

Torture: What is it, and why must it be prevented?

Human Rights Correspondence School desk

There has not been any significant global or regional campaign against torture in recent years. In fact, particularly after the ‘war on terror’, countries have begun to erode the absolute prohibition against torture, and its status as a crime against humanity. Government officials, academics, professionals and even civil rights activists throughout Asia are blinded to the perversity of torture and its affect on society, democracy and rule of law. Instead, the mention of torture raises eyebrows and queries involving the (in)frequency of the acts and the nature of the offence resulting in torture.

Such queries miss the point. No offence justifies the use of torture, and even one case of torture is too many. In actual fact, torture in a number of Asian countries is widespread and occurs on a regular basis, in many instances for no offence at all.

By the use of torture, the state is sanctioning violence and ill treatment for the purposes of confession, punishment, intimidation and personal gain. Inevitably, this practice permeates all levels of society; from a police officer assaulting a suspect of drug trafficking, police officers begin to assault or threaten to assault (in exchange for bribes for instance) petty criminals or complainants of other crimes. As the practice widens and spreads, the propaganda accompanying it suggests that torture is necessary for effective criminal investigations, and that those being tortured are deserving of such brutality.

Such propaganda is blatantly false. It has long been accepted that torture is a crude and inaccurate method of criminal investigation; torturing an individual to extract information cannot guarantee that the information is valid. Most persons will confess to anything while undergoing severe pain. Similarly, torture as punishment is disproportionate and ineffective. The purpose of punishment is not just retribution for the crime committed, but also deterrence to future crimes. It is not the severity of punishment that deters persons from committing crimes however, but the certainty of punishment. These principles were clearly elucidated by the 18th century Italian philosopher Cesare Beccaria in his treatise *On Crimes and Punishment*, and were quickly adopted throughout Europe and many of its colonies.

Understanding torture

Despite the decades-long existence of international principles codifying and prohibiting torture, there continues to be a lack of understanding within civil society regarding what exactly constitutes torture. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), defines ‘torture’ as

“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.”

According to this definition, the following three elements make up an act of torture: 1) Causing physical or mental pain and suffering; 2) Carried out by a state officer or someone acting in official capacity, or anyone else with the consent/acquiescence of a state official; and 3) With the purpose of obtaining information, intimidation or discrimination.

The gravity of the act of torture stems from it being committed by state officers, officers whose duty is to serve and protect citizens. It is this aspect that distinguishes torture from other violence crimes such as domestic violence and grievous hurt. This distinction is often not made or is overlooked by both activists and members of civil society.

Furthermore, arguments are sometimes made that existing legal provisions relating to assault, wrongful detention/confinement are enough to address acts of torture. This is incorrect; such provisions do not include the following aspects, which comprise the internationally accepted definition of torture:

- The act of torture is specifically carried out by state officers (or those acting in official capacity or with their acquiescence);
- The act of torture is not limited to a specific purpose, such as obtaining confessions;
- Torture includes both physical and mental pain or suffering;
- Torture is a punishable offence with grave penalties.

Another important element in understanding torture is that there can be no justification for it, no derogation from its absolute prohibition. Innocent or guilty, all individuals have the right not to be tortured.

Differentiating between torture and other crimes:

Torture & ill treatment	Other crimes
Police violence towards demonstrators Public officials assaulting individuals Teachers hitting students Individuals beating someone in view or with the knowledge of police/public officials Law enforcement officers assaulting suspected criminals	Civilians assaulting individuals Wife beating Parents hitting children

Below are five cases documented by the Asian Human Rights Commission in 2009, all of which include the three elements making up torture as discussed above:

On July 12 **Sushan Limbu** was arrested and detained by **police officers** from Morang, **Nepal** on charges relating to an earlier dispute with a hotel owner. The next day, July13, Limbu and another detainee, **Bhakta Rai**, were beaten for several hours by the police, first in their cells and later in public, in front of a large crowd. Both detainees were forced to strip down to their underwear and to crawl on their knees and elbows on a pebbled and concrete surface for an hour, severely injuring their knees and elbows. They were beaten with iron rods and bamboo sticks, punched, and kicked by officers wearing boots. Several witnesses were able to record the abuse on their mobile phones.

Subsequently, the officers reportedly pressured several people, including members of political parties, to issue statements blaming the public for the beating, and not the police. One officer forcibly erased video evidence of the beatings from the mobile phones of witnesses. Moreover, several human rights defenders who visited Limbu in hospital received threatening phone calls warning them against pursuing this case. It is also alleged that police are continuing to torture Limbu and threatening to frame him for the possession of a weapon [AHRC-UAC-086-2009].

Mansur Utto Salih, 32 years, was abducted on January 9 and taken to the headquarters of the 6th Infantry Division of the **Philippines Army**. There, soldiers applied electric shocks to his sex organs, his body and behind his ears several times, in an attempt to secure his confession to masterminding the bombing in Kidapawan City and burning of houses in Midsayap, North Cotabato in 2008. For seven consecutive days, Salih was tortured in the same manner in three different interrogation rooms. He was only given food and water on two occasions. Salih was kept in detention until April 7 [AHRC-UAC-081-2009].

After arresting **Sadiq Ali** from a roadside hotel on June 17, **Pakistani police officers** took him to the Gilgit Judicial Magistrate with a First Information Report (FIR) regarding the murder of a government worker. Even though Ali's name was not in the FIR and he had not been in Gilgit on the date of the murder (June 13-14), the magistrate still granted remand.

On June 24, without registering the case or asking permission of a magistrate as required by law, intelligence agents took Ali from the police station for investigation into anti-state activities. He was brought back to the Gilgit police station on June 26, unconscious and bleeding, in critical condition. He died at around 4am on June 27, reportedly with deep open wounds near his kidneys and around his hips, and with bloody fingernails and toenails [AHRC-UAC-069-2009].

On April 29, **Zaenal M Latif** was arrested by a group of **Indonesian police officers** who repeatedly assaulted him around his head. He was taken into an interrogation room and punched in the face and back, with the purpose of forcing him to confess to being a drug dealer. One officer burned Latif's left hand with a cigarette. He was then unexpectedly released. Less than an hour later, the police officers arrived at Latif's room and subjected him to further physical abuse in an attempt to force a confession out of him. They punched his face and body and trampled on his hands. When the officers were unable to find any evidence to prove Latif as a drug dealer, they took him back to the police station. There he was told that if he did not confess by 5am the next morning, he would be killed.

On April 30 Latif was told to clean up and change his bloodstained clothes, before being released. He was warned not to tell anyone about what had happened to him [AHRC-UAC-065-2009].

Upul Palitha Mawalag, a taxi driver in **Sri Lanka**, was stopped by **police officers** for a routine search of his vehicle on May 7. It was alleged that his two passengers were found to be carrying drugs. The three were taken to Bluemendhal Police Station but the passengers were released, allegedly after paying a bribe. Mawalag reports having been stripped naked, tied to a chair and beaten severely with a stick by officers in

a bid to force a confession. He was charged with transporting drugs, and is currently in remand at Welikada prison [AHRC-UAC-093-2009].

Punishable crime

The above cases indicate the routine and widespread nature of torture within law enforcement agencies throughout Asia. Over many years of work, the AHRC has built up a considerable amount of torture documentation (which can be found at <http://notorture.ahrchk.net>). In most countries, including Nepal, Indonesia and Pakistan, there is no law prohibiting or punishing torture, which means that victims have no means of redress. A first step in eliminating the practice and providing justice to the victims is to enact a specific law against torture.

Such a law should incorporate a broad definition of torture as found in the Convention and provide serious punishment to the perpetrators.

Torture and other human rights

Torture affects the enjoyment of all other rights. If you voice your opinion regarding government education policies, or the suspicious expenses incurred by a local politician and you are subsequently beaten up and put in prison, your freedom of expression and opinion is curtailed. In the same manner, if you are assaulted and evicted from your home/land by the police under the influence of wealthy developers, your rights to housing, land and/or food are violated. Severe and brutal torture—together with a lack of medical attention, food and water—can result in death, thereby depriving individuals of their right to life.

Torture thus prevents you from enjoying your fundamental rights. It is used by state officers to punish you, be it for a crime committed or for doing anything that inconveniences them. It serves a dual purpose—as punishment for an act, as well as deterrence to future acts. Corruption and personal gain are common reasons for torture as well. In fact, the practice of torture can be a lucrative business for many state officials.

In several Asian countries, torture is also used as a means of criminal investigation. Criminal charges are filed based on ‘confession’ statements made by victims of severe torture and assault. When this occurs, it impinges on the right to fair trial.

Fair trial

The litmus test of the enjoyment of basic rights is the realization of the right to a fair trial. Fair trial is the means by which justice is served for the abuse of any rights, as well as how future such abuse can be deterred. Without the possibility of a fair trial, there is no way to guarantee basic human rights. Apart from serving as a remedy to the victim, fair trial serves as a legitimate and rational way to determine punishment for the accused. Both of these aspects are equally important for a functioning and harmonious society.

There are several conditions necessary for the guarantee of fair trial, including:

Background requirements	Pre-trial rights
Independence of judges and lawyers Right to effective remedy	Right to liberty and security Rights upon arrest (including freedom from torture and inhuman treatment)
Access to lawyers and legal services Independent and competent tribunals	Right to habeas corpus Presumption of innocence Proper investigations

The importance of these elements is to eliminate any possibility of arbitrary or biased punishment imposed by the state, on its citizens. If the judge is politically motivated for instance, the individual expressing dissent with government education policies is unlikely to get a fair hearing; the judge may decide on a harsher punishment than prescribed in law. On the other hand, if the right to habeas corpus does not exist, the police may imprison the individual indefinitely, with no recourse to judicial proceedings. For the person evicted from her home, the lack of effective remedies may mean she has no way to complain against the violation of her right to housing. In all three cases, the crime and punishment are decided arbitrarily, outside the purview of a fair trial.

The pre-trial rights also ensure that torture is not used at any point during arrest and investigation, which would compromise the rights to liberty and security, to presumption of innocence and to impartial and proper investigations. If these rights are compromised, so is the right to a fair trial. Without a fair trial, no other human rights can be realized, including the rights to due process and effective remedies.

If the above preconditions to a fair trial were met, the individual imprisoned for his views on state education policies would be freed, while the responsible police officers would be prosecuted and punished for illegal assault and detention. Similarly, the victim of forced eviction would have a channel through which to complain. It is therefore essential that elements needed for an effective fair trial are first established, in order for punishment to be certain, swift and proportionate to the crime. This is necessary for the harmonious functioning of society. As mentioned before, it is widely accepted that true deterrence of crime comes from the certainty of punishment, rather than its severity.

Rational punishment

Any punishment outside the sphere of fair trial is not only illegal, but unnecessary. Fair trial is crucial in determining appropriate punishments for crimes committed, and to eliminate the possibility of arbitrary punishments imposed by the state, including torture and inhuman treatment. The use of violence and torture as a punishment or a mode of social control by the state has repercussions on various levels. First, it is impossible to draw a line between when torture is to be used and when not. Invariably, violence will become the solution for everything, leading to a conflicted and perhaps even militarized society. Second, when violence becomes the norm, it replaces other modes of social control, such as public discussion and

rule of law. In turn, this will displace the ideals of democracy and human rights, for which public participation and supremacy of the law are crucial.

The social impact of torture

Torture has an impact on individuals as well as on the society at large. It has a profound impact on an individual's physical and psychological health, which can impair economic and social productivity. It can also result in social problems such as domestic violence, robbery, and other criminal activities. Furthermore, the impact of torture can also be transferred from one generation to another (parents to children), termed 'secondary trauma'.

Individual level

- It has a profound, immediate and long-term impact on physical and psychological health. Research indicates that the psychological effects of torture can often be worse than the physical effects. Some of these include:
 - Lack of self confidence, inability to trust;
 - Anger, fear, anxiety and restlessness;
 - Insomnia, nightmares;
 - Recurring and intrusive memories;
 - Breakdown in family and personal relationships;
 - Breakdown in wider social and community relations.

Physical symptoms of the psychological effects can be a lack of energy & appetite, heart palpitations, headaches, depression.

- The economic and social productivity of the individual and perhaps even her family is affected.
- The individual's home/family life is disturbed. The family may have to leave their community due to discrimination, resulting in further economic problems. This can affect the education of children as well.
- The individual/family's relationship with the state becomes influenced by hate, fear and distance from the law enforcement agencies. Their relationship with society may also be thus affected.
- Individual perpetrators of torture and violence become brutalized by their acts, which will also affect their family and social relationships.

Societal level

- A society composed of traumatized torture victims and family members as well as brutalized state officers is far from healthy. Such an environment can lead to a rise in anti-social and criminal behaviour, as well as poor economic performance.
- Torture makes human rights, democracy and rule of law irrelevant. This means that society is now based on irrational means. Corruption and violence will then increase, particularly against marginalized and vulnerable groups. In turn, this will shrink the social space for dialogue and compromise.
- An increase of violence in the public sphere will encourage violence in the private sphere.
- There will be a widespread climate of fear and distrust, which is detrimental to growth and development. If torture and violence become a way of social control, pockets of resistance may develop, some of which will invariably be violent.
- At the extreme end of the spectrum, society will descend into chaos and violence, with gross human rights violations taking place.

This article has been adapted from the Human Rights Correspondence School Lesson Series 61: The right to be free from torture at www.hrschool.org.