the CPT's delegation during a visit to their country, or of CPT members being invited to participate in an NPM visit. The CPT is not in favour of such scenarios. To begin with, the rule of

confidentiality which applies to the Committee's activities would pose significant problems as regards the participation of NPM members in one of its visits. More fundamentally, the Committee considers that to mix up the functions of national and international preventive mechanisms could prove to the detriment of both. The strength of the tripartite monitoring system (NPMs, CPT, SPT) now in place – the assistance and support that each part can provide to the others – lies precisely in the mechanisms remaining, and being seen to remain, quite separate. "United in our goals, distinct in our roles" should be the motto to adopt." [27]
The chapter discusses further in details opportunities of cooperation before, during and after a CPT visit.

Concluding remarks

The emergence of many new NPMs has led to a much more diverse picture of the arena of actors active in the prevention of ill-treatment and torture. If well-resourced, independent from government intervention and well-trained, NPM's have good opportunities to pay effective visits to relevant establishments and do this more frequently as it is possible for the CPT. It is a continuing concern that NPM institutions should be endowed with the necessary powers, resources and independence to guarantee that they can undertake well-qualified work and are not under pressure or have to face obstacles put in their way by state authorities.
Activities at the national and regional level are not competing with each other, but should rather complement each other so that synergies can be realised. Indeed, already now, an immense effort and exchange of relevant materials, experiences and training seminars have been organised over the last years to allow and foster a common understanding of prevention work, covering many aspects of prevention work.
All these efforts should help to improve what must be seen as a broad spectrum of country situations. Quite a number of countries still use old establishments where people are being held deprived of their liberty which suffer from bad material conditions accompanied by lack of regime, weak protection of prisoners against ill-treatment by staff and violence by fellow prisoners – and often facing considerable overcrowding problems. In other cases, establishments while more modern and better resourced, require that issues of a more specific nature are being taken up such as disciplinary punishment, length of isolation and treatment of mentally ill inmates, to mention just a few. Immediate *effective* access to a lawyer is still an issue in a large number of countries. The same goes for impunity, the lack of prompt, impartial effective investigation and sanctioning of abuses mostly in a police and prison context[28].

[1] This contribution draws in part on two earlier publications by the author, Zur Arbeit des Europäischen Ausschusses zur Verhütung der Folter (CPT) des Europarats, in: Andreas Zimmermann (Hrsg.), Folterprävention im völkerrechtlichen Mehrebenensystem, Potsdam: Universitätsverlag Potsdam, 2011, pp. 81-99 and Der Europäische Ausschuss gegen Folter nach 25 Jahren. In: Forum Strafvollzug. Zeitschrift für Strafvollzug und Straffälligenhilfe, No. 3, 2015, pp. 175-179.

[2] Council of Europe, Penitentiary questions 2010. Council of Europe, Recommendations and Resolutions, Strasbourg: Council of Europe Publications, 2010.

[3] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

[4] cpt.coe.int.

[5] See generally Renate Kicker, The Council of Europe Committee for the Prevention of Torture (CPT): In: European Yearbook on Human Rights, Mortsel: Intersentia, 2009, pp 199-209, Jim Murdoch, The Treatment of Prisoners. European Standards. Strasbourg: Council of Europe Publications, 2006, Rod Morgan/Malcolm D. Evans (eds.), Combating torture in Europe. The work and standards of the European Committee for the Prevention of Torture, Geneva 2001. More generally, comparing Council of Europe monitoring bodies: Renate Kicker/Markus Möstl, Standard-setting through monitoring? The role of Council of Europe expert bodies in the development of human rights. Strasbourg. Cedex: Council of Europe Publishing 2012.

[6] ECPT, art. 11, § 2.

[7] CPT, CPT Standards, Strasbourg 2015 (available in various languages).

[8] CPT, 24th General Report, pp. 21-23.

[9] On return flights see Jiri Pirjola, Flights of Shame or Dignified Return? Return Flights and Post-return Monitoring, in: European Journal of Migration and Law, No. 4, 2015, pp. 305-328.

[10] "If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned" (Art. 8, 5 ECPT).

[11] "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter" (Art. 10, 2, ECPT).

[12] News flash: Council of Europe anti-torture Committee announces visits to ten states in 2016, 30.03.2015.

[13] See Eric Svanidse, Effective investigation of ill-treatment. Guidelines on European standards, Strasbourg: Council of Europe Publications, 2010.

[14] Press release - DC024(2015), 25 years of the Anti-torture Committee.

[15] Author does not express an opinion on the legal status.

[16] But see: CPT news flash, Extending the activities of the Council of Europe anti-torture Committee to Abkhazia and South Ossetia.

[17] All references to terrorism in CPT reports can be found at http://hudoc.cpt.coe.int/eng#{"fulltext":["terroris*"]}.

[18] E.g. CPT/Inf (2013) 6.

[19] Living space per prisoner in prison establishments: CPT standards (2015).

[20] E.g. in the Denmark report of 2014 (CPT/Inf (2014) 25) CPT stated: "The duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment" (p. 44).

[21] CPT Standards were mentioned on the occasion of a visit to Spain that focused on such a case (CPT/Inf (2009) 10).

[22] Publications about U.S., Russian governments´ and other countries´activities should be known. Here I just wish to refer to Spain's experiences with the "Antiterrorist Liberation Groups" (Spanish Acronym GAL) which was responsible for murder, torture and kidnappings by members of the Spanish police and foreign mercenaries. Trials led to the conviction of high-ranking public officials including the then minister of homeland security. See Paddy Woddworth, Dirty War, Clean Hands: ETA,the GAL and Spanish Democracy, Yale University Press, 2003.

[23] Romania: CPT/Inf (2011) 31; Lithuania: CPT/Inf (2011) 17.

[24] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002).

[25] European NPM newsletter.

[26] See the last CPT reports on Austria, Bulgaria and Georgia, all published in 2015.

[27] CPT, 22nd General Report of the CPT, 2011-2012, pp. 15-20 (paras. quoted selected by the author).

[28] Council of Europe, Eradicating impunity for serious human rights violations. Guidelines and reference texts, Strasbourg 2011.

THE LEGAL PROHIBITION OF TORTURE: CONTINUOUSLY WIDER APPLICATION

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On 16 March 2016, the Inspector-General of Places of Deprivation of Liberty (CGLPL) in France issued emergency recommendations concerning the Ain psychotherapy centre. In this document published in the official Journal, the CGLPL, established in France in application of the Optional Protocol to the United Nations' Convention against Torture (OPCAT), underlined in particular that the "conditions for care represent a serious breach to the fundamental rights of the individuals hospitalised in this establishment". Furthermore, she stated that "the four inspectors assigned to the task noted exceptionally stringent supervision of patients' actions and movements, with patients subjected to disproportionate restrictions of their comings and goings within the establishment, access to their personal belongings and communication with the outside world"[1].

This intervention from the CGLPL is a vivid illustration of the manner in which the scope of the prohibition of torture and cruel, inhuman or degrading treatment has been extended to encompass persons deprived of their liberty, an issue we shall explore in this piece. Effectively, this intervention demonstrates a broadening of the concept of deprivation of liberty in the sense that in this case the CGLPL intervened in premises fairly far removed from the premises historically associated with the prohibition of torture and other forms of mistreatment, such as prisons and police stations. In addition, in highlighting issues that extend beyond violations to physical integrity, this intervention embodies the holistic approach to deprivation of liberty promoted by visiting mechanisms applied in detention premises, which ultimately nourishes and consolidates the legal framework relative to the prohibition of torture and other forms of mistreatment.

A broader understanding of the concept of deprivation of liberty

In the late eighties, the European Committee for the Prevention of Torture (CPT) began carrying out preventative visits to premises designed to detain persons deprived of their liberty following decisions taken by public authorities, in compliance with Article 2 of the European Convention for the Prevention of Torture. At the time, the notion of deprivation of liberty, as understood by the bodies responsible for overseeing the prohibition of torture, was conservative to say the least.

Cases brought before the European Court of Human Rights only concerned the judicial process of deprivation of liberty, with litigation overwhelmingly pertaining to the treatment of detainees rather than detention conditions[2]. Similarly, in its assessment of the periodic reports submitted by State parties of the United Nations' Convention against Torture, the Committee against Torture concerned itself with reflecting on the implementation of obligations in prisons and gendarmerie or police stations, yet only briefly considered conditions in psychiatric facilities or detention centres for migrants. The first United Nations' Special Rapporteur on Torture was appointed in 1985, and in the first few years focused on the practice of torture and other forms of mistreatment in police establishments and penal institutions. Although the Rapporteur was quick to turn his attention to some categories of detainees such as minors[3], defenders of human rights[4], sexual minorities[5] and women[6], it wasn't until 2003, for example, that the Rapporteur began taking an interest in the situation that prevails in psychiatric institutions[7].

Yet the CPT would soon reject this narrow interpretation of the concept of deprivation of liberty. While according to its comment on Article 2 of the Convention ("Each State Party shall allow visits, in accordance with the present Convention, to anyplace under its jurisdiction and control where persons are or may be deprived of their liberty by virtue of an order given by a public authority") the CPT states that it adheres to the definition provided under Article 5 of the European Convention on Human Rights, in practice its interpretation of the concept of deprivation of liberty has been much looser.

Thus, from its very first visit to a State party to the Convention – Austria – the CPT visited police stations and penal institutions as well as a special transit centre for asylum seekers at Schwechat airport[8]. While this type of deprivation of liberty unquestionably falls under the remit of public authority, this was the first time that one of the Council of Europe's bodies had turned its attention to the conditions and treatment of detainees on these premises.

In the first year of its existence, it visited a psychiatric hospital and a military detention centre in Malta[9], as well as a detention centre for minors in Finland[10].

At the time, the decision to do so was a bold one, resulting in the fact that the CPT can now state that its mandate extends beyond penal institutions and police stations to encompass, for example, "psychiatric institutions, detention areas at military barracks, holding centres for asylum seekers or other categories of foreigners, and places in which young persons may be deprived of their liberty by judicial or administrative order"[11]. Finally, it should be emphasised that since the late noughties, the CPT has also been monitoring detention conditions during return flights.

More recently, the Sub-Committee for the Prevention of Torture established by the OPCAT has also adhered to this interpretation of the concept of deprivation of liberty. Thus, the Sub-Committee states that it visits all premises on which persons may be deprived of liberty, including police stations, prisons (military and civilian), detention centres (e.g. pre-trial detention centres, immigration detention centres, juvenile justice establishments, etc.), mental health and social care institutions[12].

Similarly, in France, in its interpretation of Article 8 of its founding legislation (Law n° 2007-1545 of 30 October 2007 establishing the role of the Inspector-General of Places of Deprivation of Liberty), the CGLPL states her intention to visit penal institutions, health care establishments, establishments under the joint authority of the ministry of health and the ministry of justice, custody premises, customs detention premises, administrative detention centres and premises for migrants, waiting areas in ports and airports, holding areas or jails in courts, secure educational centres and all vehicles used to transfer persons deprived of their liberty. Furthermore, Law n° 2014-528 of 26 May 2014 amending the law of 30 October 2007 establishing an Inspector-General of Places of Deprivation of Liberty also broadened the scope of the institution to include the monitoring of the material enforcement of deportation procedures for migrants up until the point that the latter are handed over to the authorities of the State of destination[13].

Interestingly, this understanding of the concept of deprivation of liberty permeates the functioning of other mechanisms used to monitor the prohibition of torture and other forms of mistreatment. As an example, the European Court of Human Rights is now assessing the material conditions of detention for asylum seekers in Greece[14] and detention conditions in psychiatric hospitals[15].

In addition to this significant widening of the concept of deprivation of liberty, there is also a holistic approach to the cases of these persons deprived of their liberty, supported by the visiting mechanisms in a bid to understand the realities of the scope of prohibition of torture and cruel, inhuman and degrading treatment.

A holistic approach to deprivation of liberty

Visiting mechanisms, whether international, national or regional, are not designed to determine the legal classification of behaviours brought to their attention, but instead to identify and suggest concrete measures that may prevent behaviour that violates human dignity from occurring and being repeated.

As emphasised by the CGLPL, the goal is to "ensure that persons deprived of their liberty are treated humanely and make sure that rights which are inherent in human dignity are enforced"[16]. The International Committee of the Red Cross (ICRC) has similar aims, and visits detention premises to "secure humane treatment and conditions of detention for all detainees"[17] and the CPT "in order to assess how persons deprived of their liberty are treated"[18].

Furthermore, although visiting mechanisms continue to pay particularly close attention to how persons deprived of their liberty are treated physically, and aim to have an immediate impact, for example by responding with emergency measures in various premises on behalf of a specific person or category of person[19], the overall approach has been broadened. Thus, the CGLPL clearly states that "the focus is to analyse the place of detention as a system and assess all aspects related to the deprivation of liberty. The aim is to identify aspects of detention which could lead to violations of human rights"[20].

The consequence of this two-fold movement is embodied in a holistic approach to the experience of persons deprived of their liberty. The issues tackled by the CGLPL in her opinions and recommendations are example enough of how loose an approach this is. Effectively, although searches, material accommodation conditions and discipline are of course taken into consideration, the Inspector also assesses other criteria such as access to care, activities, work and training, food, confidentiality in communication, the right to information, the right to privacy, hygiene, the maintenance of personal and family ties, and religion[21].

Drawing on this same holistic approach, a British mechanism for visiting persons deprived of their liberty, Her Majesty's Inspectorate of Prisons[22], identified "expectations"[23] as part of the criteria it assesses during visits. Structured around four “key tests” (safety, respect, purposeful activity and resettlement), these expectations are adapted by detention premise type (prisons, police stations, migrant detention premises, court detention premises, military prisons) and category of person visited (women and minors). These "expectations" allow premises to be assessed in their entirety in order to make concrete recommendations to be integrated into a detention system.

Finally, the methodological guides published by the Association for the Prevention of Torture in particular also adhere to this holistic approach, and invite visiting mechanisms to take into account issues surrounding treatment (torture and mistreatment, violence between detainees), safeguards (contact with, and access to, a lawyer, a judge, right to information, appeals procedures, detention, inspection and monitoring registers), safety, order and discipline (solitary confinement, separation of detainees, body and cell searches, use of force, methods of restraint, disciplinary measures), contact with the outside world (family visits, correspondence, telephone, internet, consular services, access to external information), material conditions of detention (accommodation, sanitary facilities and personal hygiene, water and food, lighting and ventilation, clothing and bedding), prison life (work, religion, outdoor exercise, education, recreational activities), health care (access to treatment, specific care by detainee category, health care staff) and finally staff conditions (recruitment, training, working conditions)[24].
As well as lending structure to working methods for visiting mechanisms and offering increased protection to persons deprived of their liberty, this holistic approach has had an impact on the normative framework relative to the prohibition of torture and cruel, inhuman or degrading treatment.

Consolidating the normative framework

On this subject, the role of the CPT and the contribution made by some visiting mechanisms with respect to revising regional and international legal rules must be emphasised.

The CPT's standards
From its very first visits, the issue of applicable rules arose in a highly practical fashion. In effect, the European Court of Human Rights' case law relative to Article 3 was far from sufficiently developed and did not equip the CPT with sufficiently precise criteria via which to assess the situation of persons deprived of their liberty. The CPT thus began applying a highly pragmatic approach to identify the standards to be applied to the premises visited in order to prevent torture and other forms of mistreatment. As a result, in its second annual report[25], the CPT identified a certain number of measures aimed at preventing the mistreatment of detainees in detention in penal institutions and in police detention. On this subject, it states that detainees

must enjoy three "fundamental safeguards"[26] pertaining to the right to inform a third party of their detention, the right to access a lawyer and the right to access a doctor of their choosing.
Going forward, in almost every one of its ensuing annual reports, the CPT shared its thoughts on the specific issues rélative to specific detention premises and/or specific categories of persons deprived of their liberty. Chapters are therefore dedicated to health care in prisons[27], people detained under legislation relative to irregular immigration[28], involuntary admission to psychiatric institutions[29], minors[30] and women deprived of their liberty[31], police detention[32], imprisonment[33], migrant deportations by air[34], the fight against impunity, electric shock weapons, methods of restraint in psychiatric establishments for adults, access to lawyers and solitary confinement, the collecting and flagging of medical evidence of mistreatment[35] and finally to the phenomena of intimidation and reprisal[36].
Over the last few years, these chapters have been collated in a CPT document entitled "CPT standards". In addition to being an exercise in systematisation that is particularly useful for practitioners and those implementing deprivation of liberty, it is worth noting that these “standards“ have effectively been applied as legal reference norms in legal proceedings. Thus, from the beginning of the noughties, a number of references to these standards appear in decisions emitted by the European Court of Human Rights[37].

European Prison Rules and the Mandela rules

In a more “traditional” sense, these standards have permeated two recent processes relative to protecting persons deprived of their liberty in penal institutions: the European Prison Rules and the Mandela rules.

Initially adopted in 1973, the European Prison Rules were updated in 2006 following a consultative process. In its recommendation to State members, the Committee of Ministers stated that the proposed rules also take into account "the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports"[38]. References to the CPT's “norms” are very explicitly and concretely detailed in the commentary of the European Prison Rules[39]. Thus, the provisions relative to detainees' accommodation conditions, the cleanliness of premises and personal hygiene, the penal regime, physical exercise and recreational activities, minors, health care, doctors' duties, mental health, searches and monitoring measures and finally weapons are directly inspired by the CPT as they appear in the annual reports[40].

Similar crossover can be seen regarding the Mandela rules adopted on 17 December 2015 by the United Nations General Assembly[41] which take the shape of a revised version of the United Nations Standard Minimum Rules for the Treatment of Prisoners initially adopted in 1957. This crossover is primarily illustrated by some visiting mechanisms being introduced into the consultative process, leading to the adoption of these rules. Thus, the CPT, the United Nations Sub-Committee for the Prevention of Torture and the International Committee of the Red Cross embarked upon a series of negotiations and/or submitted written contributions[42].
The text's new items prioritise the preventative approach promoted by the visiting mechanisms for detention premises in two different ways[43]. Firstly, the rules recognise the importance of the aforementioned fundamental safeguards in preventing torture and mistreatment. Thus, the right to immediate communication with a lawyer, the right to inform one's family of detention, a transfer, illness or serious injuries and access to a doctor upon admission to a penal institution were recognised[44].
In addition, the rules acknowledge the importance of internal and external inspection mechanisms[45] and invite States not only to implement said mechanisms but also to guarantee them access to all prisons and proceed to carry out unannounced visits, to consult with the detainees of their choosing in private, and to make recommendations to the competent authorities.

Conclusion

We can but applaud the extension and consolidation of this legal framework relative to the prohibition of torture and other forms of mistreatment that ultimately benefit persons deprived of their liberty. This unique combination of litigation mechanisms, monitoring bodies and especially visiting mechanisms provides for a protective and holistic approach, and has allowed its scope to be extended over the past 20 years, at a time when the absolute nature of the prohibition of torture and cruel, inhuman or degrading treatment has been called into question.
While this broadening of scope is welcome, the fight continues in three main directions. The first remains the need to continuously remind of the absolute nature of prohibition. While progress has indeed been made over the past few years, the core concept of the need to protect the dignity of persons deprived of their liberty is far from being a given, especially in an environment in which security is invoked increasingly frequently as an argument against. The second is a more recent phenomenon, and pertains to paying particular care to some categories of persons deprived of their liberty, who find themselves in a vulnerable situation and require more specific care. Visiting mechanisms' activities and the mobilisation and advo-

cacy seen among organisations tasked with defending these people have revealed specific needs for women, children, foreign nationals, members of the LGBTI community, detainees with disabilities and the elderly. This adapting of the normative framework and of the practices used by detention authorities to meet these specific needs will mark a significant step forward in protecting the dignity and fundamental rights afforded to these groups.

The third direction involves drawing on the normative and institutional progress seen in the field of deprivation of liberty and applying it to other situations in which people are subjected to acts of torture and mistreatment. In effect, much remains to be done to protect victims and prevent violations of dignity in areas such as expulsion and deportation of foreign nationals, protecting the sick, the death penalty, the fight against all forms of discrimination and socio-economic living conditions. The ideas for progress and development explored in this submission will undoubtedly allow us to move forward in this direction.

[1]] http://www.cglpl.fr/2016/recommandations-en-urgence-relatives-au-centre-psychotherapique-de-lain-bourg-en-bresse/

[2] For an overview of the case law of the European Court of Human Rights in relation to Article 3 on detention conditions, see Jean-Manuel Larralde, "L'article 3 et les personnes privées de liberté" in La portée de l'article 3 de la Convention européenne des droits de l'Homme, pp. 209-236 or Frédéric Sudre, "L'article 3 bis de la Convention européenne des droits de l'homme: le droit à des conditions de détention conformes au respect de la dignité humaine", Libertés, justice, tolérance. Mélanges en hommage au Doyen Gérard Cohen-Jonathan, Bruxelles, Bruylant, 2004, Vol.2, pp.1449-1514.

[3] See E/CN.4/1996/35, 9 January 1996.

[4] A/54/156, 4 February 2000.

[5] A/56/156, 3 July 2001.

[6] A/HRC/7/3, 15 January 2008.

[7] A/58/130, 3 July 2003.

[8] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment's Report to the Austrian Government on the Visit to Austria from 20 May 1990 to 27 May 1990CPT/Inf (91) 10 [EN], 3 October 1991.

[9] http://www.cpt.coe.int/documents/mlt/1992-05-inf-eng.htm.

[10] http://www.cpt.coe.int/documents/fin/1993-08-inf-eng.htm#I.B.

[11] CPT/Inf/E (2002) 1 - Rev. 2015, p. 5.

[12] http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx.

[13] http://www.cglpl.fr/missions-et-actions/sa-mission/

[14] See Ali Cheema and others v Greece, First section, Application No 7059/14, 7 April 2016.

[15] See for example: Stanev v Bulgaria, Grand Chamber, Application No 36760/06, 17 January 2012.

[16] http://www.cglpl.fr/en/the-tasks-of-the-controleur-general-des-lieux-de-privation-de-liberte/

[17] https://www.icrc.org/en/what-we-do/visiting-detainees.

[18] http://www.cpt.coe.int/en/about.htm.

[19] In this regard, see the CGPL's "unexpected visits" and the CPT's "ad hoc" visits.

[20] http://apt.ch/en/preventive-visits/

[21] http://apt.ch/fr/resources/avis-et-recommandations-du-controleur-general-des-lieux-de-privation-de-liberte-de-france-2008-2014/?cat=62

[22] Her Majesty Inspectorate of Prisons, for more information see https://www.justiceinspectorates.gov.uk/hmiprisons/

[23] https://www.justiceinspectorates.gov.uk/hmiprisons/about-our-inspections/inspection-criteria/. Interestingly, these working documents published by the CPT also reveal that the CPT sometimes uses surveys to assess some of the detention premises it visits. See for example the checklist for visits to social care institutions where persons may be deprived of their liberty (CPT/Inf (2015) 23, 22 May 2015.

[24] See for example http://www.apt.ch/detention-focus/

[25] CPT/Inf (92) 3 [EN] – Date published: 13 April 1992.

[26] *Ibid.* § 36.

[27] CPT/Inf (93) 12 [EN] - Date published: 4 June 1993.

[28] CPT/Inf (97) 10 [EN] - Date published: 22 August 1997.

[29] CPT/Inf (98) 12 [EN] - Date published: 31 August 1998 and CPT/Inf (2009) 27, 20 October 2009.

[30] CPT/Inf (99) 12 [EN] - Date published: 30 August 1999 and CPT/Inf (2015) 1, January 2015.

[31] CPT/Inf (2000) 13 [EN] - Date published: 18 August 2000.

[32] *Op. cit.* note 6 and CPT/Inf (2002) 15, 3 September 2002.

[33] *Op. cit.* note 6 and CPT/Inf (2001) 16, 3 September 2001.

[34] CPT/Inf (2003) 35, 10 September 2003.

[35] CPT/Inf (2013) 29 Strasbourg, 6 November 2013.

[36] CPT/Inf (2015) 1, January 2015.

[37] See for example the recent case of Bouyid v Belgium, Application No 23380/09, Grand Chamber, 29 September 2015.

[38] Recommendation Rec(2006)2 by the Committee of Ministers to Member States on the European Prison Rules1 (adopted by the Committee of Ministers on 11 January 2006 during the 952nd meeting of the Ministers' Delegates).

[39] http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf

[40] European Prison Rules Nos. 18, 19, 25, 27, 35, 39, 42, 43, 47, 59, 60 and 69.

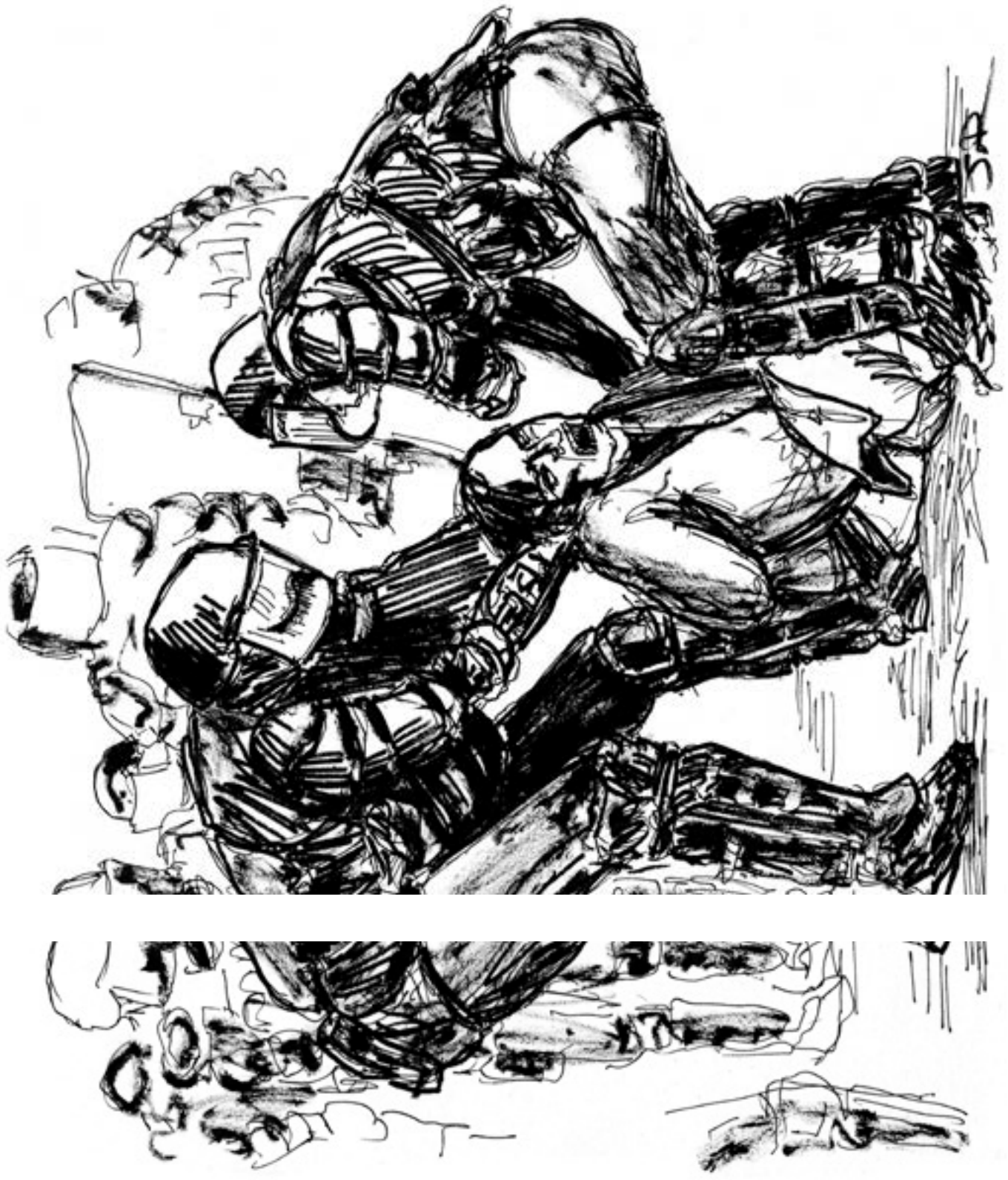
[41] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175&referer=http://www.apt.ch/en/blog/the-mandela-rules-a-crucial-revision-for-monitoring/&Lang=F.

[42] For more information on how the Mandela rules were adopted, see http://www.penalreform.org/wp-content/uploads/2013/07/Joint-NGO-Briefing-SMR-Review-updated-January-2016.pdf.

[43] For more information on the analysis of the contents of the Mandela rules, see in particular http://www.penalreform.org/wp-content/uploads/2016/01/PRI_Nelson_Mandela_Rules_Short_Guide_WEB.pdf.

[44] http://www.apt.ch/en/blog/the-mandela-rules-a-crucial-revision-for-monitoring/#.VwIS46ThBdg.

[45] *Ibid.*



THE ISTANBUL PROTOCOL*: A PRACTICAL MANUAL FOR MEDICAL EXPERTS

PAR BERNARD GRANJON, former Chairman of Médecins du Monde (MdM)
Doctor and head of the Turkey Migrant Project for MdM

The term “torture” conjures up images so terrifying to each of us that we are in great danger of only tackling the issue from a subjective point of view. The term effectively sparks feelings of repulsion, horror, disgust and shock, making it difficult indeed to characterise, describe and even denounce it in an objective fashion. Torture has, of course, always existed, yet although it is as widespread as ever, its conditions have changed. From our point of view as health care professionals, significant progress has been made in the examinations of and care for the victims. For members of the legal profession, over the past twenty years or so the International Criminal Court (ICC)* has boosted the possibility of acknowledgement being obtained – crucial to paving the way for resilience, convictions, and even compensation. The Istanbul Protocol was an attempt to satisfy these many needs and requirements.

THE ISTANBUL PROTOCOL

WHY?

The protocol was drafted in 1999 by the United Nations secretariat with the approval of the Office of the United Nations High Commissioner for Human Rights. Its credibility is reinforced thanks to the support of close to 40 humanitarian associations including Amnesty International, the Association for the Prevention of Torture, the

International Committee of the Red Cross, Human Rights Watch, the Turkish Medical Association, etc.
It describes itself as "*Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*". The protocol does in fact draw on the terms of the Convention against Torture, with the definition of the latter adopted in 1984.

> *"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..."*

Torture is of great concern to the international community. Its aim is to deliberately destroy not only the physical and mental wellbeing of its victims, but in some cases the dignity and free will of entire communities. It affects all members of the human community, as it calls into question the very meaning of our existence and compromises all hope for a better future. It severs the ties that link us to our past, our surroundings and our loved ones and in doing so obliterates any possibility of forging new ties, new senses of belonging, and new points of reference. Although the international instruments of human rights and humanitarian law systematically outlaw torture in all circumstances, torture and mistreatment is practised in over half of the world's countries. "The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for States to identify and implement effective measures to protect individuals from torture and mistreatment. This manual was developed to enable States to address one of the foremost fundamental concerns in protecting individuals from torture – effective documentation. Such documentation brings evidence of torture and mistreatment to light so that perpetrators may be held accountable for their actions and the interests of justice may be served. The documentation methods contained in this manual are also applicable to other contexts, including human rights investigations and monitoring, political asylum evaluations, the defence of individuals who 'confess' to crimes during torture and needs assessments for the care of torture victims, among others. In the case of health professionals who are coerced into neglect, misrepresentation or falsification of evidence of torture, this manual also provides an international point of reference for health professionals and adjudicators alike".

The protocol immediately emerges as having a dual focus:
- A legal and political focus,
- A medical and ethical focus.

The legal and political focus
This aspect is based on international legal standards, namely:
- International humanitarian law,
- The jurisdiction of the United Nations,
- The jurisdiction of local organisations,
- The International Criminal Court.

A. International humanitarian law that pertains in particular to solutions to armed conflict. Its provisions do not allow for varying interpretations: in no case or event may the use of torture be justified.

B. The jurisdiction of the United Nations: For a number of years now, the United Nations has been striving to develop universally applicable standards. The conventions, declarations and resolutions adopted by the Member States of the United Nations clearly establish that no exception to the prohibition of torture may be made, and impose obligations designed to ensure individuals are protected from mistreatment. The most important of these texts include:
- The Universal Declaration of Human Rights,
- The International Covenant on Civil and Political Rights,
- The Standard Minimum Rules for the Treatment of Prisoners,
- The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

All of these texts insist on the legal obligations for preventing torture and specify the means to be implemented in order for this to be achieved. To do so, the United Nations draws on a certain number of bodies and mechanisms, including:
- The Committee against Torture*,
- The Human Rights Committee*,
- The Commission on Human Rights,
- The Special Rapporteur on Torture*,
- The Special Rapporteur on Violence against Women,
- The UN Voluntary Fund for Victims of Torture.

Each of these bodies is assigned a specific role that we shall not be discussing here.
* See lexicon p. 295

C. Regional organisations: The regional organisations encompass a series of jurisdictions that can be appealed to:
- The Inter-American Commission on Human Rights and Inter-American Court of Human Rights,
- The European Court of Human Rights,
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
- The African Commission on Human and Peoples' Rights.

D. The International Criminal Court (ICC): Adopted on 17 July 1998, the Rome Statute established the permanent International Criminal Court, designed to prosecute the perpetrators of genocide, crimes against humanity and war crimes. Its jurisdiction encompasses large-scale and systematic acts of torture considered as crimes of genocide or crimes against humanity, as well as war crimes as defined by the Geneva Conventions of 1949. The Rome Statute defines torture as the act of intentionally inflicting intense pain or suffering, whether physical or mental, on a person under the watch or control of the accused party. Since 2 January 2015, 123 States out of the UN's 193 Member States ratified the Rome Statute and accepted the authority of the ICC. Thirty-two additional States, including Russia and the United States of America, signed the Rome Statute but have not ratified it. Some, such as China, India and Israel, have criticised the Court and have not signed the Statute.
In principle, the ICC can exercise its jurisdiction if the accused is a national of a Member State, if the alleged crime was committed on the territory of a Member State, or if the case is forwarded by the United Nations Security Council. The Court is designed to complement national legal systems: it may only exercise its jurisdiction when the national courts are either unwilling or unable to rule on such crimes. Responsibility for initiating inquiries into, and prosecution of, these crimes therefore belongs to the States themselves.

To date, the Court has opened inquiry procedures in seven cases, all in Africa: Uganda, the Democratic Republic of Congo, the Central African Republic, Darfur (Sudan), the Republic of Kenya, Libya and the Ivory Coast. The Court indicted sixteen people, of whom seven are in hiding, two are dead (or believed to be dead), four are in detention and three voluntarily appeared before the Court. An inquiry has been opened in Mali.

The medical and ethical focus
This aspect applies to all health care professionals and medical examiners whose expertise is crucial in providing victims with therapeutic care as well as in giving evidence in the international courts.

HOW?

The act of interviewing and examining torture victims is subject to highly specific constraints. The work carried out by health care professionals must be extremely precise, perfectly adapted to this specific type of patient and conducted with discretion, tact, respect, and in confidentiality. Failure to meet these conditions during an examination may result in unproductive results or worse, re-trigger past suffering and trauma. A number of provisions, examination protocols and expert reports are therefore specified, taking into account this two-fold duty that can sometimes be difficult to balance. Health care professionals are required to report a case of torture as soon as they observe it. However, the consequences of these revelations on the victims' families and the safety of witnesses must be taken into consideration.

OUR EXPERIENCE IN TURKEY

Context of the study
The study is based on around sixty observational reports gathered from Turkish detainees who had spent a number of years in detention, following their release. It is important to start by emphasising that these men and women, all political prisoners, were introduced to us by the campaigning associations we have been working with for years now. They therefore felt they could trust us and were notified that the purpose of gathering their accounts was to form an appeal.

In a very different context, we continued our work with refugees, most of whom were of African origin, who were seen in the clinic we run with ASEM (*Association de Soutien et d'Entraide aux Migrants,* or the Association for Migrant Support and Aid), a Turkish partner association of MDM (*Médecins du Monde,* or Doctors of the World).

Interview conditions
It was crucial that we immediately gain the trust of these people for whom the very concept of an interview is synonymous with police investigations and their associated violence. It ought to be reiterated that the endorsement we received from the campaigning associations was essential to ensuring the smooth functioning of the interviews, as was the prior introduction to our humanitarian team and its intentions: to submit an anonymous report to the European Court of Human Rights. We also made use of an interpreter who was well known for her expertise and activism. We never observed any reticence or displays of mistrust. Many of these former detainees even asked us to publish their names, which we nevertheless preferred not to do. Sometimes, the stories we heard were told with emotional reactions, crying, breaks in the narrative, and moments of intense emotion felt by both the interpreter and us. We cannot pretend that these reactions didn't raise serious questions, in light of our inability to provide psychological care and follow-up to these former detainees who, it must be said, are supported by the associations.

Difficulties encountered
The indispensable precautions that must be taken in investigations such as these cannot be emphasised enough. These precautions are generally obligatory, and are even more crucial when interviewing men or women suspected of having suffered sexual abuse. On a number of occasions we preferred to accept evasive answers rather than run the risk of re-triggering trauma by pushing for details. In addition to trust, safety, empathy and of course interpreting (one aspect that cannot be emphasised enough), it is also important to highlight the necessity of taking the time needed, of never rushing a story, of listening more often than questioning. Detecting the signs of torture, except in extreme circumstances such as in Syrian prisons, has become more difficult, as in many countries and in Turkey in particular, measures are taken to ensure no visible marks are left. Perpetrators prefer to use psychological torture, the signs of which aren't always easy to identify. On many an occasion, the question "How do you feel?" was met with "Very good, because we're activists and a real activist has no qualms", before noticing that almost all of these recent detainees displayed severe psychosomatic disorders, various phobias and signs of alienation from their families, communities and work. Very often, vitamin B1 deficiencies were noted, which indicate drastic hunger strikes that are still called "death strikes", resulting in neurological damage that is generally irreversible and sometimes induces life-long disability.

Another more insidious form of torture is prolonged solitary confinement and even sensory deprivation. We publicly denounced these practices as variants of torture to be prohibited as such, and we were partially satisfied by this leading to regulations requiring, theoretically at least, all Turkish prisons to comply with allowing groups of at least seven prisoners to interact on roughly a weekly basis. This obligation is particularly useful as 10-, 15- and even 20-year prison sentences are common in Turkey.

The usefulness of these assessments
Over and above the appeal itself, investigations such as these are useful on multiple levels. They are useful to us as health care professionals, allowing us to consider all aspects of a human being and the respect the latter is owed. They prevent us from following false leads, enabling us to identify all psychosomatic reactions and thus ensuring we avoid excessive examinations that are as costly as they are traumatic. For the victims themselves, an appeal is a therapeutic tool via which they are transformed from passive victims to denouncers taking back control of their own destinies. A revenge of sorts.

THERAPEUTIC CARE: OUR EXPERIENCE WITH THE OSIRIS* ASSOCIATION

Osiris is one of the rare few French associations to provide "therapeutic care and treatment for victims of torture and political repression". This is difficult and lengthy work (sometimes lasting years) that draws on a combination of analytical listening, psychodrama, individual, group and family therapy, etc. Other centres, notably in Denmark, use systemic methods. The association draws on around ten specialist interpreters (more indispensable than ever here) alongside a team of therapists who work in groups. This kind of service is non-existent in hospitals and is offered by less than ten associations in France. * See Caring for victims article p. 213

THE FUTURE OF THE ISTANBUL PROTOCOL

It is difficult to determine what the future holds for the Istanbul Protocol. As health care professionals, at best it is an incentive to exercise more rigour in our examinations and the care we provide to victims of torture and mistreatment. Based on my experience, at worst it strikes me as being a vague and optional support structure. Legal professionals or the doctors called upon to produce forensic appraisals will undoubtedly have different views on the subject. These professionals require absolute rigour in collecting their data: the use of paraclinical examinations, witness

hearings, assessments of credibility – all the elements of a judicial inquiry to be submitted to one of the criminal courts (of which we have provided a partial list), even if their reports leave much to be desired. It is difficult indeed to remain impartial, when the international justice system is reticent to condemn influential countries. We cannot but note that political and economic interests very often prevail over human rights. In the face of this absence, public opinion takes over from failed justice. This La Fontaine proverb is as applicable today as it ever was: "*According to your mighty or miserable position, the judgement of court will render you white or black*".

***The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, known as the Istanbul Protocol, provides a series of internationally-recognised guidelines for medical and legal experts on how to determine whether or not a person has been tortured, and how to establish the valid independent evidence to be used in court in prosecuting the alleged torturers.**

The Protocol allows medical experts to:
- **Gather all relevant, specific and reliable evidence related to allegations of torture,**
- **Draw conclusions on cohesiveness between allegations and medical observations,**
- **Produce high-quality medical reports to be submitted to the judicial and administrative organs.**

The Protocol allows legal experts to:
- **Obtain relevant, specific and reliable statements from victims of torture and witnesses, allowing these statements to be used as part of a judicial inquiry against the perpetrators,**
- **Obtain and preserve evidence related to allegations of torture, and**
- **Determine how, when and where the alleged acts took place[1].**

[1] www.irct.org. The English version of the Istanbul Protocol can be downloaded from www.ohchr.org

CARING FOR VICTIMS OF TORTURE AND POLITICAL REPRESSION

BY MÉLANIE MAURIN, clinical psychologist and
CHRISTINE THIRIET, member of the Osiris management board*

The people currently arriving in France and seeking the protection of the French state are, more often than not, victims of three types of traumatic event: violence inflicted in their country of origin, violence inflicted during migration or violence inflicted upon arriving in their host country.

Violence – Departure and the journey ahead

The violence individuals are subjected to in their home country takes a variety of different forms: abuse, brutality, threats, rape, psychological torture, physical torture, imprisonment, permanent warfare and a lack of State protection. This violence, or a fear of this violence and sometimes even the certainty that it will be inflicted, forces people to flee in a bid to reach a safe haven. Violence in the country of origin can be individual but is most often experienced as a family unit. It sometimes affects entire ethnic, religious, political, activist or sexual minority groups.

Departure from the country of origin is generally organised through traffickers who require payment: the countries they are aiming to travel to do not grant visas, and access to consulates or embassies, while not impossible, is generally highly restricted. Their only solution is to leave alone, leaving behind their children, partners, parents or communities and placing their lives in the hands of a first trafficker. For many refugees, the journey ends when they reach a nearby country, with the figures demonstrating that the majority find refuge in a neighbouring State. Yet this first country does not always guarantee them safety, and some are forced to continue on. Financial resources are required to continue the journey that is long and brutal, crossing mountains, desert and sea. Illness, cold and hunger take the most vulnerable. One young Afghan was shocked to see his companions die in the mountains of hunger and cold. He was unable to "*erase these images from his mind"*. We are

told that crossing some countries such as Iran and Libya is particularly dangerous, as they are home to torture centres that blackmail travellers' families back home, and use forced military conscription, imprisonment and mistreatment. People can sometimes find themselves prey to the same violence they are attempting to flee. Women and young people sometimes fall into the hands of mafia groups who work with unscrupulous traffickers who sell them on and carry out human trafficking (the Albanian and Nigerian factions are well known, with "indebted" persons being forced to "repay" their traffickers).

Because of this, the journey can sometimes last several years for people fleeing Afghanistan, Pakistan and some sub-Saharan African countries. The tighter the borders, the longer the detours required to reach Europe, and the more dangerous the journey, with travellers shut in trunks, freezer lorries and containers. The final stretch is the arrival on European soil, where drowning, arrests and deportations to their homelands await, without ever being granted an opportunity to formulate a request for asylum. It is rare that those who set off together arrive together: the most vulnerable do not always survive the journey, and this "extra failure" heightens feelings of guilt among those who survive. Setting off towards the hope of securing a life of safety is never a success, as the price paid is too high – loss, mourning and abandonment.

The initial experience – Changes to the system

Arrival is made all the harsher by the horrors of the journey. The hope of finding a better life is soon abandoned. Refugees are treated with suspicion, their social status highly precarious, the administrative and legal processes complex and dehumanising, and the environment and language often unfamiliar. Protection and the acknowledgement of refugees' traumatic experiences are gradually being eroded. The initial reception of refugees, a crucial moment in the individual's experience, has deteriorated over the last few years. A desire to "manage stock and migratory flows" has replaced a system of social support. Social housing and administrative supervision have been altered and illustrate this change. Void of the bare minimum of humanity, the European texts also have heavy consequences on refugees' experiences. A person who is arrested in a first country must apply for asylum in that same country, even if they have family or acquaintances who would be able to house and care for them in another country. The person is therefore forced to submit their application in this first country, without the support they came to Europe to seek. No legal or administrative remedy is available to correct these situations.

The issue of accommodation is also problematic and affects isolated people in particular. The waiting lists are long, and accommodation is made up of emergency centres and night hostels that only open in the evening, leaving people out on the streets during the day, left to wander in an unknown city and country. Since 2010, we have been relatively powerless to stop this deterioration of the welcome and support afforded to these people seeking protection. The reception platforms created and organised on a local level by associations specialising in applications for asylum have gradually been replaced with national operators. The latter operate under budgetary cuts and apply a framework that has been significantly impoverished over time. This new method of managing first-contact reception at a national level comes at a price: the deterioration of an understanding of local operations and issues. The associations working with asylum seekers are forced to work within extremely restricted systems. Not only must they comply with increasingly restrictive specifications (such as the two-hour time limit on putting together an OFPRA case file) that leave little room to listen to and support the individual, but they are also called upon to tackle the significant administrative contingencies that impact on operations (a plethora of audits, payment many years after the event, multiple assessment criteria, etc.).

These changes lead to a dehumanised approach to welcoming people seeking protection, characterised by a lack of acknowledgement afforded to people in exile, and distress caused to professionals. Many of the latter attempt to maintain empathy and a human touch, left to fight against a highly constrained environment. France now operates under a "Republican approach", meaning an approach that is identical for all people across France, without personalisation or the defining characteristics of specific situations being taken into account. Yet asylum seekers often experience depersonalisation through torture, mistreatment and the journeys they embark upon. This initial reception process does not afford them an opportunity to rebuild their sense of self and to reforge ties to their identity, but instead prolongs this state of non-acknowledgement. It is crucial that the obstacles they have surmounted be taken into consideration if we wish to help them rebuild their identities. Unfortunately, after having fled their countries and survived the journey, most refugees feel unwanted as soon as they arrive in their country of protection. We have noted that not enough time is dedicated to discuss their journeys, their losses, the abandoning of their people, their worries for those who remain in the country. Professionals must be in a position to foster this opening dialogue in order to point these people in the right direction and to direct them to specialised medical, psychological and counselling services.

Welcoming, listening and caring

Founded in Marseille in 1999, the Osiris care centre offers therapeutic support for victims of torture and political repression. It provides care for individuals who have been subjected to severe, intentional violence. The people who come here are all different, with different faces, colours, sizes and shapes, yet all of them carry in their eyes a look that cries out to be recognised as the look of survival. In our role as witnesses, we cannot but wonder how these people manage to overcome the violence inflicted on them, and to find enough strength to embark on the long and painful process that is exile. Often, these people, whom we refer to as patients, inspire the utmost respect and humility among the professionals who work to support them. In the work we carry out providing psychotherapy to these patients, we listen and engage with the stories they share, stories that tell of loss, absence, distance and longing. In most cases, they have left everything behind, their homes, their work, their friends and their families, for one essential reason: *survival.* Surviving war, persecution, threats and fear, and seeking a refuge in which they might feel protected, in which they might dare to dream of a life elsewhere, despite having lost everything. They are forced to start from scratch, and this often heightens the already intense psychological suffering they bear. Being treated as foreign, being misunderstood, going unacknowledged and forced to roam. Roaming in that there is no place for them, they are foreign wherever they go. No longer at home, yet not at home here, either. How can they hope to integrate?

By talking to these people, the many complex obstacles to integration come to light. In order to integrate and feel part of a community, they must already accept that they have lost. This is a very painful, introspective stage that is similar to the process of mourning. In most cases, the decision to flee their country was not based on internal variables, but on a need for protection in the face of danger: the experience is one of being wrenched away. It is almost impossible to comprehend the injustice of having to leave everything behind. Another obstacle is the language barrier, yet how can a new language be learned when one's mind is flooded by memories and flashbacks linked to one's past? Patients very often mention the difficulties they experience in concentrating, frequent forgetfulness, the impossible task of registering new information, as if the hard drive of their memory has been saturated. As a Chechen patient most poignantly described it, "*I go to my French class, I pay attention, but as soon as I leave class, it's as if everything disappears – I can't remember anything".*

French bureaucracy does nothing to help this long process of integration. Our patients find themselves confronted with political and social orders and documents they cannot understand. A failure to systematically draw on the services of interpreters adds to their difficulties in understanding and having themselves understood. From a psychological point of view, patients often describe their experience as a state of confusion, a feeling of being lost, of floating, or of "*being a zombie",* as one young Sudanese patient often said. "*People at home think I'm dead, I feel dead inside and yet still I must live",* he explained in a psychotherapy session. This complexity in patients' experiences and the diverse range of obstacles they encounter on a daily basis can sometimes make caring for them difficult. Practical aspects can sometimes feel more urgent than the stories they have to tell. Patients are frozen under the sheer weight of the many procedural tasks they face; they struggle to keep their heads above the water. This can lead to constant requests for help in dealing with practicalities, an area in which our therapists are ill equipped to help. Time is also needed to build a relationship of trust – trust that has been severely hampered by the events they have experienced. Some patients display a mistrustful attitude and suspicion towards us as therapists. It is as if the violence inflicted on them has almost severed the bond of humanity. We also notice how difficult it can be for some of them to express their experiences in words. The trauma they have endured seems crystallised in the unspeakable, the unthinkable, embedded in their psyches like tangible, hard, immutable objects. In these cases, other methods of expression and other paths must be identified in order to afford them access to all potential outlets for their suffering. Despite everything, we can testify to the incredible resources drawn upon by patients who, with time and work, can begin to rebuild themselves and start planning their future.

ASSOCIATION OSIRIS*

Founded in Marseille in 1999, the Osiris care centre offers therapeutic support for victims of torture and political repression. Men and women, teenagers and children, alone or in their families, all have been subjected to intentional violence resulting in severe trauma.
In addition to the traumatic events experienced in their countries of origin, there are a number of difficulties related to exile:
• Journeys made in dangerous, challenging conditions;
• The loss of family, professional and social identity;
• A brutal overhaul of cultural and emotional points of reference;
• Severe social and legal constraints;
• Tackling a new environment and often a new language.

The aim of therapy is to heal victims of intentional trauma using a holistic, human approach to support them towards a better sense of wellbeing. The treatment centre draws on psychoanalysis and offers therapy to individuals, couples, families, mother-and-child pairs and groups. Patients are supported by an impartial and independent multi-disciplinary team, with no restrictions regarding duration, and open to all patients who seek our services willingly, irrespective of administrative status. Osiris takes a holistic approach to the individual, which translates into working as part of a wider network alongside partners in social, legal and medical services.

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THE ABSOLUTE PROHIBITION OF TORTURE: A PRINCIPLE UNDER THREAT

SURVEY

THE FRENCH AND TORTURE

The Ifop Institute was commissioned by ACAT to survey a representative sample of 1,500 French adults in April 2016. This study was based on three core pillars: knowledge and awareness of torture, the acceptability of different acts of torture, and personal feelings on the use of torture. In 2000, Amnesty International commissioned a similar survey, from which some of the questions were taken.

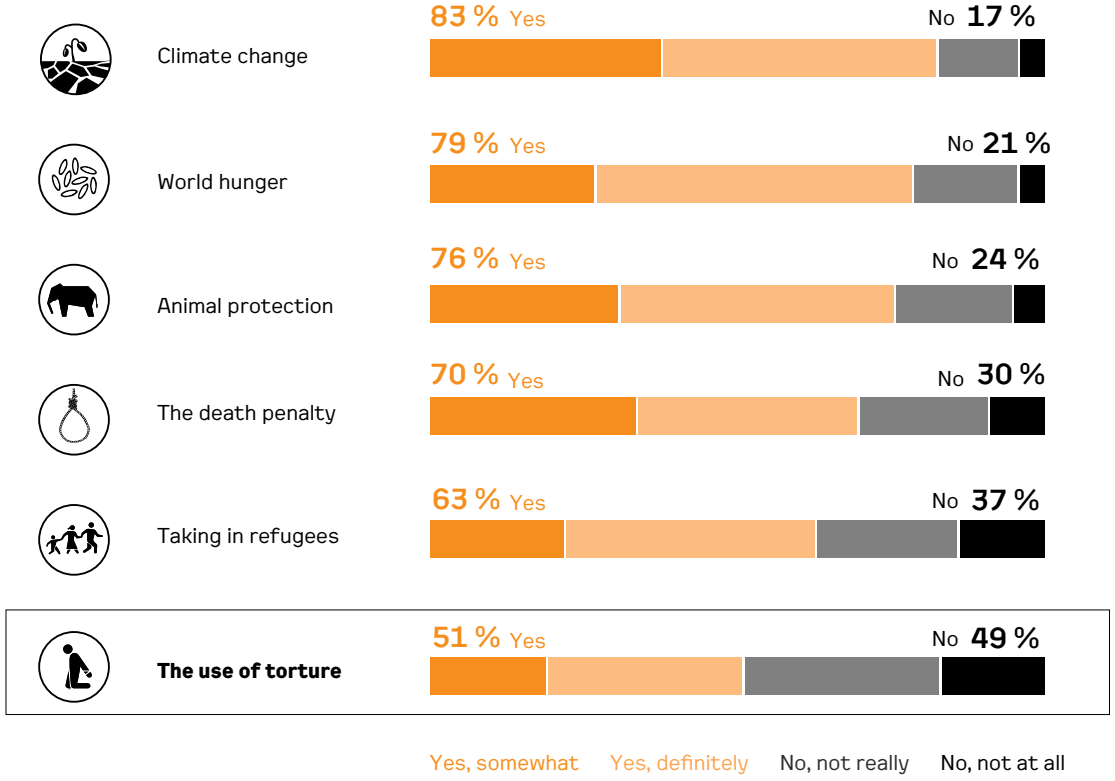
Since then, the 9/11 attacks took place (2001), followed by more recent attacks in Madrid (2004), London (2005), Paris (2015) and Brussels (2016). We thought it therefore relevant to compare how public opinion in France might have changed over this 16-year period. We then asked Michel Terestchenko, an expert in moral and political philosophy, to provide his commentary on the results. You will find his analysis in the "Growing tolerance for the use of torture" article p. 237.

Extracts from this survey feature in the pages that follow.
A full version of the survey can be found at www.acatfrance.fr

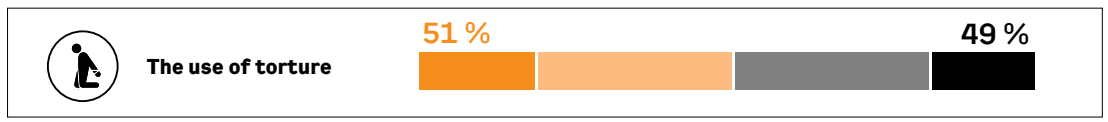
PERSONAL FEELINGS

ONLY ONE OUT OF EVERY TWO FRENCH PEOPLE FEELS PERSONALLY AFFECTED BY THE USE OF TORTURE

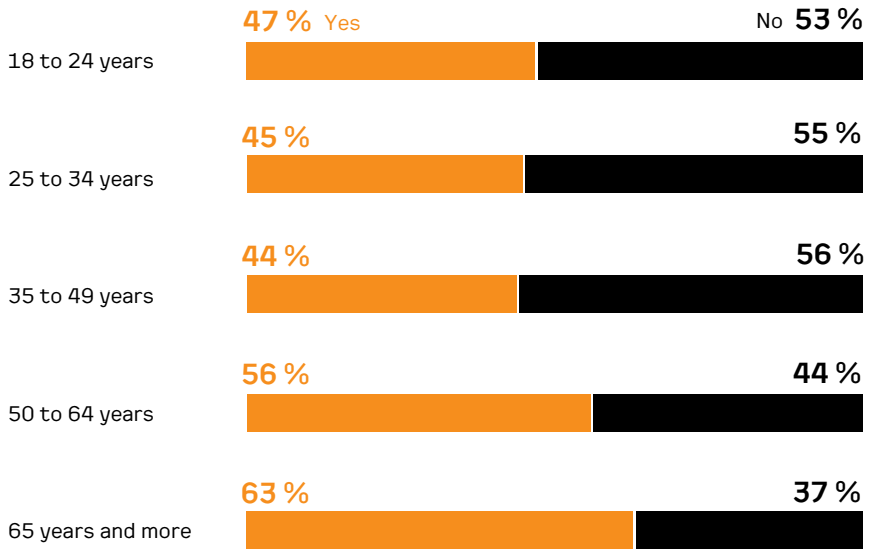
Do you feel affected by the following issues?



YOUNGER RESPONDENTS FELT LESS AFFECTED BY THE USE OF TORTURE THAN OLDER RESPONDENTS



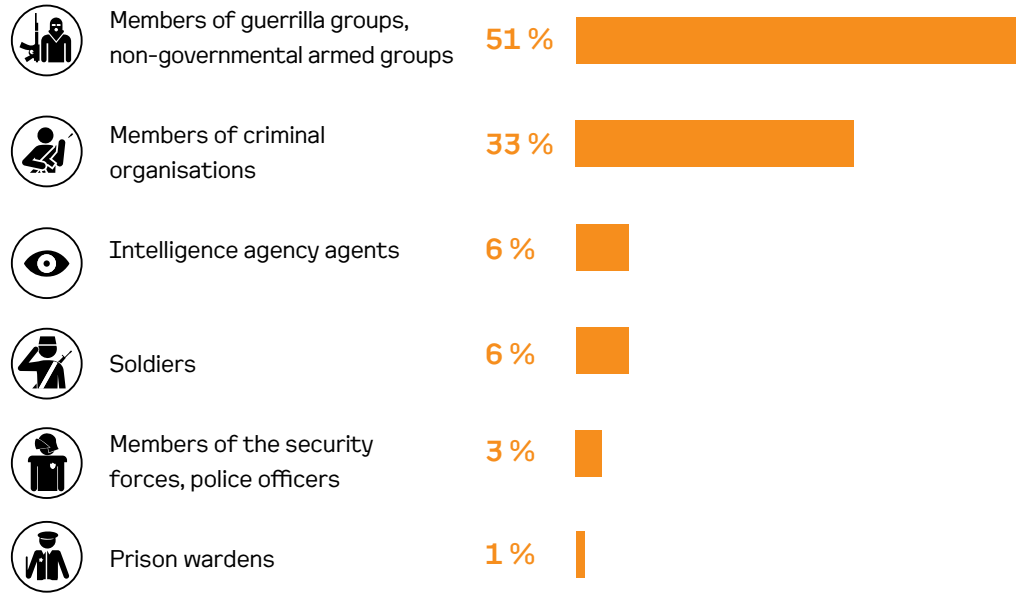
Survey results on the use of torture broken down by age



Which of the following ideas and words do you associate with torture?

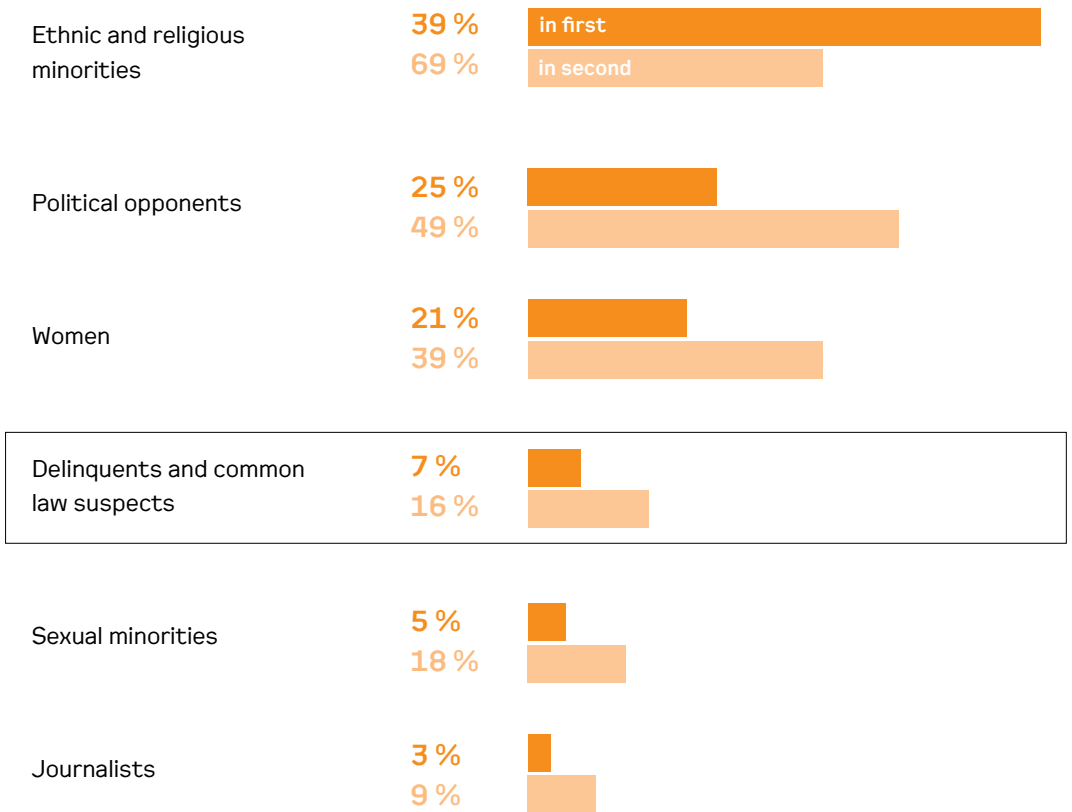
KNOWLEDGE OF TORTURE

Which of the following groups or categories do you think use torture the most often?



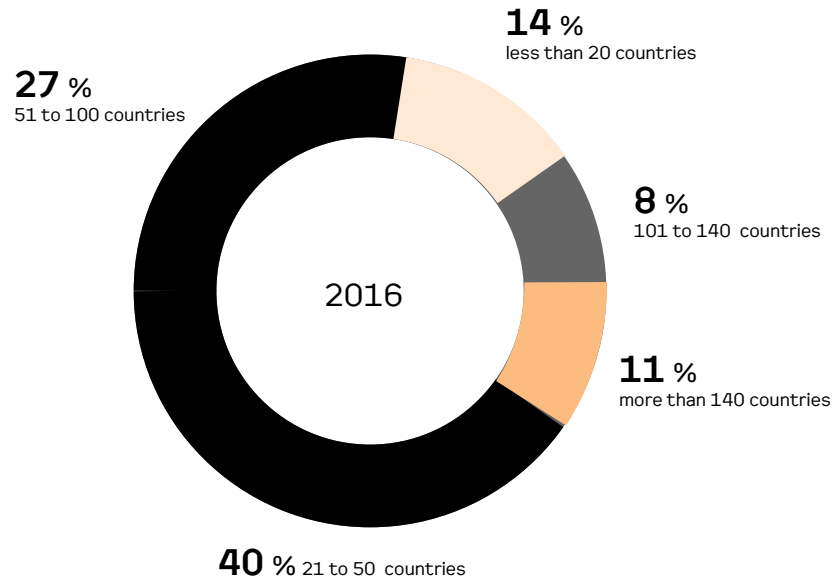
CONTRARY TO POPULAR BELIEF, IN REALITY SOLDIERS, MEMBERS OF SECURITY FORCES, POLICE OFFICERS AND PRISON WARDENS MAKE USE OF TORTURE THE MOST OFTEN

Which of the following groups or categories do you think are most often victims of torture? Please select a first and second choice.

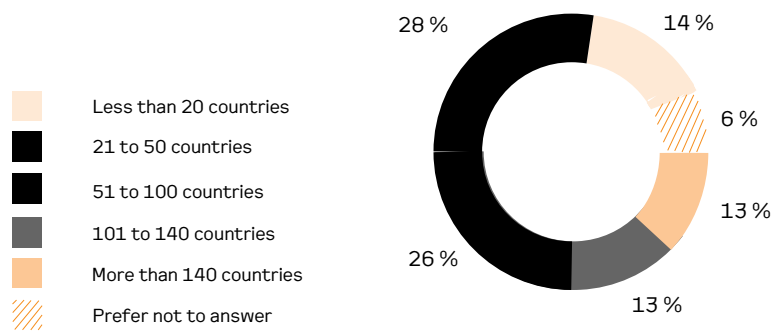


CONTRARY TO POPULAR BELIEF, DELINQUENTS AND COMMON LAW SUSPECTS ARE THE PRIMARY VICTIMS OF TORTURE

How many countries do you think still use torture today?



REMINDER 2000



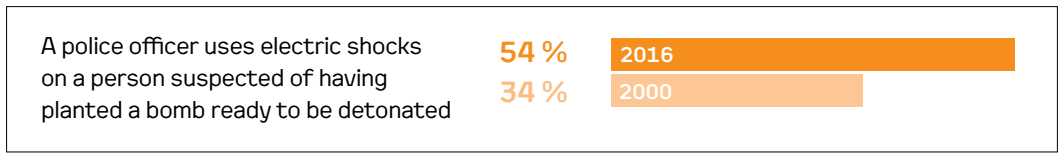
THERE ARE JUST UNDER 200 COUNTRIES AROUND THE WORLD, AND THE REALITY IS THAT TORTURE IS PRACTICED IN MORE THAN ONE OUT OF EVERY TWO

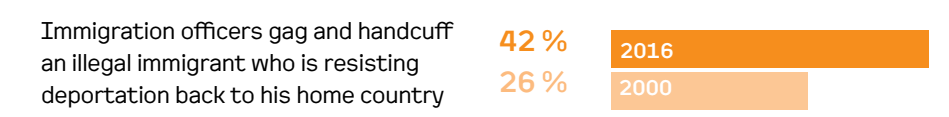
ACCEPTABILITY OF TORTURE

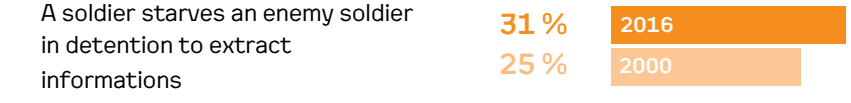
GROWING TOLERANCE FOR THE USE OF TORTURE

Do you think each of the following reactions can be justified in some cases?

> Percentage of 'yes' responses

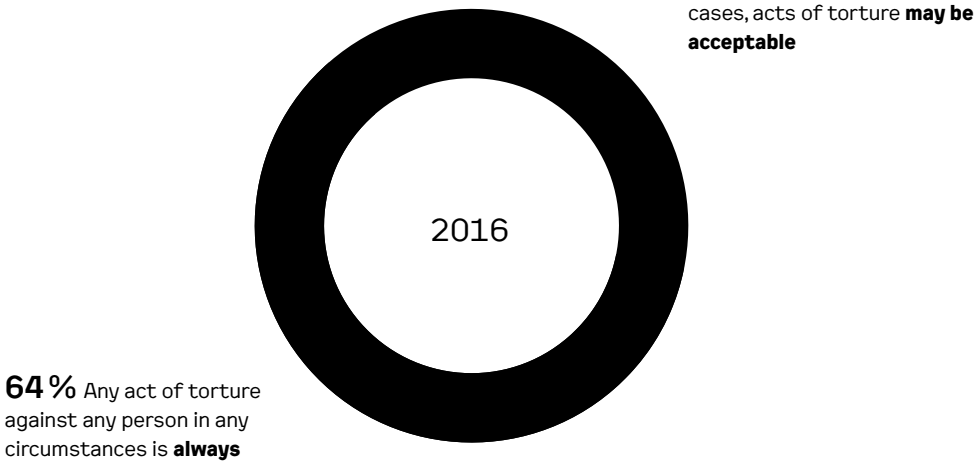




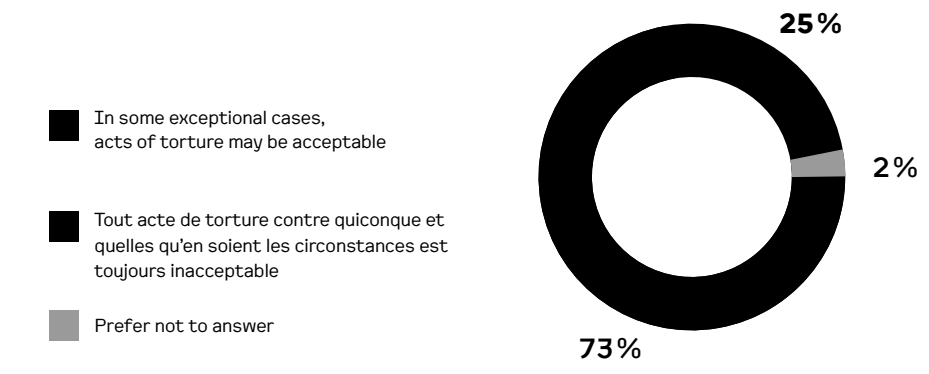


1 FRENCH RESPONDENT OUT OF EVERY 3 WOULD ACCEPT THE USE OF TORTURE IN EXCEPTIONAL CIRCUMSTANCES

Which of the following two statements best matches your beliefs?

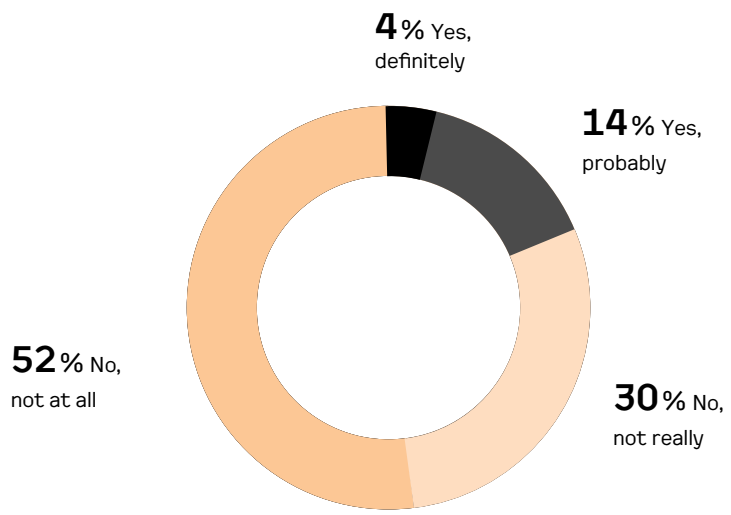


REMINDER 2000



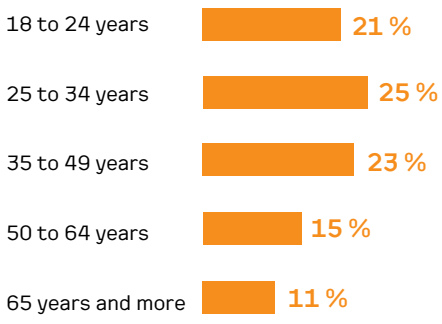
18% OF FRENCH RESPONDENTS WOULD FEEL CAPABLE OF USING TORTURE IN EXCEPTIONAL CASES

Would you yourself feel capable of using torture in exceptional circumstances?



YOUNGER RESPONDENTS MORE INCLINED TO USE TORTURE

Age of respondents answering 'yes'



"More than a three-piece suit or trouser cycle clips, it is the use of torture that definitively separates Man from beast."

Pierre Desproges

GROWING TOLERANCE FOR THE USE OF TORTURE

MICHEL TERESTCHENKO, philosopher[1]

The question of whether or not torture may in some cases be accepted, justified and authorised is answered in our constitutional texts. The answer is embedded in the principles of European public law and international humanitarian law, in the texts on which our democratic system and the concept of human rights are based, as perpetuated by a long legal and ethical tradition. And the answer is no – a loud, resounding no. An unconditional no, irrespective of circumstance. No, regardless of the various coercive methods of interrogation used. The horrific levels of physical suffering and psychological impact caused push us to prohibit any case-by-case logic that would call into question whether or not they may be defined as torture. To summarise, the question is one that we should not have to ask. A question that does not deserve to be asked. This issue does not lend itself to doubt or nuance, to sadly surrendering our convictions in the face of life's cruel necessities – the notorious principle of accountability – to consideration of the historical and social context of our norms that would seek to weaken their universal scope. These sociological and philosophical arguments have their place, but not here. Imagine a world in which the legitimacy of incest, infanticide or slavery was up for discussion. To merely consider questioning these unshakeable, essential prohibitions, no matter how theoretically, would be to embark on a slippery slope that imperceptibly leads to us justifying the unjustifiable and the obliteration of our values. And yet...

The fact that it was deemed necessary, useful and enlightening to consider the French public's views on torture is an indication in itself of a worrying vulnerability

with regard to practices that ought to be prohibited irrespective of circumstances of any kind. To reiterate the previous argument, can you imagine opening such a debate on incest or slavery? But the United States was left shaken by the 9/11 attacks, followed by attacks in Madrid in 2004 and in London in 2005, as well as two deadly, bloody attacks in Paris in 2015, and in Brussels in March 2016. And people began asking how we might put an end to the relentless violence. Might torture be a technically useful and morally acceptable method of preventing the deaths of innocent civilians, if all other methods of interrogation have failed? Our hearts and imaginations were manipulated, ensnared in a perverse parable, the parable of a ticking time bomb, used to prime our minds for moral conundrums that ought not to exist. In today's world in which international terrorism has proliferated to the point that none of us feel completely safe, many are now considering the use of torture as a serious possibility, and that alone is a worrying sign of regression.

Growing tolerance for the State's use of torture

Let us consider the most striking facts to emerge from Ifop's survey, commissioned by ACAT-France in April 2016: compared to previous surveys, a much higher degree of acceptance of torture was seen among our fellow citizens. 73% of those surveyed in 2000 responded positively to the statement "All acts of torture against any person and in any circumstances are always unacceptable", or at least that was the statement they were shown to have the most affinity with. In 2016, that figure had plummeted to 64%. Conversely, in the year 2000, 25% agreed that "in some exceptional cases, acts of torture may be acceptable", a figure that was already much too high for comfort. Sixteen years later, the number agreeing with that statement has risen to 36%, meaning over a third of the representative sample of France's population aged 18 or over. This 11-point gap is not an anomaly; it is highly reflective of the growing tolerance for violations of one of the most sacred legal principles. Violations that the same citizens would undoubtedly not accept were they to become the norm – that is the preserve of totalitarian regimes – but they nevertheless consider it acceptable, in some exceptional circumstances. The fact remains, however, that the prohibition of torture is unconditional in the eyes of the law: it may never be circumvented, debated or suspended. Morally speaking, it would appear to be a categorical imperative, and not a discretionary option that fluctuates according to the interests and calculations of the times. Yet torture all too often becomes a game of calculation. A utilitarian calculation of the lives to be saved and security to be heightened, which may, in the event of imminent threat, be used to rationally justify the sacrificing of fundamental human rights.

It ought to be reiterated that the first of these rights is the right to life and the right to human dignity, whatever the gravity of the crimes an individual may be accused of having committed. These metalegal, non-derivable principles form the bedrock of our legal system, explaining why no confessions obtained by torture may be used in proceedings against an accused person, no matter how heinous their crimes. But the intransigent position of legislators and judges are one thing, and public opinion something entirely different. The latter is flexible, changeable, likely to ebb and flow with passing events, particularly in the event of tragedy. The blood spilled by terrorists in Paris in January and November of 2015 is undoubtedly the reason for this move towards torture being deemed acceptable by over a third of the survey's respondents. Among them, 54% now believe that electrical shocks inflicted on a person suspected of having planted an explosive bomb is justifiable, a 20-point increase compared to the survey carried out in 2000! There isn't enough data to form a consistent sociological portrait of this trend, but it is indeed a slippery slope, a mentality fostered in a growing number of our fellow citizens by feelings of vengeance and sometimes hatred, and by a refusal to concede human rights to those who do not respect them, despite the fact that compliance with fundamental human rights is not dependent on reciprocity. The slope is steepened by a particularly worrying hypothesis. This ought to be discussed, because this hypothesis is the ultimate starting point for a great many academic debates on torture that took place in the United States in the aftermath of 9/11, before being popularised in fiction, such as the series *24 Hours,* watched by viewers all over the world. It is surprising if not somewhat worrying that the Ifop survey put forth this scenario without any prior discussion of the concept, as if it were a very real possibility. This is not the case.

A perverse parable

In its most commonly seen form, the parable of "the ticking time bomb" illustrates the cruel moral conundrum thrown up by the terrorists suspected of having crucial information that may enable authorities to prevent an imminent attack in a public space or in a school, where all other legal methods of interrogation have failed. In cases such as these when time is of the essence, might not torture be an acceptable, albeit desperate way, of saving innocent lives, including children, from massacre? In a nutshell, this is the crude scenario put forth in the Ifop survey when it asked those who had expressed acceptance of torture "in some exceptional cases" (over one out of every three) if they could justify the use of electrical shocks "on a person suspected of having planted a bomb about to explode". As mentioned earlier, 54% of people in this category answered "yes".

The assumption in this scenario is that torture is an effective way of obtaining information, albeit by force. As a result, irrespective of varying degrees, 58% of those questioned felt the use of torture to be an effective way of obtaining confessions and 45% of them believed it to be a way of acquiring reliable information and thus preventing terrorist attacks. Yet these three assumptions, all of which assume torture to be effective, have been disproved by experience. Torture and enhanced interrogations are the least reliable way of obtaining information, as all specialised services know, in that the person being interrogated will say what they are expected to say, or anything at all, in order to bring their suffering to an end. This was the conclusion reached by the American Senate Intelligence Committee on CIA torture under the Bush administration, following six years of investigation and reading through millions of documents: "Based on analysis of the CIA's interrogation archives, the Commission concluded that the use of interrogation techniques proved ineffective in obtaining information or in forcing detainees to cooperate" [2]. There is *not a single documented case* in which targeted torture – as this does not concern mass torture – has helped prevent an imminent attack. Consequently, the myth of the ticking time bomb, far from being a potential reality as is often portrayed, is in fact pure fiction. A perverse kind of fiction, the primary effect of which is to speak to our hearts and imaginations, conjuring up a situation that never actually occurs, while compelling us in a gripping fashion to ask moral questions that are neither justifiable nor valid under law. It is a shame that Ifop's survey did not question the likeliness of this scenario – an issue that was undoubtedly too complex to raise as part of a survey – rather than respondents' reaction to it. It thus implicitly validated this dramatic yet entirely imaginary scenario that lies at the heart of liberal justification of torture. Regardless, the high level of acceptance of the use of torture, reaching the worrying figure of 36%, confirms the ethical fragility of a significant proportion of the French population that appears ready to accept the use of practices that completely violate the fundamental norms and standards of a democratic society.

The fact that 82% of respondents admit that they would probably (30%) or certainly (52%) not be able to commit acts of torture themselves in exceptional circumstances is not entirely reassuring. Some of the most worrying lessons to emerge from social psychology experiments, such as the famous obedience to authority experiment carried out in the early 1960s by Stanley Milgram, or the Stanford prison experiment led by Philip Zimbardo, are that how individuals believe they would behave is, in some circumstances, undermined by their actual behaviour.

Ethical fragility and moral justification

But the suspension of human rights in situations where they should on the contrary be upheld is not the sole preserve of French public opinion, as moral philosophy follows suit. What we term ethical fragility only lies in contrast to morals when we see in them a collection of unconditional imperatives, duties and obligations with no exceptions. The legal condemnation of torture and humiliating and degrading acts follows this tradition. From a utilitarian view of calculating and estimating consequences, this position of principle would be deemed unrealistic and we would be forced to admit, to the contrary, that it is justifiable and legitimate to sacrifice the rights and freedoms of a few for the interests of the many, and what greater interest than security and life? Coming from such a rational, calculating viewpoint, torture ceases to be a necessary or lesser evil, a desperate solution, and becomes instead an appropriate response, the “right answer”, from the moment we wrongly assume it to “work”. This was the deceptive argument used by the CIA for years, from the highest-ranking members of the US administration to President Bush himself, denounced in the Senate Commission's report that was declassified in 2014.

A final figure from the survey flags up this ethical fragility yet again, but this time in a more general sense, as what emerges is the relative indifference of the respondents in the face of the issues and challenges raised by the use of torture. When asked to assess their awareness and feelings on different causes, torture comes bottom of the list: only 51% of people felt affected by this issue, lagging behind climate change (83%), world hunger (79%), and more surprisingly still, animal protection (76%).

What conclusions may we draw from these findings? Terrorist attacks pose a formidable challenge to democratic societies, threatening not their existence or territorial integrity, but more fundamentally still, their ability to respond to these threats while remaining faithful to, and respectful of, the principles that form their very DNA. To meet evil with evil is to feed hatred and vengeance, thus nurturing a perpetual cycle of antagonism. The law and justice system exist to protect us from this deathly temptation. It is infinitely regrettable, and in many ways deeply worrying, that the practice of torture should be considered either acceptable, or more generally, a secondary concern. We all have a duty to remain vigilant that fundamental human rights are not breached, wherever in the world these breaches may occur. Our awareness and our courage shall enable us to resist against those who would wish our downfall. In doing so, we must recall the non-derivable principles that form the bedrock of our democratic societies, encourage well-researched information to fight against the dogged presumptions surrounding the alleged effectiveness of torture, and develop awareness as early as in schools of the ethical fragility that exists

within us as individuals as well as in our institutions, in the sense that the ideals and values we hold dear are likely, given the right circumstances, to falter dangerously quickly. The results of this survey are a reminder of these most pressing matters.

[1] Philosopher, recent publications: *Du bon usage de la torture ou comment les démocraties justifient l'injustifiable,* La Découverte, Paris, 2008; *L'ère des ténèbres,* Le bord de l'eau, Lormont, 2015.

[2] *La CIA et la torture. Le rapport de la Commission sénatoriale américaine sur les méthodes de détention et d'interrogatoire de la CIA,* Les Arènes, Paris, 2015, p. 55.

THE QUEST FOR THE TRUTH, THE WILL TO FORGET: TORTURE DURING THE ALGERIAN WAR

PAR RAPHAËLLE BRANCHE, doctor in modern history at the Université de Rouen and author of several books on the subject of the Algerian War[1]

Front-page torture

Since June 2000, France has been unable to ignore the fact that its army practised torture during the war that took place from 1954 to 1962 and which ultimately led to Algeria's independence. In that fateful month, a few days after President Bouteflika's visit to France, Le Monde published a front-page story featuring details of the abuses inflicted on a young Algerian woman in 1957.
Her story was followed by the reactions of the two generals said to be responsible for the crime, while the chief medical officer who helped the young woman at the time became the embodiment of another side to the army[2]. A year later in his memoirs, General Aussaresses[3], who formerly worked under General Massu in Algiers, admitted responsibility for a number of assassinations and in particular that of one of the five members of the Coordinating and Executing Committee, the FLN's (*Front de Libération Nationale,* National Liberation Front) executive body: Larbi Ben M'hidi. His book brought him under legal scrutiny, considered as it was as an apology for war crimes and crimes against humanity[4]. The general was forced into retirement and stripped of his Legion of Honour title. Yet new light was once against cast over the past by another high-ranking officer, General Maurice Schmitt. Identified by a number of Algerians as having overseen torture sessions as a lieutenant in Algiers in August 1957, the former Chief of Staff of the French Armed Forces (1987 to 1991) found himself an accused man. These witness statements almost exclusively refer to the army. From high-ranking officers to former conscripts, the military institution would appear as having waged war single-handedly, with little to no mention made of the police forces, politically-elected representatives, civilians and former opponents. Yet war veterans – most of whom had been resettled into civilian life for forty years or more – were polarised between a flurry of justifications and finger-pointing. The issue regularly made newspaper headlines, and yet the French public was aware that torture had been used during the Algerian War. Surveys were carried out regularly, and pointed to varying degrees of recognition of this fact, but not to a

total lack of awareness. Ever since this chapter in history first began being taught in the final year of secondary school in France, the textbooks have always covered the war, however fleetingly[5]. Yet life went on as if the torture had been a mere abstraction, as if the army hadn't been comprised of soldiers and the police force by police officers. The shock that reverberated following General Aussaresses' account might be explained by his position as the embodiment of this abstraction.

1954 — torture in the spotlight

The French public was aware that the French forces used torture from the very beginning. The FLN's first attacks began on 1 November 1954. Armed with a lack of knowledge concerning changes in Algeria's nationalist movements, the police services arrested and tortured members of the Movement for the Triumph of Democratic Liberties (*Mouvement pour le Triomphe des Libertés Démocratiques),* which would later give birth to the FLN. This violence was quickly flagged in Algeria and on the French mainland. In January 1955, two articles were published with titles as provocative as they were worrying, written by Claude Bourdet and François Mauriac respectively: "Votre Gestapo d'Algérie" (Your Algerian Gestapo) and "La Question" (The Question)[6]. Internal police inquiries soon confirmed that these practices were not exceptions[7].

Information on the illegal violence employed in Algeria trickled through sporadically to the French mainland until early 1957, when the first recalled soldiers returned home, bringing with them a wealth of new information. Thanks to those who were willing to talk and write about their experiences, the daily realities of the violence and war became public knowledge in France. The arbitrary approach to operations displayed by the French army, summary executions and torture cast a shadow over the official party line on Algeria as a French success story. While General Massu's 10th Parachute Division was being celebrated for its anti-terrorism campaign in Algiers, other accounts revealed the methods used to break the general strike led by the FLN on 28 January, and then used again to obliterate nationalist support networks among the general public, and to dismantle bomb-planting organisational structures. In the first few months of 1957, Algiers was effectively a stage on which unprecedented violence was played out, the echoes of which began forcing the government to react. Some preferred to focus on its excesses, others justified it by the atmosphere of rampant urban terrorism or war, and various high-profile names deplored the situation – all knew this violence existed. The torture and forced disappearances of individuals deemed suspicious or guilty by soldiers playing God was now a clear part of the war in Algeria. In January 1962, the issue was still a hot topic when the Paris court of armed forces acquitted a lieutenant, a teacher and an agricultural engineer, 9th Zouaves officers in May 1960, despite them admitting to having tortured a young Algerian woman to death in their closed-door trial, during which they further admitted to having arrested her as part of a group of women guilty of spreading "intense propaganda designed to prevent Muslims from voting in the upcoming local elections"[8]. Their acquittal, granted despite the opinion issued by the government commissioner, sparked a protest by 150 and then 400 high-profile figures[9].

Sealing amnesty to bury the memory of violence

In 1974, emotions cooled. A law was passed to provide "those who took part in campaigns in North Africa between 1 January 1952 and 2 July 1962" with the status and pass afforded to war veterans: the Algerian War was becoming, to a certain extent, normalised[10]. Following the amnesty of 1968 that freed all imprisoned OAS (*Organisation de l'Armée Secrète,* Secret Army Organisation) members or brought them out of exile, Pierre Mauroy's government finalised the legal framework designed to reintegrate into society the last remaining individuals ostracised for their actions during the war, specifically a draft law adopted by the Ministers' Council on 29 September 1982 making provisions for "compensation for prejudices suffered by State officials and private individuals as a result of events in North Africa".

While two years previously Jean-Pierre Vittori's book *Confessions d'un professionnel de la torture* (Confessions of a Professional Torturer) slipped under the radar, thus lending weight to the idea that the war was quietly vanishing into French memory, the issue exploded onto the scene once more come the autumn. This re-fanning of the flames was primarily spurred on by a new film directed by Pierre Schoendoerffer, *L'Honneur d'un capitaine,* in which a young widow commences defamation proceedings against a lecturer who accused her husband of having been a "torturer and assassin" in Algeria. The young woman wins the case, but feelings of doubt hover over the culpability of her husband, whose last words had been "Why did the Republic abandon us?" [11]. The issue of responsibility and honour lay at the heart of the draft law. Targeting the four instigating generals of April 1961, on 22 October 1982 socialist deputies denied general officers their pensions. With all members of the Senate, including socialists, reinstating this item, the Prime Minister called on his government to pass the law before the National Assembly on 23 November. The political will to erase all conflicting traces of the past was clear. A year later, this desire was made even clearer when the first president of the Algerian Republic President Chadli visited France on an official trip.

Voices clamouring to be heard

In contrast to expectations in 1982, the Algerian War was far from disappearing into the murky waters of the past. Veterans were making their voices heard, as were repatriated French nationals from Algeria, and these grievances aligned with the violence that erupted in Algeria in October 1988[12]. The torture perpetrated by French soldiers regularly made it into the news, but in formats that soon became the norm: accusations followed by denial.
That same year, historian Benjamin Stora produced a documentary that focused on reclaiming subjectivity, with a view to shedding light on the war via the many different experiences of those involved, from the best-known names to unsung stories. *Les années algériennes* was designed as a collective memoir[13]. Broadcast on French television channels, the film aimed to inject a human aspect into the story of the war, to turn recognition of these multi-faceted accounts into a path that may lead to an understanding of the event, never too far removed from memory. He elaborated on this idea in the book he published the same year: *La gangrène et l'oubli*[14]. As a result, in 1991 the silence surrounding the war began to be strongly questioned[15]. The following year, a decree legally bestowed the status of victims of post-traumatic stress disorder to Algerian war veterans where a link of direct and significant causality between the imputability of the disorder and military service can be established - even if the traumatic event was misunderstood or minimised at the time[16]. This decree encouraged doctors to listen to war veterans more closely, but ushered in a legal paradox in that it acknowledged that military service in Algeria between 1954 and 1962 could be the root cause of some psychiatric disorders, yet continued to define the period by its old euphemism, "law enforcement operations". Everything pointed to the political ruling class feeling more at ease in accepting individual stories than in acknowledging a collective past. Yet in 1992, the public archives governed by the Law of 1979 establishing a 30-year waiting period[17], became accessible for the period stretching back to 1962. Hundreds of boxes of materials suddenly became accessible. From July 1992, accounts of the war could now be written based on sources that until then had been unknown.

"The truth": a new direction in public debate

In October 1997, while an official text advocated for the archives of 1939-1945 to be made accessible, Jean-Luc Einaudi's appearance as a witness in Maurice Papon's trial for complicity in crimes against humanity during World War 2 sparked fresh debate on the subject of the Algerian War[18]. The author of *La bataille de Paris* referred

to the actions of the accused during the latter's time as the Prefect of Police of Paris in 1961. That same day, the Minister for Culture, Catherine Trautmann, stated her willingness to open the archives surrounding this event. On May 1998, State counsellor Mandelkern's report on the police prefecture archives and an article by Jean-Luc Einaudi for Le Monde were both published, leading some to hope that the truth awaited historians, preserved and intact in the archives. In his article, Jean-Luc Einaudi stated that in Paris there was "a massacre perpetrated by police forces acting on orders given by Maurice Papon"[19]. This statement led Maurice Papon to begin a defamation suit[20]. The trial received a huge amount of media interest, resulting in Jean-Luc Einaudi's acquittal and the 17th correctional chamber of the Paris regional court recognising the "massacre" [21]. The trial was also responsible for feeding a scandal that erupted in the autumn of 1997 concerning access to the archives, with some criticising government policy on the issue. The police prefecture, in particular, was rightly criticised. A circular and communiqué from the Prime Minister translated in concrete terms the declaration made by the Minister for Culture, enabling access to archive documents concerning the violence inflicted on Algerians in Paris in 1961[22]. A month later, the National Assembly unanimously voted to approve a semantics-based draft law that would transform the official "law enforcement operations in North Africa" into the "Algerian War"[23]. The title of Jacques Floch's declaration is the perfect illustration of the unanimity among the deputies: "A score to settle with war"[24]. Yet debates revealed a range of different scores to be settled, and often opposing scores at that, with a minimal agreement finally reached.

When memory rewrites history, or torture on never-ending trial

The issue of torture began trickling into French public debate from various sources, but all shared the same confusion between memory and history. Stories about the past emerging into the public realm were tales written from memory, but these were often presented and accepted as historical fact. Witnesses recounting their experiences of war, and especially torture, all seemed to be considered as the same bearers of a truth that deserved to be heard. Partisan rhetoric did not seem to have been rendered invalid by history. Opponents of torture and those who would support it were invited to take part in the debate that was far from being real discussion. This juxtaposition of memory-based narratives made any positive confrontation impossible, thus leading to a lack of shared history being written. Monologues dominated the platforms, with the war transformed into a war of memories, all too often disguised as a conflict between varying historical interpretations. Whatever the period, the different stages of the Algerian War as presented to the public funnelled reality

into a reductive, binary interplay between accusation and justification, with accusers turned into justifiers, and vice versa. Each time, opposition to the Algerian War was re lived by those involved, protected from any real judicial impact by amnesty, as "no person may be charged, pursued, prosecuted, sentenced or subjected to any penal decision, disciplinary sanction or discrimination of any kind" for acts related to law enforcement[25]. The last amnesty law of 1982 paradoxically provoked a change, marking the end of amnesty and the beginning of a time of judicialization.

War in the courts

The gradual judicialization of the Algerian War appeared at the same time as the first inquiries into complaints of crimes against humanity[26]. In 1987, Klaus Barbie's defence lawyer, Mr Jacques Vergès, compared the crimes his client was accused of to those of France in Algeria, and argued that France had committed crimes against humanity. The issue was adjudicated by the Court of Cassation, which reduced the scope of application of the repression to crimes committed "in the name of a State that practices a policy of ideological hegemony", thus protecting the acts committed by France in its colonies, and in Algeria in particular[27]. Over the past 15 years, debate on the war crimes has changed significantly. Changes to international law and the growing pervasiveness of the fight against impunity are lending their weight to those seeking legal justice for torture and other crimes committed by the law enforcement forces in the Algerian War. But the official French position on the matter remains ambiguous. While condemning the declarations made by General Aussaresses, they did not attempt to retain General Khaled Nezzar in France, despite him having been the subject of a complaint of torture lodged by three Algerians last April[28]. The future of relations with Algeria prevails over principles and law. The authorities stand with the Algerian state, particularly in its fight against Islamism, the scapegoat for all woes. Political condemnation remains a singularly moral act. The State continues to refuse to investigate the orders given and the responsibility of those involved at the time. Yet it is precisely this insufficient response from the State that provokes clamours for justice to be served to the torturers. In light of a response that is found lacking in comparison to historical reality, the narrow doorway of the justice system emerged as the only possible route to provoking official acknowledgement of the truth. Yet tolerance is increasingly waning for the State in its desire to place the blame for the violence committed at the feet of individuals, rather than seeking to reflect on its wider responsibility. France's official position has not changed: the collective aspect of the war remains absent from political rhetoric. A year later, what remains contested is precisely this fictional belief in a war free of any political responsibility. The fiction lives on. But for how much longer?

[1] Most notably *La torture et l'armée pendant la guerre d'Algérie (1954-1962),* new edition revised in 2016, coll. Folio histoire, No. 253.

[2] Le Monde's headline on 20 June 2000 read "Tortured by the French army, 'Lila' seeks the man who saved her". In the ensuing weeks, reaction pieces from generals Massu and Bigeard were spilled through the pages of *Le Monde* from 22 June on.

[3] Despite the fascinating and meticulously-detailed book by Louisette Ighilahriz (*Algérienne,* Fayard/Calmann-Lévy, 2001, 274 p.). Unlike General Aussaresses' account, Louisette Ighilahriz's actions during the Algerian war are recounted within the much broader context of her personal and family commitment to the nationalist cause, with the torture suffered by this activist merely one of the many incidents that make up the full story.

[4] *Services spéciaux,* Algérie 1955-1957, Perrin, 2001, 197 p.

[5] See *Mémoire et enseignement de la guerre d'Algérie* (IMA/Ligue de l'enseignement, 1992), workshop No. 5 *L'enseignement de la guerre d'Algérie de l'école à l'université,* p.360-453. The Algerian War has been included on the final-year secondary school syllabus since 1983.

[6] In France Observateur (13 January 1955) and *L'Express* (15 January 1955), respectively.

[7] On the reports by Roger Wuillaume and Jean Mairey, see Pierre Vidal-Naquet, *La Raison d'État* (Minuit, 1962)

[8] President Patin's report to the Prime Minister, 5 July 1960, 770101/9* (CAC).

[9] List published in Le Monde on 1 February 1962 and added to the following week.

[10] The law was voted in on 9 December 1974.

[11] See Philip Dine, *L'honneur d'un capitaine et la question de la torture chez Pierre Schoendoerffer,* CinémAction, No. 85, 1997, p.120-127.

[12] This issue is a complex one and required serious reflection. On the way in which memories of the 1954-1962 war weigh heavily on present-day politics, Benjamin Stora's *La guerre invisible* is a good starting point. *Algérie, années 90,* Presses de Sciences Po, 2001, 123 p.

[13] *4 fois une heure* documentary by Benjamin Stora and Bernard Favre, broadcast in September and October 1991 on Antenne 2.

[14] Benjamin Stora, *La gangrène et l'oubli,* La Découverte, 1991, 372 p.

[15] After the FIS' (*Front Islamique du Salut,* Islamic Salvation Front) victory in the Algerian legislative elections in December 1991 followed by a suspension of the electoral process, Algeria was back in the headlines, with the French authorities and a section of the national population continuing to feel targeted by events in North Africa. Pressing questions on Algeria's colonial past and the role played by France arose, in particular those that aimed to explain the violence ravaging the country.

[16] Official Journal of 12 January 1992. On the subject of this decree, see Louis Crocq, *Les traumatismes psychiques de guerre,* Odile Jacob, 1999, 422 p., p. 343-349, and J. Marblé, "Le décret du 10 janvier 1992 est-il applicable?" Annales médico-psychologiques, 1998, 1, p. 63-66.

[17] Now governed by Law No. 2008-696 of 15 July 2008, the 30-year time lapse applicable to all public archives was dissolved and replaced by the principle of free access to the public archives for all, as long as the documents in question did not relate to confidential matters protected by law.

[18] Circular dated 2 October 1997 on the archives for 1940-1945

[19] "Octobre 1961: pour la vérité, enfin", *Le Monde,* 20 May 1998.

[20] He had just been sentenced to ten years of imprisonment for complicity in crimes against humanity in World War 2, a sentence he would later appeal.

[21] The magistrates of the 17th chamber were not to rule on the merits of the case, but on the defamatory nature of the offending statements. The deputy public prosecutor described the repressing of the Algerian protest as a "massacre" but deplored the "unsubstantiated subjective judgement" of the historian when he stated that the police were acting "under the orders of Maurice Papon". This dividing line that held that the police prefect "wasn't solely nor primarily responsible" and that the "murderers themselves" and the "intermediate hierarchy" ought not to be forgotten was not accepted by the judges, who released the accused in good faith on 26 March 1999.

[22] Circular dated 4 May 1999 and communiqué dated 5 May.

[23] Law of 10 June 1999.

[24] Debates in the National Assembly concerning the law of 10 June 1999.

[25] Amnesty decree of 22 March 1962 published by Pierre Vidal-Naquet in *La Raison d'État,* p.326-328. Cf. Arlette Heymann, *Les libertés publiques et la guerre d'Algérie,* Librairie Générale de Droit et de Jurisprudence, 1972, 317 p.

[26] Klaus Barbie's trial was the first in 1987, but a complaint had already been filed against Maurice Papon in October 1981. The inquiry ended in 1985 but was overturned by the Court of Cassation.

[27] Court of Cassation, May 1987.

[28] The retired general Khaled Nezzar was in France to promote his book: *Algérie, échec à une régression programmée* (Publisud, 2001). The memoir of this former 1990's war general was a bestseller in Algeria. In December 2000, he expressed an opinion on the French archives from the Algerian War period, referring to the case of French army officers who had become generals in the Algerian army, calling on France to "reveal the identity" of "these traitors".

HUMAN RIGHTS CALLED INTO QUESTION

PAR JEAN-BERNARD MARIE, Honorary Director of Research at the CNRS, Université de Strasbourg, former Secretary General of the International Institute of Human Rights - René Cassin Foundation and member of the FIACAT International Bureau.

Challenges to human rights today

Universally recognised rights

Enshrined in the UN's 1948 Universal Declaration, human rights are now recognised by the international community and are a requirement for those States that have adhered to the many binding international instruments (conventions, charters, covenants) that have since been adopted with a view to safeguarding the rights in question on a global and regional scale. Human rights today are no longer associated with pious ideals or vague principles, but form instead a concrete corpus of norms designed to be implemented in each and every country governed by various international bodies, and in particular judicial bodies, such as the European Court of Human Rights in Strasbourg. The action taken by NGOs and various civil society stakeholders has played a crucial role in the unprecedented progress and fundamental achievements seen in this area, yet consolidation remains a permanent necessity.

In this relatively recent international "struggle for human rights", the prohibition of torture features among the absolute standards which cannot, under any circumstances, be deviated from. Firstly, in accordance with all international conventions safeguarding human rights adopted within the UN and regional organisations' framework, no derogations to the prohibition of torture may be applied, even in cases where the exercising of some rights is temporarily suspended in exceptional circumstances (state of emergency, state of siege, public emergencies, war, natural catastrophe, etc.). The prohibition of torture therefore remains, irrespective of place, time and form.

Secondly, this prohibition has become a peremptory norm, a component of the legally-binding principles that develop organically, without specifically referring to an existing body, treaty or convention ratified by a State. In the event that the international organisation that ushered in these texts were to disappear, and that the treaties themselves were to be dissolved, the prohibition of torture rule would continue to apply, which does not mean, however, that it would not gradually be weakened. Today, the prohibition of torture has become a *fundamental prohibition* in the anthropological, moral and legal sense.

Yet this status granted to torture does not exist in isolation from the collection of human rights recognised as being indivisible and interdependent by the UN and other international bodies such as the Council of Europe. We are now seeing these rights being called into question and even challenged in some sections of society and by some voices other than the usual “anti-human rights” suspects. Within the Christian community too, questions pertaining to the validity and legitimacy of human rights are being raised, in terms of their basis, wording and content alike. In addition, doubts surrounding these rights are surfacing among those who until now were actively engaged in defending them.
The core issues that lie at the heart of these doubts ought to be heard and tackled within their specific context, rather than being ignored or rejected dogmatically, because they run the risk of weakening or undermining the principles and norms on which human rights were so painstakingly built. As a starting point, we might take up some of these doubts and identify some of the challenges faced by human rights today, before examining their impact on attitudes towards torture, with a view to defining lines of approach and action.

Contested or questioned?

What weaknesses, excesses or potentially even shortcomings are human rights accused of having?

— Human rights are seen as the expression of unchecked **individualism** and exacerbated egocentricity, or the result of private arrangements: individuals are seen as caring only for their own rights, "It's my RIGHT, I'm within my rights to...", with little concern for the sense of community and responsibility these rights imply, and overlooking the fact that ***"everyone has duties to the community in which only the free and full development of his personality is possible",*** as stated under Article 29 of the Universal Declaration. Yet the relationship between duty and right is asymmetric, as human rights are inalienable and cannot be conditioned by prior compliance with one's duties. Human rights are afforded to all individuals, with no pre-conditions or requirements of reciprocity attached, which does not mean that each individual's responsibility is not invoked.

— The **formal and abstract** nature of groundless rights that hinder their concrete application by concealing the conditions under which they were developed; individuals' *capacity to do and be* are not valued and the concrete means via which to transform their potential into tangible results are not sufficiently developed. Thus, rights may remain in suspension, a virtual concept, and therefore ineffective.

— The list of human rights is said to resemble an **endless road trailing off into the distance,** with *new and “invented” rights* continuously and increasingly popping up in various areas (private life, gender, sexuality, life and death, science and technology, etc.). All needs or preferences are thus expressed in the form of a right to be legitimately claimed, such as the "right to happiness", the debtor and guarantor of which remain unknown (beyond the self). Yet human rights are fundamental rights pertaining to human dignity that do not aim to satisfy all desires or needs, whatever their content, scope or purpose.

— The risk of a **fragmentation** of human rights that may threaten their cohesive, interdependent and indivisible nature, the recognised founding pillars on which their credibility and effectiveness rely. Empowering and structuring rights into hierarchies transforms them into “items” each individual can “shop around” for to suit their own interests, needs or desires, when in fact all freedoms and rights are intrinsically intertwined, whether civil, political, economic, social or cultural, and whether they are exercised individually or collectively. Thus, to deny or breach a specific right is never an isolated act, but always an incident that has a domino effect on a series of other rights.

— Attempts to apply **identity politics** to human rights, turning subjective rights, meaning individual human rights, into rights appropriated and used by groups and various communities, under the banner of special circumstances of all sorts with a view to imposing their own rules and dominance. Yet the struggle for human rights is first and foremost a fundamental affirmation of the autonomous nature of a subject and the recognition of their dignity in the face of any kind of attempt to alienate from or subject to a community.

— A **relativistic approach** to human rights according to the diverse range of cultures that exist and the practices they implement, which undermines the principle of universality that forms the bedrock of these rights, and blocks the process of gradual *universalisation* (or *acculturation)* that develops in different societies. Human rights are thus trivialised, reduced to a local or temporary level, and lose their ability to forge common ties between different and diverse groups, the universal bond and "shared ideal" on which they are based, as proclaimed by the Universal Declaration.

— The **underdevelopment of economic, social and cultural rights,** *the poor relatives* that unbridled globalisation and economic crisis continue to increasingly threaten, in particular for individuals on the fringes of society and those living in poverty. Are human rights merely a luxury, only valid in times of prosperity and only used to benefit the blessed few? Yet economic, social and cultural rights are fully-fledged human rights, *real rights* for *real people* who must be fully recognised and granted full and real access to all rights. While non-exhaustive, this list is a good place to start in examining the many questions and objections human rights now inspire in society, to varying degrees and at different levels.

The impact on the fight against torture

These doubts and challenges surrounding human rights in general naturally have consequences on how the phenomenon of torture is tackled and on the degree to which the absolute prohibition of torture is applied. A relativistic approach leads to the inherent value of human dignity and the requirement of universal respect for the individual to be called into question, paving the way for the definition of inhuman or degrading treatment to be based on so-called "cultural" practices and norms, with varying boundaries and nuances. The qualification of torture for acts defined in the current judicial instruments could be broadened to the point that some "regulated" practices justified as being allegedly effective in "exceptional circumstances" might be accepted.

We know that periods of exception, especially when excessively prolonged, can often facilitate a gradual shift in the face of tension and insecurity, such as that we are now seeing in a number of countries. The threshold can be lowered in minds and day-to-day practice to the point that the legal regulations currently in force are dissolved. Over the past few years, lateral assaults as well as full-frontal attacks on both a national and international scale have been observed, which have been thwarted until now, thanks in particular to NGOs[1].

Due to the indivisible and interdependent nature of human rights, violation of one right impacts on a variety of other rights. The practice of torture is not a stand-alone phenomenon. Rather than existing in a bubble, it develops concomitantly with other breaches of related rights: the right to justice and defence, freedom of expression and of association, freedom of thought, conscience and religion, etc. Yet the practice of torture is also related to the denial of other rights that would at first glance appear less closely related, such as cultural, economic and social rights. There is often also a link here with discriminatory practices. A fragmented approach to human rights and torture undermines their cohesiveness and ultimately their effective application. Similarly, an approach that gives exclusive priority to the interests of a particular community rather than the individual results in a denial of the inalienable nature of all individuals' right to physical and mental integrity. As a counterpoint, an approach that focuses too heavily on the individual denies the solidarity and shared responsibility that these rights entail.

This is a paradoxical aspect of human rights: intrinsically expressing an individual's ability to fight back against the dominance of group, while simultaneously requiring the support and participation of the communities in question. It is a question of balance that must be identified and tangibly worked towards in day-to-day practice, continuously based on the founding pillar that is the respect for human dignity afforded to every human being.

In light of current questions surrounding these aspects, how might we respond and react? Naturally, there is no one-size-fits-all solution, yet some approaches can nevertheless be defined and employed.
Firstly, re-appropriating and deepening the values inherent to human rights is a crucial step to embark upon if we are to overcome the dogmatism and single-mindedness they all too often fall prey to. This is an approach that each and every one of us must seek to exercise not only on an individual basis, but also in our groups, associations and communities, with a view to bolstering enlightened discussion that may lead to concrete, appropriate action taken on a daily basis. This requires us to learn and develop our knowledge of situations that are always complex and difficult to understand in a world littered with a multitude of crises. In this area, associations and NGOs play an essential part in developing training programmes for their members and the general public, particularly in schools and community spaces. Religious leaders also have a particular responsibility to uphold in educating their members and society at large. There appears to be an enormous amount of work still to be done on this level, in all religions and places of worship. Now more than ever, there is a real need to strengthen advocacy among the various institutional partners.

The aforementioned norms and plethora of conventions signed by States cannot be allowed to create the illusion that all is in order in terms of norms and standards. While it is true that standards and norms are fairly well developed on an international level, there is always room for improvement, as we have already seen in the fight against torture[2].

In addition, a great many States still have not ratified fundamental conventions such as the United Nations' two Covenants, one on civil and political rights[3] and the other on economic and social rights (ratified by 168 and 164 States, respectively) or subscribed to specific protocols that require continuous action for progress. The priority areas remain the implementation of enshrined rights and supervision of the international commitments made by States: monitoring carried out within the convention committees (such as the Committee against Torture) and as part of systematic procedures such as the Universal Periodic Reviews (UPR) that govern the 193 UN Member States. Today, work carried out in cooperation with governments and the international community is set against a challenging backdrop of crises and tension: economic crisis, unbridled globalisation, armed conflicts and internal disruption, as well as the rise of terrorism featuring in the foreground across several continents, and an increase in migration to Europe.

As can be observed among the international bodies, in the UN and the Council of Europe in Strasbourg, States are beginning to withdraw from human rights, with even those that once led the way in the field demonstrating a certain reticence. Some governmental representatives are openly expressing the view that States have already "given a lot" (or too much, for some) and are "trapped" in a system that is too restrictive. They believe the time has come to temper efforts: too many norms and standards to comply with, too many supervisory procedures, too many reports to draft and assessments to undergo, too many recommendations. It is true that for States that have ratified a number of conventions that implement a system of periodic reports, the workload surrounding national reports can be heavy. In addition, the treaty committees of experts tasked with examining these reports are insufficiently equipped to complete their duties to a satisfactory level.

Although we cannot examine the finer points of this issue here, suffice to say that the struggle for human rights now finds itself in an unfavourable international context characterised by withdrawal and inflexibility supported by governments working to the lowest common denominator. Now more than ever before, the role played by civil society and public opinion is crucial in ensuring we progress or at least maintain the status quo in the norms recognised and commitments made up to this point. NGOs' competence, diversity and ability to act as well as their capacity to rally the people should allow us to tackle a challenge that, above and beyond weakening political commitments and legal obligations, is set to destabilise the ethical bedrock of human rights and their underlying convictions. Until now, NGOs and other associations have been able to stave off the dilution of values and withdrawal from the norms that have been painstakingly pieced together on an international level – yet challenges remain. Tireless efforts must continue to be rolled out across all levels, in all directions and by the hands of all stakeholders. But action can only bring about effective, lasting results if it is based on, and nourished by, open and constructive thought and debate on the founding principles and issues surrounding human rights in our culturally diverse societies across existing platforms or spaces yet to be created, such as inter-cultural dialogue and particularly on a religious level.

In their many varieties and scopes, human rights are part of a dynamic process, with the Convention itself described by the European Court of Human Rights as a "living instrument". The content of human rights and the contexts and methods via which they are applied, may evolve in time and space in accordance with changing values, cultures and social practices. Human rights are forged through **a process of universalisation** by gradually being absorbed by different cultures, despite the tensions and contradictions that remain to be overcome on a permanent basis. With this in mind, what might be of use is an approach based on *individuals' capacities to do and be,* focused on the resources required to exercise human rights and the conditions necessary to live a dignified life.
Nevertheless, changes to the content and scope of these norms must not call into question the core concept of human rights and the values and principles on which these rights are based: human dignity and the principles of universality, indivisibility and non-discrimination. All stakeholders, from individuals and associations to institutions, must remain active, vigilant and creative in safeguarding this "***common good"*** supported by the international community that draws on the efforts of all countries and citizens around the world.

[1] On the subject, read the following article www.unmondetortionnaire.com/L-interdiction-de-la-torture-un.
[2] *Optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*
[3] See Table of ratifications p. 288.

SPOTLIGHT ON ERITREA

LEFT OUT IN THE COLD

ERITREANS PERSECUTED AT HOME AND IN EXILE

BY COLINE AYMARD, Head of ACAT Coordination and Campaigns.

Genesis

Well before the tents of Calais and the boats of Lampedusa, the Libyan traffickers and the Sinai torturers, there was a country. Surrounded by Sudan, Djibouti and Ethiopia in the Horn of Africa, for its citizens in exile, Eritrea is remembered as a bittersweet memory, its genesis characterised by revolution and hopes of independence. In September 1952, Eritrea was officially annexed to Ethiopia. A decade later, it became an Ethiopian province, paving the way for a number of liberation movements, with the Eritrean Liberation Movement (ELM) emerging in November 1958, followed by the Eritrean Liberation Front (ELF) in September 1961. Yet it was the Eritrean People's Liberation Front (EPLF) movement founded in February 1972 that ultimately secured independence for Eritrea as a nation. On 24 May 1991, the EPLF seized Asmara and put an end to the war of independence. In the ensuing referendum for self-determination, a 99.8% majority voted for Issayas Afeworki, a warlord who headed up the EPLF, and who was subsequently elected president of the Republic of Eritrea. Since then, military dictatorship and a reign of terror have succeeded dreams of independence.

Today, between 3,000 and 4,000 Eritreans flee the country every month. Issued by the United Nations High Commissioner for Refugees in 2015, this figure is merely an estimate, as it is impossible to ascertain exactly how many people try to leave, how many are arrested upon attempting to cross the border and how many are killed, in a country where journalist and NGO access is denied.

Faced with a president who has stated that "*those seeking a multi-party democracy can seek it on the moon",* Eritreans are seeking just that. Yet to do so, a long journey on Earth awaits. From the moment they leave to the moment they arrive in Europe, they suffer the cruel realities of the paths that lead to exile, all deathly and all dangerous, and often characterised by the indelible traces of torture.

A military dictatorship is born

A little over 20 years following its independence, ruled with the iron fist of President Issayas Afeworki – a liberation hero turned cowboy autocrat – Eritrea is one of the most heavily militarised countries in the world. In 1993, Afeworki clamped the country into lock-down, and began a merciless reign over politics, the army, civil society and the media. Yet it was in September 2001, when the world's eyes were firmly set on the 9/11 attacks in New York, that the regime slipped definitively into a reign of terror: a wide-scale cull was carried out among the ranks of the opposition, the free press was obliterated, and all opposing voices faced imprisonment, torture or "disappearance".

The Eritrean government uses its unresolved conflict with Ethiopia to maintain the state of emergency proclaimed in May 1998 and indefinite military service, the legal maximum duration of 18 months having been eradicated in 2001. Eritrean citizens find themselves prisoners in their own country, with opportunities to leave difficult, if not impossible. Routinely rounded up by the army, they are forced to work for the sole benefit of a State entirely engulfed by the political party in power. The borders are closed to both incoming and outgoing travellers, resulting in Eritrea's unofficial title as "*the North Korea of Africa".*

The endemic practice of torture within the regime

Children are systematically enrolled in military training that takes precedence over their compulsory schooling, thus forcing them to spend their last year of secondary school in the Sawa military camp. Inside the camp, living conditions are incredibly harsh: torture, women often repeatedly raped and sexual harassment within the army itself. To make things even worse, during their indefinite military service, conscripts earn approximately $30 a month, which generally prevents them from either starting a family or keeping their children fed.

Many conscripts attempt to escape this perpetual military service, with some children leaving school early to avoid it. Others are then forced into service before the minimum age to compensate for the defectors. The luckiest deserters manage to cross the border into Sudan, while the less fortunate face prison and even death.

Deserters, journalists, opponents and Jehovah's Witnesses are left to rot in the regime's jails, where they face torture, arbitrary rule and mistreatment on an almost systematic basis, despite all diplomatic efforts. In September 2015, Asmara ratified the United Nations Convention against Torture. Yet the use of torture in the country's military service and detention centres remains widespread[1]. Detention premises aren't always official, with some being located underground or inside containers, and others being nothing more than open-air spaces surrounded by fencing. And so the Eritreans flee in droves, despite a shoot-to-kill border policy, the dangers of exile and fear. Once they leave the country, returning is impossible – the door is locked on both sides. Not only are they unable to return for as long as the regime still stands, all contact with the friends and family they leave behind in Eritrea is made virtually impossible due to government surveillance: contacting a "traitor" is punishable by imprisonment or torture.

The circles and detours of a survivor: the long, painful path to exile

Over the last 15 years, at least 300,000 Eritreans are believed to have risked their lives fleeing their country. Passing through the hands of traffickers, prisons and makeshift shelters, the luckiest manage to cross Sudan and Libya to reach Lampedusa after a long and perilous crossing. They then generally attempt to reach Sweden, Germany or the Netherlands. In 2015, Eritreans represented the third highest percentage of migrants crossing the Mediterranean. And Eritreans represented the majority of the migrants who lost their lives in transit.

Yet although the journey across the sea is dangerous, the roads are just as hazardous, if not more so. In 2006, Libya and Italy signed an agreement to contain immigration to Lampedusa. Eritreans are kept in Libyan prisons before being forced into labour in almost slave-like conditions. They look instead to Israel: the starting point for the journey across the Sinai Peninsula.

The exodus to Israel: the bloody trade of the Sinai traffickers

"*Ovdim Zarim",* or foreign workers – this is how the 80,000 migrants from East Africa who wash up at Neve Sha'anan in the heart of Tel Aviv are referred to. Most of them cross the Sinai desert to Israel in a desperate bid to flee unstable political conditions, religious or ethnic persecution in their homelands or unbearable living conditions in transit countries, much to the dismay of the Israeli government. In 2002, the latter implemented an immigration administration policy that aims to prevent the long-term settlement of refugees and to organise returns to their countries of origin, in violation of international law. In 2012, the Prime Minister of Israel

launched a "prevention of infiltration" policy that involves systematically imprisoning undocumented migrants and a 227-kilometre fence running the length of the border with the Sinai Peninsula, the crossing point for Eritreans entering Israel. Faced with these new obstacles, the exodus to Israel slowed down, while following the fall of Gaddafi, the flow of migrants to Italy spiked. The Eritreans avoided the Sinai Peninsula and turned once more to the Mediterranean.
This meant a real loss of earnings for the Bedouin traffickers operating in Sinai, who until then had been extracting extortionate amounts from Eritreans in exchange for passage to Tel Aviv. In a desolate Sinai Peninsula, trafficking of all kinds is one of the only ways of making a living, and as a result, the traffickers were to take on a new role as torturers. They began a new trafficking system that used systematic torture of Eritreans in "torture camps" in order to extract money from their families. The Rashaidas, a tribe in Sudan and Eritrea, went as far as to kidnap Eritreans in their own country or the Sudanese refugee camps, to sell them on to the Bedouins in Sinai.

The proliferation of "torture houses" in North Africa

On the dangerous roads that trail through the desert, "torture houses" have mushroomed over the last decade. Traffickers kidnap Eritreans, as well as Ethiopian and Sudanese inhabitants of the refugee camps, and detain them in these "houses" where they are chained together. Several times a day from 5am, they are tortured while their families are called on the phone. Burnt with melted plastic, electrocuted, repeatedly raped, hung from their hands for dayàs on end, psychologically tortured and beaten, the men, women and children are handed over to merciless torturers who hope to extract generous sums of money using this "method". Ransom payments are often made using Western Union or through appointed intermediaries among the European diaspora, as the families left behind in Eritrea do not have the means with which to pay the exorbitant amounts demanded.
Thanks to the research carried out by Cécile Allegra and Delphine Deloget in their documentary "*Voyage en Barbarie*" (Albert Londres Prize 2015), we now have tangible evidence of the existence and operations of this form of trafficking, which had long remained nothing more than rumour. In the film, victims and torturers alike reveal the details of the well-oiled human trafficking machine, the funding for which is sourced here in Europe.
Today, trafficking is a flourishing trade in North Africa and the Horn of Africa. A military clean-up operation has been underway in the Sinai Peninsula since 2013, following the deposition of the Egyptian President Morsi. The army and police work together to eradicate "criminal elements" that maintain a reign of terror in northern Sinai. Yet rather than turning their attention to the torture camps, the Egyptian forces avert their eyes. Under fire from military strikes, the torture houses relocate to North Africa, and are now present in Sudan, Libya, Yemen, and others, while the international community masks its shame behind promises of investigation.

The guilty silence of European governments

Despite having been well aware of the abuses exercised by a dictator who has been in power for over twenty years now, France has an embassy in Eritrea and maintains diplomatic relations with Asmara, even going as far as to finance the regime in the hope of reducing the number of migrants to the European continent via the distasteful "Khartoum Process". Signed by a number of European countries, this partnership enables the European Union to fund development projects in partner countries who, in return, promise to heighten military border patrols. Paradoxically, France guarantees Eritrean exiles automatic refugee status, thus simultaneously acknowledging the horrific situation in their country of origin. Flimsy promises abound. In Paris, as everywhere else, Eritrean refugees are left to languish by the public authorities, while an endless stream of “New Sangattes” sprout up on the edges of the city. For as long as the Afeworki dictatorship remains in place, Eritreans will continue to flee their country.

Belonging neither here nor there, Eritrean exiles are left out in the cold, condemned to roam as perpetual foreigners, to wander across a world that does not want them in their endless quest for asylum. This exile is an exodus – a road along which one cannot turn back, without a finishing line, destined to be paced without end, an interminable waiting game.

[1] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/163/45/PDF/G1516345.pdf?OpenElement.

Interview with Meron Estefanos, human rights defender

On 21 November 2015, the ACAT Foundation awarded the Engel-du Tertre prize, aimed at acknowledging the commitment displayed by a human rights defender, to Meron Estefanos, a Swedish-Eritrean journalist and activist leading the fight against the torture and kidnappings suffered by Eritreans in the Sinai Peninsula. Since 2010, she has hosted a weekly slot on *Erena,* an Eritrean opposition radio platform broadcast from Europe, and founded the I*nternational Commission on Eritrean Refugees* in Stockholm, Sweden, where she now lives.

Meron, how did you start working on the torture camps issue?

I began in 2010 through my radio show called "The Voices of Eritrean Refugees". A man who lived in the United Kingdom called me. His daughter had been kidnapped, and the traffickers were asking for $20,000 in exchange for her release. This father gave me their number. I called them from home, and they immediately began calling me back, asking me to pay ransoms, telling me people were dying. I had just one goal in mind, and that was to save these people.

Traffickers now frequently torture their victims in real time; they hold up a telephone to the person they're torturing. I stayed on the line and tried everything I could to save their lives. To those who believe in a policy of zero ransom payments, I'd say, "*If it was your child, your brother, your sister screaming in the throes of death, what would you do?*" Today, trafficking is a flourishing trade in North Africa and the Horn of Africa. A military clean-up operation has been underway in the Sinai Peninsula since 2013, following the deposition of the Egyptian President Morsi. Under fire from military strikes, the torture houses relocate to North Africa, and are now present in Sudan, Libya and Yemen.

How can this evil be stopped?

My work is primarily concerned with helping Eritrean refugees fleeing their torturers to come out of hiding, in a bid to avoid them getting kidnapped and tortured yet again. This involves getting all of these refugees in a single place where they feel safe, but it also means using my radio show to speak to the victims and to discourage those fleeing Eritrea from taking the route through Sudan and Libya.

I also lobby the European Parliament and the U.S. Department of State. Firstly, I explain the problem, which is not widely understood by political decision-makers. My goal is also to hunt down the traffickers and torturers, who sometimes manage to slip onto the list of refugees welcomed in to Western democracies. To do so, I have to put together investigation files, work with lawyers, write up reports, etc. It's hard work.

How are European countries responding to this phenomenon?

The director of the Middle East and Northern Africa office attached to Federica Mogherini, High Representative of the European Union for Foreign Affairs, told me that he'd raised this issue with the Egyptian government, and at the same time, told me he wasn't aware of the kidnappings. It's very confusing. After my first book on the subject was published, the European Union condemned the treatment and torture of human beings in the Sinai Peninsula, and that's good, but Brussels should make stopping funding of the Eritrean authorities via development agreements its priority. The European Union has already allocated €250 million in funding to the Eritrean government and is set to unblock a further €350 million shortly. Yet the Eritrean authorities are directly linked to the trafficking, and the funding needs to stop!

What will be your next move?

File a complaint with the International Criminal Court against a number of Egyptians guilty of genocide. An estimated 50,000 Eritreans have passed through the Sinai torture camps. Innumerable victims have had their genitals mutilated and are now unable to have children. This trafficking is our own Eritrean holocaust. No torturer must go unpunished. My aim is to bring them to justice before The Hague.

ASPECT OF RESISTANCE

BY GUY AURENCHE, honorary lawyer, honorary Chairman of the International Federation of ACAT, author of *Justice sur la terre comme au ciel*[1].

ACAT-France's "A World of Torture" report makes for harrowing reading. The wounds of the world, as well as its lies and deceptions, are an assault to the mind and a shock to intellectual conviction. The courage of those who fight back plays on the fears that cushion the lives of so many powerful figures. It paves the way for action and reaction. And so we must push on. This vague awareness may be turned into proactive willingness applied through a handful of aspects that each may add to, and adapt, as they see fit.

It begins with a cry

> **"If we look back at the origins of the promotion and defence of human rights, we see how the movement started, like life itself emerging into the light: it begins with a cry."**[2]

What role do cries play in both personal life and society? The biggest risk facing tortured people around the world is that their cries become background noise we grow accustomed to. We become so used to the sound that we no longer hear it. If we do hear it, we explain it away as something not urgent enough to warrant a response, claiming security, safety and profit as our primary concerns. An ability to feel outrage is required, but more important still is our ability to listen in a world that smothers the deepest cries with distracting sound.

Harrowing cries

What of our ability to remain open to a harrowing message that comes from beyond our own selves? Torture tells us something about the world in the way in which it

bears testimony to the world's sickness. The transcendent nature of the cries of the tortured is most harrowing of all. Humanity cries out whenever it is threatened by ambitions that seek to use and abuse it. Humanity whimpers or screams in fear of dehumanisation, the new generation left to wonder what role hope is to play. This cry is indeed striking, and must be reflected in the priorities chosen by the world, by political society, families and religious communities, economic and ideological projects, experiences and personal choices. The abolition of torture is no easy feat. Everything begins with a cry, and everything may well end with a cry, if we cannot or will not hear it.

The reasons for torture

Torture is not born in a vacuum, and the cries of the tortured push us to dig out its causes – a dangerous endeavour, when fundamental ideas are turned into secondary concerns under the pretext of a reaction to war, as illustrated by the words of a French politician a few months ago. A dangerous endeavour, when human beings are reduced to the status of mere political pawns, the tools of economic or financial exploits, the vectors for technological success, the cogs of religious crusade or sacralised ideology. A dangerous endeavour, when Otherness is denied under the guise of false equality or in a bid to impose cultural or material uniformity. A dangerous endeavour, when the question of spirituality and how we welcome our fellow Man is relegated to the ranks of outdated compulsion.

By questioning our behaviours and the primary choices we make, the cries of the tortured call us to revolution, inspire us to look within ourselves, to take a step back, to open our doors to the Other, or simply engender a sense of disenfranchisement in the face of a thirst for power and domination.

A cry from elsewhere

The spiritual dimension in the fight for the abolition of torture then comes to light. For over 40 years, ACAT has been applying the gospel of Jesus Christ in the action it carries out to see legal obligations complied with. Yet to embrace the spiritual is not to take flight in the heavens, nor to justify today's suffering with the promise of some future happiness[2]. An attempt to understand the world of torture must be made. After all, "theological or philosophical reflections on the state of the world today may seem repetitive and abstract if they are not placed in a present-day context as an unprecedented chapter in the history of humanity. Before we investigate how faith can usher in new motivations and new requirements in our approach to the world to which we belong..." it strikes me that we ought to "*pause briefly to consider what is happening in our common home"* [3]. This is the first step of the spiritual aspect of the question.

The socio-political aspect: preventing the world from destroying itself

> **"Each generation doubtless feels called upon to reform the world. Mine knows that it will not reform it, but its task is perhaps even greater. It consists in preventing the world from destroying itself [...] this generation starting from its own negations has had to re-establish, both within and without, a little of that which constitutes the dignity of life and death."** [5]

Facing the unacceptable

I am unable to be either optimistic or pessimistic, as pessimism is a choice that leads to deadly despair. Optimism, on the other hand, flirts with cynical provocation in a world disrupted by so many trials and tribulations. To stand alongside those who refuse to accept the unacceptable and who decide to "prevent the world from destroying itself" – this choice is a summary of human rights and more particularly the movement triggered by the Universal Declaration adopted by the United Nations on 10 December 1948. Faced with 60 million lives lost, death camps, the holocaust, the first experiments with the atomic bomb, "considering that a lack of knowledge of, and a disdain for, human rights led to barbaric acts", humanity put forth "a shared ideal to be attained by all peoples". At its heart, was the core concept that "none should be subjected to torture or cruel, inhuman or degrading treatment" [6]. Thus, the absolute and universal prohibition of torture was laid down in a bid to prevent the world destroying itself.

This is the basis for the moral and legal duty we now hold in our hands. A legal code, monitoring and penalising procedures and guidelines for collaboration and exchange were put forth as tools with which to build a world in which people could live together. Compliance with these rules enshrined in a communal agreement became a symbol of promoting faith in the dignity and value of human life for all peoples, more than it was a mechanism via which to sanction or punish.

Building a world together

Building this new world now requires global partnership and cooperation between various different communities. No community can survive as an island. Isolation or imperialism lead to death. This legal framework must either be universal, or it shall cease to exist.

A new supporter appeared on the world stage: civil society, not in unrest against appointed authorities but as a guardian and promoter of the commitments each agreed to take on. The fight for the abolition of torture has taken on an inescapably political and social dimension. In order to prevent the world from destroying itself

under the deadly blows of torture, a fair, sharing-based economy must be structured in which the labour and land of each person are respected. An economy in which profit is not erected as an idol; in which the world is not treated as a slave to be exploited, but as a garden to nurture with care and patience; in which preventing torture is not the preserve of a few, but is embarked upon by the many, as a collective experience incarnated in humanity's many different cultures.

Now more than ever before, it is crucial that civilian education be developed, as promised in our many declarations, covenants, conventions and laws. The same applies to any person threatened or placed in a situation of extreme danger.

The aspect of conscience

The soul of the world is sick

Humanity has been brought face to face with its conscience. I am struck by the emphasis placed on conscience in debates pertaining to the dangers and threats of ecological disruption.

This quest for a clear conscience is clearly reflected in the fight for the abolition of torture, as if all the different paths that lead to obliterating the major threats to the world meet at a central crossroads: our conscience.

> **"Conscience may be described as the intimate space in which each human being may freely assess their own responsibility towards life."[7]**
> **"Consciences must be sparked in the face of crisis [...] Adding a vertical dimension to mankind's severe crisis [...] The soul of the world is sick. You [spiritual families] have voices that rise above the clamouring depths of society."[8]**

The Universal Declaration refers to this when it asserts a desire to fight the "barbarous acts which have outraged the conscience of mankind". To call on conscience is also to call on conviction.
I know that our generation revolted against talking heads and "believers" who believed that a handful of carefully chosen words or well-strung ideas were enough to build a fairer world. We are pragmatics at heart, and all too often reject faith-based debate.
The time has come to re-examine action spurred on by conviction. The time has

some to draw on secular society as a source of action rather than an impassive silence. ACAT is first and foremost concerned with action, and does well to stand for the pragmatic demands of realism, yet it also draws strength from its convictions. What would it mean to act without conviction? Conviction need not remain the preserve of the religious.

How and why to adjust

Justice is not the act of mechanically applying rules, but is first and foremost the art of adjusting. We must adjust the decisions and actions taken in the fight to abolish torture so that they may align with the fundamental principles outlined by the global community for the benefit of human dignity, dignity which surges up from the convictions that lend meaning and nourish hope.

Justice has its place on earth as it does in heaven. "Thou shalt not torture". We have had to formulate this new commandment that God most certainly could not have imagined upon entrusting Moses with the Tablets of Stone[9].

Human rights are described as "orphans", because their origins, the root of this proclaimed dignity, are attached to no God, supreme being, ideology or faith. Our texts assert the right to dignity and apply it through laws, duties and obligations. The impetus that carries human dignity on is challenging and adapted to a multicultural, modern world – challenging, in that despite there being no reference in the legal texts to a higher source, this source must nevertheless be excavated. This is an absolute necessity and must be born of free will, rather than imposed by one power or another.

Sharing life

This silence is also adapted to the cultural and religious diversity so characteristic of globalisation. It invites us to exchange and discuss our sources and to share our convictions. The abolition of torture cannot escape this requirement. Humanity must not be afraid to share beliefs and convictions while respecting one another's differences and nurturing a curiosity for how others think and believe. Who do you see when you imagine a human being? Where does this person come from, and where are they going? Is there some higher presence capable of answering these questions? Sharing our sources and life, when backed up by cooperative action that moves beyond differences in faith, is time well spent. It serves as a springboard we might use in "heavy and disappointing times", as the present day seems to be.

The evangelical aspect: I was in prison and you came to Me...[10]

The Christian basis for human dignity is generally summarised in the Creation of man and woman "in God's image". And human beings' resemblance to their creator is significant.

Such a gift that comes from thee...

Above and beyond dogma, morals and ecclesiastical practices, the source of human dignity in the eyes of Christians stems from an eternal love story.
The Bible recounts these words spoken to Man by God: "Such a gift that comes from thee [...] I have graven thee upon the palms of my hands". Here, the creator confesses how dear his creation is to his heart, how dearly he wishes to incorporate Man into his being. Many Biblical texts tell of God's suffering when a person is wounded by others or harmed by their own violent or deceitful ways. A creature that may so affect God must indeed possess dignity.

The primacy of Otherness

Christian beliefs give Otherness pride of place, and yet we know that torture inherently negates this Otherness. The Christian faith is based on the full and unquestioning acceptance, including by God, of the individual otherness of each man and woman. Life is not possible without Otherness. Love is not possible without respect and a desire for difference. Faith is not possible without love that relies on the trust inherent to diversity. The primacy of Otherness is the source of all life expressed in Christian thought by the mysterious Holy Trinity: a single being incarnated by three, a single life made possible by the loving, trusting relationship between three beings. There is no place for a desire to pervert the other to resemble oneself.

Reaching out to the most vulnerable

Christianity is undoubtedly truly singular in that Man meets with his creator not in the heavens, nor later, nor in abidance by a set of rules, but through human interaction and particularly in our relationships with the most vulnerable. Not only do the Psalms state that God comes to the aid of the mistreated, but that God can be "met" in effective, embodied and committed encounters with human beings who face the difficulties of humanity. "I was in prison and you came to me [...] But when did I come to you? [...] When you visited the prisoner". This is not a social afterthought attached to a spirituality turned towards a future encounter. It is in the midst of our attempts to help and save human beings mistreated by life or by others that we meet He who the Christians recognise as the God of all life. By signing an urgent appeal, working to free a tortured detainee, protesting against non-compliance with the prohibition of torture, denouncing the dehumanising living conditions endured by many – all of these acts are an opportunity to meet with our creator.

You are not alone!

The solitude in which victims die is vanquished. Like God who lent his support to humanity to save it from its destructive solitude, when one shoulders a mistreated person, the latter is no longer alone, in life and in the throes of their suffering. The most concrete gestures of support on behalf of the suffering therefore become gestures of salvation in the religious sense of the term – acts that lend physical form to a communion with God. Our encounters with the suffering are encounters with God. Earlier I referred to a timeless love story. Effectively, the message we receive from the presence of Jesus Christ in the heart of life is a message of love that surpasses all our deadly acts. The Gospel tells a story to illustrate the great love God has for Man: the story of a son who sets off to squander his father's fortune, reconsiders, and returns to his father believing that his faults have forever lost him his status as a beloved son. Yet he was wrong. On his way home, the Father was awaiting his child, displayed his tender love for him, ran to him and welcomed him home. There are no scores to be settled, no punishment in exchange for repentance, no relationship of give and take. What erupts is merely the Father's joy upon reuniting with his errant son. A time for celebration. Life made possible once more.

[1] *Ed. Salvator*, Paris 2016.
[2] Luis Pérez Aguirre, *It begins with a cry,* Ed. L'Atelier.
[3] Guy Aurenche, *Justice sur la terre comme au ciel,* Ed. Salvator.
[4] Pope Francis, Laudato Si encyclical.
[5] Albert Camus, *Nobel Prize speech,* 1958.
[6] Preamble to the Universal Declaration of Human Rights.
[7] Pierre Rabhi, *Manifeste pour la terre et l'humanisme.*
[8] Nicolas Hulot at the Senate on 21 May 2015.
[9] Cardinal Etchegaray. Preface to the aforementioned book by Guy Aurenche.
[10] Gospel of Matthew, Chapter 25.

" Torture is the radical means by which the Other is turned into an object one possesses. It must be destroyed, an all-seeing face I must deface, words that demand response and responsibility I must silence. It must be disfigured, in the highest possible sense of the word. The face must be forced to express no more than the body, a dislocated body, a misshapen, scarred body. "

Olivier Clément

APPENDICES

DEFINING TORTURE

Torture

Torture presents several characteristic features which, taken as a whole, determine its specificity:

- An acute pain or suffering, whether physical or mental.
- A deliberate act resulting from a decision (unlike the occurrence of an accidental act).
- A torturer acting officially or at the instigation, with the consent or the assent of a State agent (police officer, soldier, prison guard, member of a paramilitary group)[1].
- A specific purpose, such as obtaining a confession or information from the victim, or punishing him for an act committed by him or by another, or intimidating him, or terrorizing him (him or the group to which he belongs), or any other motive based on some discrimination.
- The intention to harm a person's physical or mental integrity, break his personality, or force him to behave in a fashion he would not voluntarily behave in.

The act of torture is the result of all these elements. International law clearly affirms the absolute and non-derogable nature of the prohibition against torture, which has acquired the status of a customary norm.

Definition of the United Nations Convention against Torture
(adopted 10 December 1984, effective as of 26 June 1987)

"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."[2] (Article 1)

Cruel, Inhuman or Degrading Treatment or Punishment

The notion of cruel, inhuman or degrading treatment or punishment includes all measures and punishments intended to cause physical or mental suffering, or to degrade or humiliate a person. Torture constitutes an aggravated form of cruel, inhuman or degrading treatment.

Cruel, inhuman or degrading treatment is – as is torture – illegal under international law, and particularly under Article 16 of the Convention against Torture. While international law does provide certain indications of what this prohibition covers, no actual definition exist. As the Human Rights Committee* and the Committee Against Torture* have noted, it is in fact impossible to make a clear-cut distinction between what constitutes torture and what constitutes cruel, inhuman or degrading treatment or punishment.

Unlike torture, the latter may result from carelessness, as may be the case, for example, of uncertain detention conditions, of food or medicine deprivation. The difference between the two notions also resides in the degree of gravity of the pain or suffering inflicted. Yet this depends on a considerable number of factors, such as the nature and duration of the ill-treatment inflicted, the victim's specific physical or moral fragility, his sex, age, and state of health…

But this distinction has significant legal consequences, because the international legal mechanisms intended to fight against torture are stronger than those concerned with cruel, inhuman or degrading treatments.

For the sake of convenience, the expression "ill-treatment" is often used instead of "cruel, inhuman or degrading treatment" in this report.

[1] The word "torture" may designate the same acts when they are committed by "non-state-controlled players", such as members of armed groups (required to comply with the 1949 Geneva Conventions regulating the laws and customs of war and specifically prohibiting torture) or groups exercising *de facto* authority over part of a territory, or by individuals, when the State has failed to meet its obligations concerning the effective protection of people.

[2] Regarding this provision, in its General Observation No. 20 (1992), the Human Rights Committee specified that corporal punishments fell within the scope of the prohibition against torture and cruel, inhuman or degrading treatment. This interpretation has been confirmed by the Special Rapporteur* on Torture in 1997 and the Human Rights Commission in 2000.

Ratification status of treaties concerning torture

● The State is a party to the treaty by ratification, membership or succession / ◗ The State has only signed the treaty / — Not applicable (regional treaty)

as of march 2016

COUNTRY	1984 CONVENTION AGAINST TORTURE (CAT)	2002 OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT)	1966 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	2006 INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE	1951 CONVENTION RELATING TO THE STATUS OF REFUGEES	1998 ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT	1950 EUROPEAN CONVENTION on Human Rights	1987 EUROPEAN CONVENTION for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.	1969 AMERICAN CONVENTION on Human Rights	1985 INTER-AMERICAN CONVENTION to Prevent and Punish Torture	1981 AFRICAN CHARTER on Human and Peoples' Rights
AFGHANISTAN	●		●		●	●	—	—	—	—	—
ALBANIA	●	●	●	●	●	●	●	●	—	—	—
ALGERIA	●		●	◗	●	◗	—	—	—	—	●
ANDORRA	●		●			●	●	●	—	—	—
ANGOLA	◗	◗	●	◗	●	◗	—	—	—	—	●
ANTIGUA AND BARBUDA	●				●	●	—	—			—
ARGENTINA	●	●	●	●	●	●	—	—	●	●	—
ARMENIA	●	●	●	●	●	◗	●	●	—	—	—
AUSTRALIA	●	◗	●		●	●	—	—	—	—	—
AUSTRIA	●	◗	●	◗	●	●	●	●	—	—	—
AZERBAIJAN	●	●	●	◗	●		●	●	—	—	—
BAHAMAS	◗		●		●	◗	—	—			—
BAHRAIN	●		●			◗	—	—	—	—	—
BANGLADESH	●		●			●	—	—	—	—	—
BARBADOS			●			●	—	—	●		—
BELARUS	●		●		●		—	—	—	—	—
BELGIUM	●	◗	●	●	●	●	●	●	—	—	—
BELIZE	●	●	●	●	●	●	—	—			—
BENIN	●	●	●	◗	●	●	—	—	—	—	●
BHUTAN							—	—	—	—	—
BOLIVIA (PLURINATIONAL STATE OF)	●	●	●	●	●	●	—	—	●	●	—
BOSNIA AND HERZEGOVINA	●	●	●	●	●	●	●	●	—	—	—
BOTSWANA	●		●		●	●	—	—	—	—	●
BRAZIL	●	●	●	●	●	●	—	—	●	●	—
BRUNEI DARUSSALAM	◗						—	—	—	—	—
BULGARIA	●	●	●	◗	●	●	●	●	—	—	—
BURKINA FASO	●	●	●	●	●	●	—	—	—	—	●
BURUNDI	●	●	●	◗	●	●	—	—	—	—	●
CAMBODIA	●	●	●	●	●	●	—	—	—	—	—
CAMEROON	●	◗	●	◗	●	◗	—	—	—	—	●
CANADA	●		●		●	●	—	—			—
CAPE VERDE	●	◗	●	◗		●	—	—	—	—	●
CENTRAL AFRICAN REPUBLIC			●		●	●	—	—	—	—	●
CHAD	●	◗	●	◗	●	●	—	—	—	—	●
CHILE	●	●	●	●	●	●	—	—	●	●	—
CHINA	●		◗		●		—	—	—	—	—
COLOMBIA	●		●	●	●	●	—	—	●	●	—
COMOROS	◗		◗	◗		●	—	—	—	—	●
CONGO	●	◗	●	◗	●	●	—	—	—	—	●
COOK ISLANDS						●	—	—	—	—	—
COSTA RICA	●	●	●	●	●	●	—	—	●	●	—
CÔTE D'IVOIRE	●		●		●	●	—	—	—	—	●
CROATIA	●	●	●	◗	●	●	●	●	—	—	—
CUBA	●		◗	●			—	—	—	—	—
CYPRUS	●	●	●	◗	●	●	●	●	—	—	—
CZECH REPUBLIC	●	●	●		●	●	●	●	—	—	—
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA			●				—	—	—	—	—
DEMOCRATIC REPUBLIC OF THE CONGO	●	●	●		●	●	—	—	—	—	●
DENMARK	●	●	●	◗	●	●	●	●	—	—	—
DJIBOUTI	●		●		●	●	—	—	—	—	●
DOMINICA			●		●	●	—	—	●		—
DOMINICAN REPUBLIC	●		●		●	●	—	—	●	●	—
ECUADOR	●	●	●	●	●	●	—	—	●	●	—
EGYPT	●		●		●	◗	—	—	—	—	●
EL SALVADOR	●		●		●		—	—	●	●	—
EQUATORIAL GUINEA	●		●		●		—	—	—	—	●
ERITREA	●		●			◗	—	—	—	—	●
ESTONIA	●	●	●		●	●	●	●	—	—	—
ETHIOPIA	●		●		●		—	—	—	—	●
FIJI	●				●	●	—	—	—	—	—
FINLAND	●	●	●	◗	●	●	●	●	—	—	—
FRANCE	●	●	●	●	●	●	●	●	—	—	—
GABON	●	●	●	●	●	●	—	—	—	—	●
GAMBIA	◗		●		●	●	—	—	—	—	●

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GEORGIA	●	●	●		●	●	●	●	—	—	—
GERMANY	●	●	●	●	●	●	●	●	—	—	—
GHANA	●	◗	●	◗	●	●	—	—	—	—	●
GREECE	●	●	●	◗	●	●	●	●	—	—	—
GRENADA			●	◗		●	—	—	●		—
GUATEMALA	●	●	●	◗	●	●	—	—	●	●	—
GUINEA	●	◗	●		●	●	—	—	—	—	●
GUINEA BISSAU	●	◗	●	◗	●	◗	—	—	—	—	●
GUYANA	●		●			●	—	—			—
HAITI	◗		●	◗	●	◗	—	—	●	◗	—
HONDURAS	●	●	●	●	●	●	—	—	●	◗	—
HUNGARY	●	●	●		●	●	●	●	—	—	—
ICELAND	●	◗	●	◗	●	●	●	●	—	—	—
INDIA	◗		●	◗			—	—	—	—	—
INDONESIA	●		●	◗			—	—	—	—	—
IRAN (ISLAMIC REPUBLIC OF)			●		●	◗	—	—	—	—	—
IRAQ	●		●	●			—	—	—	—	—
IRELAND	●	◗	●	◗	●	●	●	●	—	—	—
ISRAEL	●		●		●	◗	—	—	—	—	—
ITALY	●	●	●	●	●	●	●	●	—	—	—
JAMAICA			●		●	◗	—	—	●		—
JAPAN	●		●	●	●	●	—	—	—	—	—
JORDAN	●		●			●	—	—	—	—	—
KAZAKHSTAN	●	●	●	●	●		—	—	—	—	—
KENYA	●		●	◗	●	●	—	—	—	—	●
KIRIBATI							—	—	—	—	—
KUWAIT	●		●			◗	—	—	—	—	—
KYRGYZSTAN	●	●	●		●	◗	—	—	—	—	—
LAO PEOPLE'S DEMOCRATIC REPUBLIC	●		●	◗			—	—	—	—	—
LATVIA	●		●		●	●	●	●	—	—	—
LEBANON	●	●	●	◗			—	—	—	—	—
LESOTHO	●		●	●	●	●	—	—	—	—	●
LIBERIA	●	●	●		●	●	—	—	—	—	●
LIBYA	●		●				—	—	—	—	●
LIECHTENSTEIN	●	●	●	◗	●	●	●	●	—	—	—
LITHUANIA	●	●	●	●	●	●	●	●	—	—	—
LUXEMBOURG	●	●	●	◗	●	●	●	●	—	—	—
MACEDONIA (THE FORMER YUGOSLAV REPUBLIC OF)	●	●	●	◗	●	●	●	●	—	—	—
MADAGASCAR	●	◗	●	◗	●	●	—	—	—	—	●
MALAWI	●		●		●	●	—	—	—	—	●
MALAYSIA							—	—	—	—	—
MALDIVES	●	●	●	◗		●	—	—	—	—	—
MALI	●	●	●	●	●	●	—	—	—	—	●
MALTA	●	●	●	●	●	●	●	●	—	—	—
MARSHALL ISLANDS						●	—	—	—	—	—
MAURITANIA	●	●	●	●	●		—	—	—	—	●
MAURITIUS	●	●	●			●	—	—	—	—	●
MEXICO	●	●	●	●	●	●	—	—	●	●	—
MICRONESIA (FEDERATED STATES OF)							—	—	—	—	—
MONACO	●		●	◗	●	◗	●	●	—	—	—
MONGOLIA	●	●	●	●		●	—	—	—	—	—
MONTENEGRO	●	●	●	●	●	●	●	●	—	—	—
MOROCCO	●	●	●	●	●	◗	—	—	—	—	—
MOZAMBIQUE	●	●	●	◗	●	◗	—	—	—	—	●
MYANMAR							—	—	—	—	—
NAMIBIA	●		●		●	●	—	—	—	—	●
NAURU	●	●	◗		●	●	—	—	—	—	—
NEPAL	●		●				—	—	—	—	—
NETHERLANDS	●	●	●	●	●	●	●	●	—	—	—
NEW ZEALAND	●	●	●		●	●	—	—	—	—	—
NICARAGUA	●	●	●		●		—	—	●	●	—
NIGER	●	●	●	●	●	●	—	—	—	—	●
NIGERIA	●	●	●	●	●	●	—	—	—	—	●
NORWAY	●	●	●	◗	●	●	●	●	—	—	—
OMAN						◗	—	—	—	—	—
PAKISTAN	●		●				—	—	—	—	—
PALAU	◗		◗	◗			—	—	—	—	—
PANAMA	●	●	●	●	●	●	—	—	●	●	—

● The State is a party to the treaty by ratification, membership or succession / ◗ The State has only signed the treaty / — Not applicable (regional treaty)

COUNTRY	1984 CONVENTION AGAINST TORTURE (CAT)	2002 OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT)	1966 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	2006 INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE	1951 CONVENTION RELATING TO THE STATUS OF REFUGEES	1998 ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT	1950 EUROPEAN CONVENTION on Human Rights	1987 EUROPEAN CONVENTION for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.	1969 AMERICAN CONVENTION on Human Rights	1985 INTER-AMERICAN CONVENTION to Prevent and Punish Torture	1981 AFRICAN CHARTER on Human and Peoples' Rights
PAPUA NEW GUINEA			●		●		—	—	—	—	—
PARAGUAY	●	●	●	●	●	●	—	—	●	●	—
PERU	●	●	●	●	●	●	—	—	●	●	—
PHILIPPINES	●	●	●		●	●	—	—	—	—	—
POLAND	●	●	●	◗	●	●	●	●	—	—	—
PORTUGAL	●	●	●	●	●	●	●	●	—	—	—
QATAR	●						—	—	—	—	—
REPUBLIC OF KOREA	●		●		●	●	—	—	—	—	—
REPUBLIC OF MOLDOVA	●	●	●	◗	●	●	●	●	—	—	—
ROMANIA	●	●	●	◗	●	●	●	●	—	—	—
RUSSIAN FEDERATION	●		●		●	◗	●	●	—	—	—
RWANDA	●	●	●		●		—	—	—	—	●
SAINT KITTS AND NEVIS					●	●	—	—			—
SAINT LUCIA			◗			●	—	—			—
SAINT VINCENT AND THE GRENADINES	●		●	◗	●	●	—	—			—
SAMOA			●	●	●	●	—	—	—	—	●
SAN MARINO	●		●			●	●	●	—	—	—
SAO TOME AND PRINCIPE	◗		◗		●	◗	—	—	—	—	●
SAUDI ARABIA	●						—	—	—	—	—
SENEGAL	●	●	●	●	●	●	—	—	—	—	●
SERBIA	●	●	●	●	●	●	●	●	—	—	—
SEYCHELLES	●		●		●	●	—	—	—	—	●
SIERRA LEONE	●	◗	●	◗	●	●	—	—	—	—	●
SINGAPORE							—	—	—	—	—
SLOVAKIA	●		●	◗	●	●	●	●	—	—	—
SLOVENIA	●	●	●	◗	●	●	●	●	—	—	—
SOLOMON ISLANDS					●	◗	—	—	—	—	—
SOMALIA	●		●		●		—	—	—	—	●
SOUTH AFRICA	●	◗	●		●	●	—	—	—	—	●
SOUTH SUDAN	●	●					—	—	—	—	
SPAIN	●	●	●	●	●	●	●	●	—	—	—
SRI LANKA	●		●	◗			—	—	—	—	—
STATE OF PALESTINE	●		●			●					
SUDAN	◗		●		●	◗	—	—	—	—	●
SURINAME			●		●	●	—	—	●	●	—
SWAZILAND	●		●	◗	●		—	—	—	—	●
SWEDEN	●	●	●	◗	●	●	●	●	—	—	—
SWITZERLAND	●	●	●	◗	●	●	●	●	—	—	—
SYRIAN ARAB REPUBLIC	●		●			◗	—	—	—	—	—
TAJIKISTAN	●		●		●	●	—	—	—	—	—
TANZANIA (UNITED REPUBLIC OF)			●	◗	●	●	—	—	—	—	●
THAILAND	●	◗	●			◗	—	—	—	—	—
TIMOR-LESTE	●	◗	●		●	●	—	—	—	—	—
TOGO	●	●	●	●	●		—	—	—	—	●
TONGA							—	—	—	—	—
TRINIDAD AND TOBAGO			●		●	●	—	—	●		—
TUNISIA	●	●	●	●	●	●	—	—	—	—	●
TURKEY	●	●	●		●		●	●	—	—	—
TURKMENISTAN	●		●		●		—	—	—	—	—
TUVALU					●		—	—	—	—	—
UGANDA	●		●	◗	●	●	—	—	—	—	●
UKRAINE	●	●	●	●	●	◗	●	●	—	—	—
UNITED ARAB EMIRATES	●					◗	—	—	—	—	—
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	●	●	●		●	●	●	●	—	—	—
UNITED STATES OF AMERICA	●		●			◗	—	—	◗		—
URUGUAY	●	●	●	●	●	●	—	—	●	●	—
UZBEKISTAN	●		●			◗	—	—	—	—	—
VANUATU	●		●	◗		●	—	—	—	—	—
VATICAN	●				●		—	—	—	—	—
VENEZUELA (BOLIVARIAN REPUBLIC OF)	●	◗	●	◗		●	—	—	●	●	—
VIETNAM	●		●				—	—	—	—	—
YEMEN	●		●		●	◗	—	—	—	—	—
ZAMBIA	●	◗	●	●	●	●	—	—	—	—	●
ZIMBABWE			●		●	◗	—	—	—	—	●

LEXIQUE

Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union brings together in a single document the fundamental rights protected in the European Union. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights and Justice. Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

Committee Against Torture

The United Nations Committee Against Torture (CAT) is the monitoring body for the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984). Consisting of 10 members serving in their personal capacity, it meets twice a year at the UN to examine the periodic reports submitted by the States parties (one year after the entry into force of the Convention, and – theoretically – every four years thereafter), on advancement of the implementation of the rights and obligations contained in the Convention. As a result of its review, the CAT addresses its concerns and makes recommendations to the State party in the form of "concluding observations". Under certain conditions, the CAT is competent to consider violations of the rights set forth in the Convention and brought to its attention by private individuals through communications*. It may initiate investigations and review complaints between States. In the course of its analysis of reports, the Committee Against Torture has adopted "general observations" that interpret certain specific aspects of the Convention.

Communications

Under UN terminology, a communication concerning human rights is a complaint regarding breaches of these rights. It may be addressed:

- To the supervisory bodies of treaties, such as the Human Rights Committee* for allegations of violations of the provisions of the International Covenant on Civil and Political Rights, and the Committee Against Torture* (CAT) for allegations of violations of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Communications may be filed by or on behalf of private individuals, provided that the State party has ratified the treaty concerned and recognized the competence of the Committee. For a communication to be receivable, the individual must have exhausted all domestic remedies, or it must be evident that these would prove ineffective or would exceed reasonable delays. Furthermore, the communication must not be currently examined under another procedure of international investigation or settlement.
- To the Human Rights Council*, as part of its Special Procedures (country – or thematic-based mechanisms, such as the Special Rapporteur* on Torture). Communications may be submitted by the victims, their relatives, a local or international NGO, etc. Special Procedures apply to all member States of the UN, regardless of the treaties they ratified.
- To the Human Rights Council* under the procedure known as "1503", which allows identifying, on the basis of communications, a series of flagrant and systematic violations of human rights. Communications may come from any person or group of persons claiming that they were the victim of such violation or that they have knowledge thereof.

Council of Europe

The Council of Europe is an inter-governmental organisation that was founded on 5 May 1949 by the Treaty of London. Through its legal standards in the fields of protecting human rights, promoting democracy and the rule of law in Europe, it is an international organisation with a recognised legal role in international public law, encompassing 820 million inhabitants in 47 Member States.

Council of Europe's Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe Member States. The Commissioner is mandated to:

- Foster the effective observance of human rights, and assist Member States in the implementation of Council of Europe human rights standards;
- Promote education in and awareness of human rights in Council of Europe Member States;
- Identify possible shortcomings in the law and practice concerning human rights;
- Facilitate the activities of national ombudsperson institutions and other human rights structures; and
- Provide advice and information regarding the protection of human rights across the region.

Enforced disappearance

One speaks of enforced (or forced) disappearance when a person is arrested, abducted or detained by State agents (or by people acting with the support or consent of the State), and when the authorities refuse to recognize the deprivation of liberty or conceal the person's fate and the place where he is being held. Removed from society, unable to have their rights respected or to benefit from the protection of the law, disappeared persons are at the mercy of their captors. They are often tortured and murdered. Resorting to enforced disappearances is a strategy of terror which seeks to keep a society in line and eliminate the opponents. It is also a strategy to organize impunity, which – due to the absence of information, cadavers, and evidence – allows to cover up both the crime and the State's (and its leaders') responsibility. For families and relatives, not knowing the fate of the missing person, nor indeed if this person is still alive, is a never-ending suffering. The International Convention for the Protection of All Persons from Enforced Disappearance was signed on 20 December 2006. It came into effect in December 2010, after 20 States had ratified it.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is the body of the Council of Europe responsible for implementing the places of detention's inspection mechanism provided for in the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The CPT is composed of independent experts elected for a four-year term by the Committee of Ministers of the Council of Europe, and conducts periodic visits to the places of detention of the States parties (including police stations, migrant holding centres and psychiatric establishments) to assess

the treatment of people deprived of their liberty. It notifies the State concerned of its intention to carry out a visit but, unlike the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)*, is not required to provide the timeframe within which this visit is to be held.
CPT delegations have an unlimited access to all places of detention and may interview freely and privately any person deprived of liberty as well as any person likely to provide information. At the end of its visit, the CPT sends the State concerned a confidential report setting out its findings and recommendations. In the case where the State do not cooperate or refuse to implement the recommendations formulated by the CPT, the latter may decide to issue a public statement. As of 21 December 2012, the CPT had conducted 350 visits and published 294 reports.

European Convention against Torture and Cruel, Inhuman or Degrading Treatment

In 1987, the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in 1989. Based on Art. 3 ECHR which prohibits torture, inhuman or degrading treatment or punishment, the Convention established a committee of independent experts, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). It is authorized to access all places in which people are detained by public authorities (such as prisons, youth detention centres, police stations, migrant detention centres, mental institutions) at any time. After its inspections, the Committee hands over a confidential report to the respective state containing recommendations on how to amend the situation in the institutions visited.

European Court of Human Rights

Founded in 1959, the European Court of Human Rights is an international court that rules on individual or State applications alleging violations of the civil and political rights set out in European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly. In almost fifty years the Court has delivered more than 10,000 judgements. These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court's case law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe.

Dangerous Returns

In theory, international conventions prohibit States from expelling, extraditing or returning individuals to a country where they are at risk of being subjected to torture or ill-treatment because of their ethnicity, religion, nationality, the community to which they belong or their political opinions. In practice, however, such returns do take place despite the risks presented by the country of destination. See *non-refoulement.*

Diplomatic assurances

Diplomatic assurances are agreements (whether formal or casual) concluded between two States, guaranteeing that a person sent back from a State to another (either through expulsion, deportation, removal measures or extradition), will be treated with dignity upon his arrival in the receiving country. This practice is used by States such as Russia, Germany, the United Kingdom, Italy, Spain, France and Sweden, particularly against people suspected of terrorism when they are transferred to States that resort to torture and ill treatment. By invoking these diplomatic assurances, States seek to circumvent the principle of non refoulement, and the absolute nature of the prohibition against torture. These agreements have no legal force and provide no real safeguard against the risks of torture and ill treatment for the person being sent back.

Falaqa

This method of torture consists in whipping the soles of a detainee's feet with a truncheon, an iron rod, a cane, a cable... The victim is tied down horizontally, for example on a table, or suspended upside down. This technique is very hurtful because of the many nerve endings clustered in the feet. Once the victim has been released, he may be forced to walk on bloodied feet, sometimes over a salt-covered surface. The falaqa damages both the soft tissues and the small bones of the feet, may lead to chronic infirmities, and may make walking a painful and difficult activity. Universal, as all methods of torture, the falaqa is notably used in Middle East and North African countries.

Human Rights Committee

The United Nations Human Rights Committee is the monitoring body for the International Covenant on Civil and Political Rights (16 December 1966). Consisting of 18 members serving in their personal capacity, it meets three times a year at the

UN to examine the periodic reports submitted by the States parties to the Covenant on the advancement of the implementation of the rights recognized in this instrument. As a result of its review, the Human Rights Committee addresses its concerns and makes recommendations to the State party in the form of "concluding observations". Under the corresponding Optional Protocol, and under certain conditions, it is competent to consider violations of the rights set forth in the Covenant and brought to its attention by private individuals through communications. In the course of its analysis of reports, the Human Rights Committee has also developed a case law of sorts through the adoption of "general observations" which interpret certain specific aspects of the Covenant's provisions.

Human Rights Council

Created by the General Assembly of the United Nations on 15 March 2006, the United Nations Human Rights Council replaces the Commission on Human Rights (1946-2006) as the intergovernmental body tasked with promoting and overlooking the respect of Human Rights throughout the world. Consisting of the 47 States members elected by an absolute majority by the General Assembly for a three-year term (renewable), it meets three times a year at the UN, in Geneva, and may hold extraordinary sessions. The General Assembly of the United Nations may, by a two-third majority decision of its members, suspend a member of the Human Rights Council found guilty of flagrant and systematic violations of human rights.

Incommunicado detention

A detainee is held incommunicado when he is allowed no communication outside of his detention centre. His only interlocutors are his fellow prisoners (if he is not being held in solitary confinement*), his guards, those who interrogate him and, if applicable, the judicial authorities. Theoretically, he may neither meet nor contact his family, his friends, a lawyer or a physician.

International Criminal Court

Created by the Rome Statute adopted on 17 July 1998 (ratified by 121 States as of April 2012), the International Criminal Court (ICC) is the first permanent international criminal court competent to prosecute and try persons responsible for war crimes, crimes against humanity, and genocides. The ICC, which sits at The Hague, may judge nationals of the States parties or persons responsible for crimes committed within the territory of these States, but only in cases that have occurred since its statute came into effect. Under the principle of complementarity, the ICC is only competent in the event of failure or bad faith of States. Since September 2004, the ICC has heard 13 cases involving crimes committed in the Central African Republic, Côte d'Ivoire, the Democratic Republic of the Congo (DRC), Kenya, Libya, Sudan (Darfur), and Uganda, a situation that was referred by the Security Council. On 31 March 2010, the ICC allowed the Prosecutor to open an investigation into crimes committed in Kenya.

Istanbul Protocol

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, is a guideline for the documentation of torture. This text, approved by the United Nations in 1999, aims to draft and implement effective measures to protect individuals against torture and to fight against the impunity of torturers. It provides medical and legal experts with a methodology to help them determine whether a person has been tortured and establish evidence which may be used in a court of law. It details, among other points, how to produce medical reports or to gather testimonies if they are to be used in legal proceedings against alleged torturers. The Istanbul Protocol has no mandatory value for States, but it does represent an effective tool for them, insofar as international law requires them to investigate acts of torture.

National Preventive Mechanisms

States parties to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) commit to establish National Preventive Mechanisms (NPMs) tasked with periodically reviewing the treatment of people deprived of their liberty. NPMs make recommendations to the authorities to improve detention conditions and strengthen the protection against torture and ill treatment. NPMs are helped and counselled by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to fulfill their mission. Following the OPCAT ratification by France in 2008, the Inspector General in charge of places for persons deprived of freedom (CGLPL) plays the role of the French NPM.

Non-refoulement

The principle of *non-refoulement* is the prohibition for States to transfer a person to another country when this would expose the said person to serious human rights violations, such as the arbitrary deprivation of the right to life, torture, or any other cruel, inhuman or degrading treatment or punishment. Initially stated in the Geneva Convention Relating to the Status of Refugees (1951), the principle of *non-refoulement* was reiterated in many international and regional human rights protection treaties, such as the International Covenant on Civil and Political Rights (1966), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the European Convention on Human Rights (1950). It is derived from the absolute prohibition against torture, which – as peremptory customary norm in international law – is mandatory for all States, whether or not these are signatories to the applicable corresponding treaties. It must be complied with under all circumstances, including in the context of the fight against terrorism and during armed conflicts.

Ombudsman

The concept of the *Ombudsman* emerged in the Scandinavian countries in the 19th century as an alternative method for settling disputes. It literally means "spokesperson of grievances" in Swedish and refers to an independent authority or individual with responsibility for receiving and examining complaints by citizens who feel their rights have not been respected by the State and wish to seek compensation. The *Ombudsman* carries out official investigations into complaints received and transfers its recommendations to the relevant body. If these are not followed in practice, it can submit an *ad hoc* report to Parliament. In some cases, it can act on its own authority to defend the public interest by taking legal action and monitoring the prosecution process, although it does not have the power to issue binding decisions or overrule court judgements. The *Ombudsman* is generally appointed by Parliament or on the basis of specific legislation, but is sometimes nominated by the executive, thus raising doubts about its impartiality in relation to the bodies it is supposed to keep in check. In 2010-2011, according to the International *Ombudsman* Institute, 156 countries had such an institution, under various titles: the People's Advocate in Albania, the Defender of the People in Bolivia, the Protector of Justice in Portugal, and the Human Rights Defender in Poland. The role of the *Ombudsman* also varies from one region to another: this guardian of legality and the rule of law in democratic countries has specialised to focus on promoting and protecting human rights in more authoritarian regimes.

Psychological torture ("White torture")

Besides the most brutal physical abuses, torturers also resort to other methods of torture so-called psychological. These increasingly sophisticated techniques seek to break the victims more efficiently while fostering the impunity of torturers (fewer visible physical signs, use of methods less likely to be perceived as torture). Less medieval in appearance, these processes inflict sufferings that are just as intolerable, and their after-effects are often far more lasting than those of merely bodily traumas. The methods most often used are: keeping the detainee in absolute uncertainty and dependence (eyes blindfolded, hooded head, personal effects and clothes confiscated, maintenance in solitary confinement*); sleep deprivation extended over several days; sensory deprivation: maintenance in complete darkness through prolonged wearing of a blindfold over the eyes and/or maintenance in absolute silence through wearing soundproof hats; sensory hyper-stimulation: hours-long subjection to intense noises (music, screams, whistles…), to blinding and/or strobe lights, to constant lights, day and night; death threats, and mock executions.
"White torture" can also consist of solitary confinement* and the prohibition against any kind of communication, including with the guards and prisoners; of being threatened with or forced to be present during the torture or rape of one's loved ones; of offences against one's moral or religious values – the obligation to be naked or, in the case of a man, to wear feminine underwear, the obligation to simulate or have sexual intercourse, the profanation of sacred objects, the obligation to blaspheme or insult one's homeland…; of the total regulation of the detainee's life down to the smallest detail; of the forced ingestion of psychotropic drugs intended to generate psychic modifications; of the obligation to execute absurd, contradictory or degrading orders; of the seclusion to a mental hospital where the victim is being subjected to aggressive medication (injection of antipsychotics) intended for mentally ill patients. All these forms of psychological torture are often alternated with physical abuses.

Roasted chicken

This is a method used to immobilize and suspend the victim. A rod is introduced under the detainee's knees and over his elbows, whose hands and feet are bound together. The rod is then fixed horizontally between two supports (tables, chairs…) as a parrot's perch would be. The detainee – most often naked, completely immobilized for hours in a painful and humiliating position – is beaten, electrocuted, raped… While this technique is used by torturers in all countries, South American's, (and in particular Brazil's) police forces made massive use of it under the dictatorships of the sixties and seventies.

Secret detention

A person is detained in a place that is not officially a detention centre: a military camp, a secret jail, a concealed section within a jail or police station, or in private facilities.

Special Rapporteurs

The United Nations Special Rapporteurs are independent experts, serving in their private, personal and non-remunerated capacity, tasked by the Human Rights Council to review a specific issue ("thematic mandates") or a specific situation in a given country or territory ("country mandates") in the field of human rights see also Special Procedures. Special Rapporteurs may carry out investigations through onsite visits, at the conclusion of which they draft a report containing their findings and recommendations. They can also receive individual complaints and information describing specific human rights violations; ask for explanations from the States through communications; conduct studies; provide technical assistance to a country; and undertake activities to promote human rights. Each year, they present a report to the Human Rights Council*. The Austrian Manfred Nowak was the Special Rapporteur on Torture up to November 2010. His successor is the Argentinian Juan E. Méndez.

Solitary confinement

Solitary confinement may be imposed for the purpose of an investigation, to protect a detainee, or as a security measure against the prisoners considered the most dangerous. However, it is very often used as a punitive measure (theoretically of limited duration), inflicted as an additional punishment to detention. Placing a detainee in solitary confinement consists in confining him alone in a cell (often a small one) with no or very little communication with other detainees. In some cases, the detainee may be confined for almost twenty-three hours (sometimes even for twenty-four hours) per day in a room equipped with a very small window (if any), and he remains alone, even during the rare walks he takes in fenced yards. Furthermore, the possibilities of contacts with the outside world are strictly limited, when actually non-existent: letters are censored and sometimes come months later, if ever; access to reading material is restricted, telephone calls are forbidden; work is denied, as are the opportunities to participate in education or reinsertion activities. Prolonged solitary confinement, sometimes over several years, has grave implications on both the physical condition and the mental health of prisoners: physical problems related to the confinement in a narrow cell with little if any illumination, too cold or too hot depending on the seasons, and to the lack of exercise, are compounded by symptoms such as claustrophobia, hypertension, insomnia, anxiety attacks, or a decrease in the ability to concentrate.

Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is the body established by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (18 December 2002), tasked with inspecting the States parties' places of detention. Consisting of 25 independent experts elected for four years by the States parties, the SPT conducts periodic visits, without prior authorization, to the places of detention of the States parties (including police stations, migrant holding centres and psychiatric establishments) to assess the treatment of people deprived of their liberty. It carries out its mission with the collaboration of the National Preventive Mechanisms* (NPMs). The SPT notifies the State concerned of its intention to perform a visit and specifies the dates on which this visit is to be held. Theoretically, SPT members have an unlimited access to all places of detention and to all information about the detention conditions of persons deprived of their freedom.

They may interview freely and privately any person deprived of liberty as well as any person likely to provide information. At the end of its visit, the SPT sends the State concerned a confidential report setting out its findings and recommendations; this report may, at the State's request, be made public, along with any observation the State may wish to make. In the case where the State do not cooperate or refuse to implement the recommendations formulated by the SPT, the latter may ask the Committee Against Torture* to issue a public state-ment or to publish the report of the Subcommittee.

United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees was established on 14 December 1950 by the UN General Assembly to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and wellbeing of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a

third country. It also has a mandate to help stateless people. It ensures international instruments relative to refugees and asylum seekers (the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees) are implemented, providing assistance, if required, to States in applying these texts. The UNHCR takes a holistic approach to the issue of refugees and seeks out partnerships with bodies that handle related issues (protection of human rights, peace-keeping, international development, migration management).

Universal Periodic Review

The Universal Periodic Review (UPR) was created by the resolution 60/251 of March 2006, which also established the Human Rights Committee*. It is the mechanism under which the Human Rights Council* reviews the situation of human rights in the 193 member States of the UN General Assembly. Each State is examined every four years, which brings the number of States reviewed each year to 48. Founded on the principles of universality and equal treatment between States, this mechanism constitutes a forum that provides them with an opportunity to present the measures taken to improve the situation of human rights in their country and share their experiences and better practices on the subject. The UPR also seeks to provide the States with assistance in the effective treatment of human rights-related problems. NGOs may attend the review and express their position in a plenary session prior to the adoption of the final recommendations.

Waterboarding

Waterboarding is an interrogation method that consists in immobilizing a prisoner to a board, usually face up (often with the feet slightly higher than the head). A piece of cloth or plastic is forcefully placed over the prisoner's face, over which water is poured to provoke a sensation of drowning or suffocation. The extreme pain is accompanied by the feeling one is dying. CIA agents who accepted to be subjected to this method have stated it was very difficult to resist for more than fifteen seconds. In reference to this method, commonly used by the United States' secret services, the term "simulated drowning" is often used. ACAT believes this to be a very useful euphemism to camouflage the suffering caused. Actually, water boarding is merely a more sophisticated version of the torture by immersion into or forced ingestion of large amounts of water (sometimes with the addition of detergents, urine…). It has long been a favourite of torturers, because of its effectiveness and the few marks it leaves. In this sense, waterboarding hardly differs from the so-called "bathtub torture" used by the Gestapo.

METHODOLOGY NOTE

Remark on the structure and principles underpinning this report

This is the fifth dedicated report that ACAT has carried out on the phenomenon of torture in the world today. While it can be read independently of the two earlier reports, readers will appreciate its import all the more when taken as a new volume in the encyclopaedia of torture that we intend to build up over the years.

Completed in may 2016 this fifth edition is entitled *ACAT Report 2016: A World of Torture,* according to its year of publication.

This report is divided into two sections. The first, *Geography of Torture,* continues the factual description of torture practices in 9 different countries from the world's five continents. These serve to complement the 78 countries previously included and were chosen on the basis of the sources currently at ACAT's disposal, while of course ensuring a certain level of geographic balance.
For the purposes of objectivity and in an effort to facilitate comparisons between the countries analysed, each country file is structured in exactly the same way[1]: following a brief outline of the country's political and social background, the authors describe its various torture practices, highlighting the victims, the torturers and the locations where abuses take place, as well as the methods used and the objectives behind their actions. They go on to provide a study of current legislation and judicial practices, outlining the way in which the crime of torture is legally condemned in these countries and the way in which those responsible are prosecuted.
Readers will find bibliographical references detailing our sources at the end of each file. The country files are classified according to continent, with an introduction for each one detailing the overall geopolitical context and the way in which torture is used there.

As well as the specific knowledge and contacts of the researchers at ACAT, the first section of this report primarily draws on sources within the network of NGOs that combat torture or campaign for the protection of human rights, as well as the work of international institutions and bodies.

The second section, *Analysis of the Phenomenon of Torture,* presents a survey realised by the Ifop Institute commissioned by ACAT in April 2016 "The French and torture: knowledge, awareness and acceptability". It continues with original articles by authors involved in the fight against torture and researchers (theologians, NGO representatives, legal experts and others) who endeavour to present and understand the many facets of this major affront to the rights and dignity of mankind. This section is intended to build on the raw facts exposed at the beginning of the report; it gives our contributors the opportunity to reflect on the various specific features of torture and on the major common threads that emerge, to identify the individual geopolitical, cultural, economic or other reasons that explain its persistence, and finally to study the legal and moral resources used to combat this phenomenon.

The appendix provides readers with an updated overview of the different States that have signed or ratified international conventions prohibiting torture or designed to prevent it. Finally, a lexicon contains the definitions of more "technical" words and concepts which might have proved cumbersome if explained in the main body of the report. These are indicated by an asterisk and are arranged in alphabetical order.

Reflecting the *raison d'être* of ACAT, the purpose of this report is to serve as a tool that contributes to the fight against torture. To this end, we have endeavoured to reconcile factual precision, the quality and rigour of the ideas expressed and the fairness of the analyses put forward, with the simplicity and accessibility of the text as a whole. This is essential if we are to produce a reference work intended for public or private organisations that specialise in the protection of human rights, while at the same time ensuring as wide a readership as possible. We hope to have achieved this objective.

[1] For those countries where torture practices are not endemic (Western democracies in particular), our approach is different and depends on the specific problems in each country.

ACKNOWLEGMENTS AND LIST OF CONTRIBUTORS

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Analysis of the Phenomenon of Torture

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ACAT. THE NGO FOR CHRISTIANS ACTING FOR HUMAN RIGHTS

ACAT

For the past 40 years, Action by Christians Against Torture (ACAT) has been fighting for the abolition of torture and the death penalty, supporting victims without discrimination of any kind. ACAT takes an ecumenical approach to bringing together Christians from all paths seeking to take action for human rights, standing shoulder to shoulder with those fighting for the cause, whatever their faith.
Its action is implemented by an active network of 39,000 members and sponsors as well as 25 employees. ACAT draws on its legitimate expertise in human rights and the phenomenon of torture in the action it takes.

ACAT'S MANDATE

Founded in 1974, ACAT is an ecumenical Christian NGO for the defence of human rights that strives to eradicate torture and the death penalty and to promote respect for the dignity of all individuals. Its campaigns centre on:
› The fight against torture,
› The abolition of the death penalty,
› Supporting the right to asylum,
› Monitoring detention conditions, particularly in France.

CRIMES ACAT TAKES ACTION AGAINST

› Torture, cruel, inhuman and degrading treatment and punishment,
› Judicial or extra-judicial capital punishment,
› Forced disappearances,
› War crimes, crimes against humanity and genocide.

How does ACAT act? ACAT carries out inquiries, research, legal aid and appeals. It carries out on-the-ground campaigns, drafts reports and lodges complaints with courts. It assists asylum seekers throughout the asylum process. In addition, it aims to build public awareness through the media and a range of events.
In 2015, ACAT acted on behalf of 388 people in 42 countries (torture victims, refugees and asylum seekers).

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FIACAT. THE ACAT INTERNATIONAL NETWORK

ACAT-France is the oldest of the 30 ACATs scattered around the globe. All are members of FIACAT.

FIACAT

The *Fédération internationale de l'Action des chrétiens pour l'abolition de la torture* (the International Federation of Action by Christians for the Abolition of Torture, or FIACAT) is an international NGO for the defence of human rights that fights for the abolition of torture and the death penalty. Founded in 1987, FIACAT encompasses 30 different ACATs (with 5 memberships currently being processed) in 4 continents.

MISSIONS

Represent national ACATs in dealing with international and regional bodies and organs

FIACAT enjoys consultative status in the United Nations (UN), participatory status in the Council of Europe* and observer status in the African Commission on Human and Peoples' Rights (ACHPR). It has been accredited by the bodies of the Organisation internationale de la Francophonie (International Organisation of La Francophonie, or OIF). By conveying on-the-ground concerns expressed by its members before international bodies, FIACAT aims to ensure relevant recommendations are adopted and implemented by governments. FIACAT contributes to ensuring the application of international conventions on the defence of human rights, the prevention of acts of torture in places of detention and the fight against forced disappearance and against impunity. FIACAT aims to build awareness of torture and the death penalty among churches and Christian organisations, and to encourage the latter to take action for abolition. FIACAT is a founding member of a number of activist collectives, notably the World Coalition Against the Death Penalty and the International Coalition against Enforced Disappearances, and is a member of the Human Rights and Democracy Network (HRDN).

Empowering members of its network

FIACAT helps its member associations in terms of structure and organisation. It supports the initiatives that lend the ACATs weight in civil society as bodies capable of shaping public opinion and having an impact on the authorities in their respective countries. It nurtures the network by encouraging debate and exchange, offering regional and international training programmes as well as joint intervention initiatives. It supports individual ACATs' actions and coordinates on their behalf on an international scale. It fosters development of the network by forming new national ACATs and setting up regional structures to coordinate with the national associations.

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The entire text of this report is available at
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ACAT 2016 REPORT

A World of Torture

In 2016, one out every two countries continues to practice torture. And not only authoritarian regimes, some democratic States are also affected. Every day, thousands of men, women and even children are left at the mercy of their all-powerful torturers, who so often go unpunished. Every day, torturers and those who control them try to silence political opponents, trade unionists, journalists and lawyers. Every day, they terrorise members of ethnic, religious and sexual minority groups. They extract confessions from common law prisoners through violence.

The 2016 edition of *A World of Torture* supplements the analysis developed by the ACAT in the reports published the previous years. It documents the reality of the practices of torture in 9 new countries, while also shedding light on the historical, political, psychological and cultural features of this phenomenon. Forty years after the coming into effect of the texts and international pacts aiming at fighting against torture, it explores the various mechanisms set up at the national, regional and international level to cope with it. It analyzes the causes of the persistence of the phenomenon of torture, with this essential question: how to conceive that torture can be at the same time condemned quasi-universally on the legal level like ethics, and nevertheless daily practised on a so vast scale? Lastly, it mentions a certain slip, worrying, of the French public opinion which makes waver an universal principle: the absolute prohibition of torture.

This year's report includes a preface by Emmanuel Decaux and original contributions by Raphaëlle Branche, Jean-Bernard Marie, Veronica Filippeshi or Michel Terestchenko. This report, which serves as a bibliographical resource and advocacy tool is the fifth volume in our encyclopaedia of the torture phenomenon.

This report can be read in full on our website.

ACAT is an ecumenical NGO that was founded in France in 1974 for the purposes of combating torture. It also campaigns for the abolition of the death penalty and to defend the right to asylum.

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