

**Book review: *Does Torture Prevention Work?* Edited by Richard Carver and Lisa Handley Liverpool University Press 2016**

In the past three decades, international and regional human rights bodies have developed an ever-lengthening list of measures that states are required to adopt in order to prevent torture. But do any of these mechanisms actually work? This study is the first systematic analysis of the effectiveness of torture prevention. The book looks at four groups of measures required, and sets out systematically to test which are most effective. The list below shows a ranking of measures, from those which have most impact to those which have least.

- Laws, rules and procedures governing the arrest, detention and interrogation of suspects
- State jurisdiction over the crime of torture and the prosecution of torturers
- Monitoring mechanisms to visit places of detention and imprisonment to inspect conditions
- Complaints mechanisms

The study employed extensive and in depth quantitative and qualitative methods to determine which of these preventive mechanisms in fact reduce the risk of torture, based on research in sixteen countries.

**Main findings**

Its key finding is that safeguards in the first hours and days after arrest contribute crucially to the lessening of the risk of torture, and that detention practice has by far the strongest impact on the incidence of torture. The most important mechanisms are those that ensure that individuals are held only in lawful, documented places of detention; that their families or friends are promptly notified of the arrest; and that they have prompt access to a lawyer, as well as medical examination by an independent doctor; and that they are promptly brought before a judge. Audio or video recording of interrogations are also important, when used, but are not widely used in the countries in the study. It was also important to reduce reliance on confession evidence in criminal proceedings, as, when police investigators make use of alternative forms of evidence, and the judicial process insists that they do, the motive for, and risk of torture being used, decline.

An important qualification is added: to prevent torture, what matters is not laws on the statute book, but practice in the police station. Across all sixteen case studies there is a significant gap between detention law and practice, varying between countries and over time. The factors which explain this gap include: the willingness of police and detention officials to abide by the law, the cost of safeguards, the availability of qualified professionals and the quality of their expertise.

The second most important set of preventive mechanisms is contained in the Convention against Torture and focuses on the criminalisation and effective investigation of acts of torture, and the gap between law and practice in this area is even more apparent, due to poor practice in the prosecution of alleged torturers. In all the case studies except Norway (where there was no torture), practice fell

short, and there were proportionally fewer prosecutions, convictions and lower penalties for torture than for comparable crimes. The risk of torture falls when torturers are more likely to be prosecuted.

Monitoring mechanisms also have an effect in reducing torture, although this safeguard is not as strong as with operational detention safeguards and prosecution of torturers. Complaints mechanisms were also studied but the study did not identify any systematic preventive impact of bodies handling complaints. Complaints may well benefit individuals concerned, but there was no evidence that such mechanisms have reduced the future impact of torture.

In looking for explanations for the gap between law and practice, the study looked at the impact of training in each of the four different clusters of variables, and found that inadequate knowledge of the law, and lack of skills to implement it, provide part of the answer. Training of prosecutors and judges handling torture cases, of police in complying with detention safeguards, and of doctors in identifying signs of torture, have all helped to improve practice and ultimately to reduce torture.

It is also necessary for certain political preconditions to be met to reduce or eradicate torture, and conversely, where such conditions are not met, it will be fruitless to use 'essentially technical' measures to address the problem, and the study therefore takes account of political structures and broad social processes. The conclusion that effective detention practice contributes most to torture prevention remains valid across these varying conditions.

The UK (with Chile) is in a group of just two countries in the sample which have seen 'consistent and sustained improvement', having introduced a 'comprehensive package of reforms' that strengthened detainees' access to lawyers and medical examinations, family notification and judicial supervision, responding to a series of miscarriages of justice (Group 1)<sup>1</sup>. In Northern Ireland, where torture had been most serious, the police force was comprehensively reformed, and by the latter part of the study period (2016) reports that the territory of the UK 'was effectively free of torture' although its use persisted outside the country's borders, for example in occupied Iraq, where there were no preventive mechanisms. The other countries in the study divide in three more groups: (2) countries where progress has stalled after positive development, (3) those that have made dramatic recent improvements that 'may or not be sustained', and (4) countries with no discernible improvement over a thirty-year period (see footnote).

#### UK detailed findings

The study warns of risks to the eradication of torture in the UK, including the government's intention (as at 2016) to repeal the Human Rights Act and implied withdrawal from the European Convention on Human Rights in British courts, cuts in legal aid and the duty solicitor scheme, the increased use of court secret hearings, and government attempts to influence the reports of the Chief Inspector of Prisons.

The book also documents, in the period of the study, marked progress in eradicating torture in Northern Ireland, the exposure and ending of torture practices by the West Midlands Serious Crime Squad in the 1980s, the exposure of torture practices by the army in Iraq, the British state's collusion with other states in the use of torture, to 'sub-contract' it to those states, for interrogation purposes.

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<sup>1</sup> Countries studied: Group 1 UK, Chile; Group 2 Hungary, Indonesia, Israel, Peru, South Africa; Group 3 Georgia, Tunisia, Turkey; Group 4 Ethiopia, India, Kyrgyzstan

It confirms that agents from MI5 and MI6 were involved in interrogation of people (often British citizens) held in other countries and tortured e.g. Binyam Mohammed (at the instigation of the US with British complicity). And in 2001 the British government supported a US programme of 'extraordinary rendition' in which torture was a crucial element (e.g. the case of Abdelhakim Belhaj).

#### Overall conclusions

The overall message from the study is one of 'cautious optimism', as it is clear that torture prevention can work, and that priorities set at different levels (including national) have been broadly correct. Key findings are that when opportunities for torture are reduced, the incidence of torture falls; and if torturers are effectively investigated and prosecuted, it falls further. Monitoring can also be effective. Whilst some priorities may need to be reordered, patient application of basic preventive methods should yield results, although the political context matters.

The study concludes with the following observations and recommendations: to improve and standardise data collection on the incidence of torture; that 'law reform is important but we should not celebrate prematurely', as practice needs to follow suit, and may not do so; that monitoring should focus on where torture is most likely to occur, particularly detainees in police stations; that complaints mechanisms work best when they feed into the prosecution process (otherwise they may have no effect on the level of torture); to reduce the incentive to torture by moving away from confession evidence (i.e. merely put into effect Article 15 of the Convention against Torture which signatories should be doing anyway); to overhaul dysfunctional criminal justice systems (as 'all those in a malfunctioning system seem to kick downwards').

The book concludes: 'The basic elements of an effective torture prevention strategy are now well understood. Years of patient struggle will be needed to make such a strategy effective'

This is an excellent book for those who want to study deeply how torture in the world can be eradicated.

David Mellor

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Does Torture Prevention Work? (Edited by Richard Carver and Lisa Handley) July 2016 is published by Liverpool University Press, 662 pages, price £29.99

ISBN: 9781781383308 <https://liverpooluniversitypress.co.uk/products/80890>

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The next Newsletter is planned for early March.

The next Briefing is planned for mid-April.