

Torture in retrospect (1992-2000)

This text is a compilation of Henrik Marcussen's editorials from Torture, Quarterly Journal 1992-2000 supplied with inserted quotations from his editorials.

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The current TORTURE journal originally began in 1991 as Torture, Quarterly Journal. Launched anew in 2004, TORTURE sought to position itself as a core international scientific journal on torture. In the last two decades, from the launch of the original Torture, Quarterly to this edition you hold in your hand, the issues we address within these pages – the struggle against torture and the rehabilitation of torture victims – has also developed from its initiation. From the founding of the Rehabilitation and Research Centre for Torture Victims (RCT) and the 1985 launch of the International Rehabilitation Council for Torture Victims (IRCT) – which celebrated 25 years in December 2010 – our dialogue and discourse around torture has also grown and morphed.

This article will track the major themes emerging from several years of work on Torture, Quarterly Journal. Within this review is also the key events that changed the manner in which we discuss torture – increasing UN declarations, collaborations between the Indian Medical Association and the IRCT, and finally the arrest of Chilean dictator General Pinochet in England.

Justice and Prevention:

Torture as a human rights violation

While torture has long been a global problem and crime, only within the last few

decades has this come to be recognized by international legal bodies and human rights treaties. Beginning with the 1975 Tokyo Declaration and, most relevantly, the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the growing body of treaties, declarations, and protocols over the last few decades have aided victims access to justice, rehabilitation, and the work of preventing torture globally.

As such, defining characteristics of torture emerged through these treaties and discussions. The IRCT and the RCT – the Danish rehabilitation member centre and founding organisation – typically address systematic torture performed by governments and state agents. However, rehabilitation needs are much more widespread. Related torture victims, such as families and friends who are also traumatised, require rehabilitation.

Most importantly, the fight against torture has also become a “continuous fight for democracy and for general respect for human rights,”¹ this author wrote in 1992.

“Those of us who live in democratic societies should never forget to induce the spirit of respect for the individual, wherever he lives. This, however, is a product of a Western perception. In many civilizations, the group, be it the family or a defined circle

of political friends, is more important than the individual – and respect for other different groups is rare.”¹

While many NGOs and international rights groups have taken up this fight, only the countries themselves can remove these dictatorships and oppressive governments; “Only the populations themselves of the countries concerned can do away with torture.”¹

In 1994, the UN added the post of High Commissioner for Human Rights as part of the continuous global efforts to eradicate violations and to increase pressure on governments involved in torture and other crimes.

“The new post is a strong reminder that states can no longer refer to non-interference in internal affairs. It is also a way of giving human rights a proper political tool. Human rights used to be something that politicians all over the world were good at pushing aside and putting at the bottom of the negotiating pile. In the person of the new High Commissioner, the UN Human Rights Commission has a minister who can approach governments at the highest level.”²

At the time, the newly appointed commissioner Mr. José Ayala Lasso paid an official visit to Denmark to appeal for global funding for the UN Voluntary Fund for Victims of Torture (UNVFVT). His message was simple: Prevention of torture is of the highest importance and that requires the funding of the fund to provide treatment and rehabilitation for the victims of torture.

In that same year, 1994, *Torture, Quarterly’s* editorial focused on the need for compensation for victims of torture based on three M’s – moral, money, and medical. That year, the UN determined a ceiling limit for the amount of compensation a victim was afforded. In support of the IRCT’s

position, this author argued that compensation should include funds for rehabilitation, injury, trauma, loss of working capacity and property, and a lump sum “paid to victims by the country responsible for the torture in consideration of the special nature of the trauma.”³ Our 1995 edition provided us with the opportunity to review our methods and goals of torture rehabilitation and supporting a culture of human rights. That year was the 50th anniversary of the end of World War II.

The management and care of concentration camp victims, both their physical and psychological state, formulated the background work for later efforts in the 1970s, and thus, the foundation of the IRCT and RCT. And the anniversary of the war also provided this author with an opportunity to examine the social and political causes that result in state-sponsored torture.

“However, the anniversary was also an occasion for other reflections. The evil, the suffering, the destruction, the breaking down of what good forces had created – these were not weakened, not sufficiently toned down, in the clearing up after World War II. Some parts of the world may well have got more order and democracy. But state or government-sanctioned repression and evil, including torture as one of the worst weapons, continue to crop up in many countries; in 79 countries in 1994 according to Amnesty International.”⁴

In 1997, the author reaffirmed that while the journal remained separate from the IRCT/RCT and welcomed dissenting views and articles from outside these specific spaces, the editorial position supports IRCT/RCT’s continued commitment to rehabilitation of torture committed by state agents. While some have asked the IRCT and RCT to open their focus to torture and trauma from non-state agents – such as in the workplace, from individuals, or in the home – this

author supported the continued focus on state agents and a culture of human rights.

“The introduction and acceptance of human rights are prerequisites for the disappearance of torture. Therefore, the abolishment of torture should be a logical consequence of the introduction of a wide range of the elements that guarantee human rights. This ought to take place, it does take place, and is an ongoing process that takes place particularly through international relations within the diplomatic system and through various treatment initiatives.”⁵

Rehabilitation, justice and prevention remain the cornerstones of work in the fight against torture as they cyclically reinforce one another. As stories and testimonies of torture come to light and crimes of tortures are revealed, it will “increase opposition to their continued presence.”⁵

“As an important side-effect, this extension may help to further the understanding of the other components that are important for the establishment of human rights. In this connection we consider the abolishment of torture the main prerequisite.”⁵

By 1997, on the 10 year anniversary of the UN Convention Against Torture, the UN General Assembly recommended that the 26th of June be International Day in Support of Victims of Torture. The day was designed to not only support the survivors and their families and the efforts of rehabilitation, but remind governments of their obligations under UNCAT to provide such services and engage in systematic efforts to prevent torture.

“The research done by the IRCT has revealed that torture, which is used in more than one third of the countries of the world today, is done because governments want to stay in power. Therefore we refer to torture as the most destructive instrument of power used against democracy.

The Commission recalls that freedom from torture is a non-derogable right and that the prohibition of torture is explicitly affirmed in article 5 of the Universal Declaration of Human Rights. The Commission is convinced that a society that tolerates torture can never claim to respect human rights.”⁶

In the following year, after the U.N. Secretary General Kofi Annan declared the 26th of June as a day to support the victims, Torture, Quarterly celebrated this occasion in its editorial.

“Torture makes people silent. It destroys them both physically and psychologically. Torture entangles people in a web of silence which is as difficult to get out of as the prison, in which they obtained these wounds to their body and soul.

The United Nations International Day in Support of victims of torture on June 26 is a day which was given in memory of and support to the many torture victims in the world. This day is indeed important in altering the above situation. The strong support from the UN and the Secretary-General Kofi Annan, from many governments, human rights organizations, NGOs, and numerous initiatives will help break through the silence, the insecurity, the indifference and will make a stand to make torture visible, a stand for openness, for acceptance among the boards of various foundations, for the understanding of the necessity for moral rehabilitation of torture victims.”⁷

On the first year, the first of many successful global campaigns against torture, the 26th of June was celebrated around the world in more than 40 countries and 62 centres and organizations. From candle-light vigils in Tibet to a rally in Bangladesh, an artistic exhibition in Denmark, and the opening of a rehabilitation centre in Estonia, victims, their families, and supporters around

the world joined in the global fight against torture and the silence that surrounds it.

Medical work and Torture

Beginning in 1994, the IRCT and the Indian Medical Association (IMA) teamed up to focus on the medical community's role in preventing and reporting on torture, and sadly at times, colluding with torture.

The first workshop was held in Dehli in 1994. The focus was to create a comprehensive programme to prevent medical practitioners from becoming involved or colluding with torture, and to ensure the proper medical treatment of torture victims.

Doctors from all areas of medicine may encounter victims of torture: emergency physicians for first-aid, hospital physicians for further treatment, forensic physicians when a medical certificate is required, and, of course, prison, police, and military doctors who work in close contact with torture victims. The goal of the cooperation between the IRCT and IMA was to ensure a systematic prohibition of forcing physicians to collude with torture and act against medical ethical traditions.

The IRCT 1995 annual report stated that, "For the first time a national medical association has decided to launch a comprehensive national program on medical aspects of torture, including prevention (professional and public information, education, prison visits), and clinical activities, with examinations, counselling, and rehabilitation of victims of torture."⁸

By 1998, an article in *Torture, Quarterly* provided further evidence for the need of more collaboration between medical associations and the IRCT.

"The role of health professionals in relation to torture falls into three categories — in relation to rehabilitation and treatment of torture victims, in relation to prevention

of torture and finally in relation to their participation in the practicing of torture."⁹

At that time, studies had emerged that pointed to a systematic problem of doctors and medical practitioners colluding with torture. Ole Vedel Rasmussen found, in a 1990 study, that 20 percent of torture victims, within his study group of 200, reported that medical personnel were involved in torture through treatment, resuscitation, and attention for the purposes of continuing the torture. In the 1998 edition of the journal, Knud Smidt-Nielsen provided increasing support to the claim that doctors were often colluding in the practice of torture; he found that 34 percent of victims, within the 80 torture survivors he spoke with, reported doctor participation in their torture.

"This sad fact that doctors are heavily involved in different aspects of torture gives deep mistrust to a profession that is expected to relieve and help."⁹

The cooperation between the IMA, the Delhi Psychiatric Society, and the IRCT had been increasingly fruitful through the years. In 1998, the three groups coordinated to create a successful debate and essay competition on torture, where almost 300 prospective and younger doctors participated.

By 2000, this author was invited as a co-editor on the IMA's *Medical Journal* for a special issue entitled 'Focus on Torture'.

In the editorial, this author praised the IMA for their foresight and courageous stand in meeting the challenge of medical collusion, disregard, and/or negligence of torture. When the IMA created an essay competition for young doctors to provide the Indian perspective on medical collusion with torture, the IRCT ensured to have this published in their 1997 edition of *Torture, Quarterly*.

The partnership between the Indian

Medical Association and the IRCT was particularly fruitful in addressing the need for prevention of torture through their focus on the medical community.

“Certainly, it is by prevention ... that we will find the strongest expectations for eradication of torture. Knowledge and enlightenment, as well as those means and tools necessary to obtain this, are the fundamental and ultimate principles as primary prevention in the struggle against torture. Secondary prevention that will incorporate specific education spread of knowledge and attitude to ethics towards special elected target groups as medical profession, the Bench, prison and military personnel and the police, however, shows a practical aim and represents a reality.”¹⁰

In sum, the IRCT worked in hand with the Indian Medical Foundation to ensure an adherence to medical ethics so that no Indian doctors would willfully ignore, collude, or participate in torture. At the same time, the IRCT also turned to Southwest Asia, to Turkey, to support doctors there who had been arrested for refusing to turn over medical records of patients treated at torture rehabilitation centres. The trials, from 1996 to 1999, required the frequent assistance of the IRCT, in conjunction with other NGOs, to respect the medical ethics of privacy and confidentiality of medical records and treatment of patients.

In a 1997 edition of *Torture, Quarterly*, it stated, “Mr. Tufan Köse, Medical Doctor, and Mr. Mustafa Cinkilic, Lawyer, from the Rehabilitation Centre for Torture Victims in the Turkish town of Adana, were charged with disobeying the order of official authorities because they would not disclose information about the 167 clients who had had treatment at their centre. The authorities’ demand to see the client reports is contrary to the universal Hippocratic oath on

confidentiality. A sentence of the accused would be totally devastating for continued rehabilitation work with torture victims in Turkey.”¹¹

After 15 months and eight hearings – some of which only lasting five to 10 minutes – Cinkilic was found not guilty, but Dr. Köse was asked to pay a fine of 18 million Turkish Lira (approximately \$110 US). However, the centres were able to continue as they had before, and it was doubtful that authorities would again try to discover the identities of their clients.

Despite the disappointment that Dr. Köse had to pay a fine, the outcome was generally perceived by the accused and their supporters as positive. However, for the IRCT and the partnering NGOs who provided assistance during this time, the incident proved revelatory. They found that, first and foremost, large-scale international solidarity can fuel assistance in such cases. The IRCT collaborated with member centres in Berlin, Copenhagen, and Minnesota to participate in every hearing. In addition, human rights organizations, the World Medical Association, and the Council of Europe joined to provide assistance to the Turkish doctors in this issue of medical ethics and patient privacy.

“All in all, a very encouraging sign directed at a serious violation of a basic human rights principle, and highly essential in the work for torture survivors.

The Turkish trial has also shown how assistance of the accused could be established, carried out, and presented to a wider public attention, and how it led to a conclusion which, under the circumstances, we could not have hoped would be any better. This assistance will be remembered and can be used again under different circumstances. This process has given experiences with presentation of awareness-raising activities

directed at important international institutions, and these experiences will form the basis of future discussions and hearings in e.g. the UN, OSCE, Council of Europe, and US Congress.”¹¹

As a result of the Turkish case and the collaboration between international institutions, NGOs, and professional organizations, the IRCT spearheaded an international campaign in Turkey to pressure the national authorities to cease harassment and censorship of doctors treating victims of torture. After the original case, the Turkish government had again impeded the work of medical practitioners by interfering with a meeting on prison health. As a result, the IRCT and international partners sought to send a clear message to both the Turkish officials and victims of torture that doctors shall not discriminate based on the political standing of their patients. Medical ethics are inviolable, wrote this author in 2000.

The Turkish campaign also began the same year as the Torture, Quarterly marked the 25 years of rehabilitation and medical work for torture survivors. In 1974, a group of 10 doctors met in Denmark under Amnesty International to aid in the access to justice and rehabilitation of torture victims.

“The systematic diagnostic work made it necessary to start treatment of the incurred traumas, which had been so excellently described. This led to the creation and development of the proper rehabilitation initiative, which has developed as described above.

The ideas and initiative that in 1974 led to this systematic analysis, and thus increased knowledge about torture, resulted in a change in the attitude towards the concept of torture and its place in relation to other pathological conditions due to external causes. Previously, torture had not

been clearly identified as a society-created means of destruction. This initiative resulted in a development that, based on rationality, made it possible to start goal-oriented rehabilitation of torture’s physical and mental sequels.”¹²

In 1999, this connection between health, medical professionals, and human rights was again acknowledged when Medecins Sans Frontieres (MSF) won the Nobel Peace Prize. Like the IRCT, MSF is based in the medical profession but have increasingly recognized the political and humanitarian importance of their work in human rights interventions and violations. In the 1999 editorial congratulating MSF, we quoted their director Philippe Bibersen, who said, “This prize recognizes the necessity of a humanitarian rebellion, totally independent of political and military influence, against all persecution and injustice.”¹³

Need for rehabilitation centres in post-Soviet states

In 1994, the Torture, Quarterly editorial focused on the reality of post-Soviet states and the deep marks of trauma left there by 50 years of Soviet rule, which included prolonged detention, torture, and murder of thousands of people in the Baltic states.

“The need for the establishment of the rehabilitation centres is obvious,”¹⁴ this author stated.

Firstly, thousands of ex-Soviet soldiers were forcefully conscripted and traumatised during military service; approximately 80% were enlisted in the years up to 1989. In Lithuania, about 1,000 people died during their service and a further 1,000 were mutilated and injured. Furthermore, about 350,000 Lithuanians were deported, “usually to Siberia where they either died or were tortured in the gulags.”¹⁴ And their families back home suffered the loss of their absence.

In Latvia, waves of arrests began as the Second World War began. By 1941, 7,000 Latvians were arrested – about 900 were tortured, shot, and secretly buried while the remaining were sent to Soviet prisons and gulags. In June 1941, another 15,000 – predominantly intellectuals and democracy advocates – were deported to the far regions of the Soviet Union. The pattern horrifically continued. After the end of the war, 70,000 Latvians were shot or deported. And again, in 1949, a further 50,000 were shot or deported.

These horrific crimes of murder, torture, deportation, and imprisonment have left a deep mark of trauma on the Baltic states of Estonia, Latvia, and Lithuania.

“As a result of these outrages the following groups in Latvia as well as in the two other Baltic countries are in need of rehabilitation efforts: a) Those who have survived the physical and psychological torture perpetrated by the Soviet regime and in the gulag camps; b) Those who have survived being starved out, gulags and German concentration camps; c) Lithuanian soldiers who have been subjected to torture during their military service.”¹⁴

The Pinochet case

– The end of impunity for dictators?

During a stay in London, Augusto Pinochet, the former dictator of Chile was arrested following a Spanish indictment. The arrest was a watershed moment for international law and impunity for dictators. Not only had a foreign government arrested a brutal dictator, but for the first time the principle of international jurisdiction was invoked to bring a former head of state to justice for crimes committed in that nation, despite amnesty laws.

Pinochet had been charged by Spain – and later Switzerland, Norway, France and

Sweden – for murder, kidnapping, forced disappearance, and violations of human rights. These were in addition to the crimes of leading the torture of perhaps several tens of thousand Chileans during his rule.

“The process that was started by Spanish lawyers thus gives hope to the many people, not least Chileans, who have lived in the shadow of the misdeeds for which Pinochet as head of state is responsible during his dictatorship. For those who survived the dark years, this gives a hope for justice and for healing of the wounds they sustained.”¹⁵

At the time, many debated whether it was valid, appropriate, and legal to arrest a former head of state and whether diplomatic immunity protected him. At the time, this author pointed to Article 5 in the UN Convention Against Torture:

“Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences [...] when the offences are committed in any territory under its jurisdiction [...] shall likewise take such measure as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction ...”¹⁵

And to Article 7:

“The State Party in the territory under whose jurisdiction a person alleged to have committed any offence [...] shall [...] submit the case to its competent authorities for the purpose of prosecution.”¹⁵

Furthermore, opinion polls taken around 1998 showed that 74% of Chileans wanted a court case against Pinochet.

Despite the fact that later the dictator was allowed to return to Chile without a trial in the UK, “the Pinochet case has strengthened awareness of a further step forward towards the justice, already written into the UN Convention against Torture that

may lead to an efficient legal system in the form of a permanent Court of justice to sentence and punish war criminals, torturers, terrorists, and others who seriously violate human rights.”¹⁵

The case showed that torture was a crime of universal jurisdiction and one that went beyond immunity for heads of state. For other brutal dictators, the Pinochet case was indeed a watershed moment.

“The Pinochet case was a milestone since former dictators can no longer automatically expect immunity outside their own jurisdiction, and potential dictators will have to think twice before they violate human rights. In this way, the case has broken down the myth of dictators being sacrosanct. The spell is broken.”¹⁶

The results, were nearly immediate, as *Torture, Quarterly* wrote in 2000. Former regime leaders, dictators, and human rights violators suddenly feared the arms of justice for their crimes. At the time, Mengistu Haile Mariam of Ethiopia fled to North Korea; Suharto of Indonesia cancelled a medical visit to Europe; and former President Habré of Chad has been threatened with lawsuits while in Senegal. In addition, the International Criminal Tribunal has been working hard to charge the biggest criminals of the former Yugoslavia.

And while many still remain free despite their horrific crimes, a growing awareness of the crimes of torture and the need for justice has taken root.

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