

DOES TORTURE PREVENTION WORK?

**RESEARCH PROJECT COMMISSIONED BY THE
ASSOCIATION FOR THE PREVENTION OF TORTURE**

REPORT OF EXPLORATORY PHASE

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INTRODUCTION

This is the report of the initial, exploratory phase of the research project “Does torture prevention work.” This three-year multi-country research project has been commissioned by the Association for the Prevention of Torture and is being led by Richard Carver, Senior Lecturer in Human Rights and Governance at Oxford Brookes University.

The research aims to identify the key factors leading to a reduction in the risk of torture, by way of comparative research examining 17 countries over a 30-year period. At the same time, in-depth research into the proximate effects of various torture prevention interventions will give greater insight into the impact of these activities and is intended to develop effective evaluation tools for future use by preventive mechanisms.

The research will be conducted using multiple methods. In the initial concept note, it was envisaged that the overarching method for the comparative research would be Qualitative Comparative Research, which is highly suitable both for human rights impact assessment and for detailed comparative analysis of situations where causality may be extremely complex and unclear, where the question of necessary and sufficient conditions is important, where there is a relatively small number of case studies, and where available data may be of different types and not directly comparable by other methods. This proposal has been refined, as explained in this report.

The purpose of the exploratory phase was to review existing literature on the research topic, including on methodological issues, to refine the research methodology, and to make a selection of countries for case study in the pilot phase over the next six months. During this period, I reviewed a large number of reports from United Nations and regional treaty bodies, as well as the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Treaty body recommendations for a number of selected countries were tabulated and analysed with the purpose of identifying the key preventive measures that could constitute the independent variables in this study. Similarly, a large number of NGO and NHRI human reports were reviewed with a similar purpose.

This report of the exploratory phase consists of two parts. The first is a review of the academic literature relevant to this study. It is not reflective of the large amount of non-academic work read over this period, although some human rights reports are referenced to supplement observations on academic studies from time to time. The aim was to identify the findings of academic research in this and related areas, as well as to develop an understanding of potential independent variables and possible ways of operationalizing these, and measuring the dependent variable of levels of torture.

The second part of the report consists of a discussion of the methodology as we move into the pilot phase. This discussion includes a proposed method for measuring torture, a list of independent variables, some observations on data analysis, and a firm list of countries for the pilot phase, as well as a long list of countries to be considered for the main research phase.

My thanks are due to Dr Lisa Handley, methodological advisor to the project, for her very helpful contributions to the whole report.

1. LITERATURE REVIEW

1.1. Introduction

Torture has been an object of study within a number of academic disciplines. There are philosophical and ethical discussions of whether torture can ever be justified.¹ There is a large body of work dealing with the physical and mental consequences of torture and the treatment of torture victims. More pertinently for this study, there is an extensive literature on the prohibition of torture in international law and the obligations that states incur in customary law, international humanitarian law, and human rights law, in particular the two international preventive treaties, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its Optional Protocol (OPCAT), as well as the European Convention for the Prevention of Torture (ECPT).² Psychological research³ is relevant to this study insofar as it tends to demonstrate a general propensity of individuals to torture when certain conditions obtain, suggesting that the answer to the prevention question lies at the level of rules and systems, rather than morality or choosing the right people.

What is relatively sparse, however, is social scientific or historical study into the causes of torture and the factors that may prevent or mitigate it. There are, of course, notable exceptions to this statement. Langbein and others have traced the history of torture in Europe and attempted to account for its decline.⁴ Rejali has documented the persistence of torture even in modern democracies.⁵ Hathaway's work has prompted a substantial cottage industry attempting to explain the impact (or more usually lack) of the Convention Against Torture.⁶ This intersects with a far broader debate among international relations scholars, of some relevance to this study, on explanations for states' compliance (or not) with international human rights law.⁷

It has been suggested that scholars of human rights who use qualitative methods tend to be more optimistic in their conclusions than their quantitative counterparts.⁸ Whatever the merits of that observation, it is indubitably the case that qualitative and quantitative scholars exploring the causes of torture or mitigating factors tend to look in quite different areas. Qualitative scholars' inevitable focus on small numbers of case studies

¹ For example, Jean Bethke Elshtain, "Reflection on the Problem of 'Dirty Hands'," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004).

² The classic source being Nigel Rodley, *The Treatment of Prisoners under International Law*, 3rd ed. (Oxford: Oxford University Press, 2009).

³ Philip G. Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2007). Stanley Milgram, *Obedience to authority; an experimental view*, 1st ed. (New York,; Harper & Row, 1974).

⁴ John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1976).

⁵ Darius Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2007).

⁶ Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?," *Yale Law Journal* 111(2002). See also, for example, James R. Hollyer and B. Peter Rosendorff, "Do Human Rights Agreements Prolong the Tenure of Autocratic Ratifiers?," *New York University Journal of International Law and Politics* 44(2012).

⁷ Harold Hongju Koh, "How is International Human Rights Law Enforced?," *Indiana Law Journal* 74(1999).

⁸ Emilie Hafner-Burton and James Ron, "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes," *World Politics* 61, no. 2 (2009).

leads them to study the impact of particular mechanisms or interventions on the incidence of torture – such as legal reforms, justice procedures, or the creation of visiting bodies for closed institutions. Quantitative scholars have tended rather to look to broader factors such as large political changes or the ratification of human rights treaties. Clearly both approaches potentially hold valuable insights in the search to identify ways of measuring the dependent variable – incidence (or change in the incidence) of torture – and identifying and operationalizing the independent variables that may explain this.

What follows is a review of those sections of the academic literature that are of direct relevance to this study. Non-academic literature has been extensively consulted – reports of treaty bodies and other intergovernmental bodies and of national human rights institutions and non-governmental organizations. However, they have not been cited in this review to any great extent. While they are invaluable in documenting torture, their explanations of its causes and solutions tend to refer back to the laws and other norms. An important exception is to be found in the thematic reports of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SRT).

This literature review looks first at the legal and normative literature explicating the obligations on states under international human rights law, which includes the full range of potential preventive interventions. Second, it reviews some of the findings of country case studies identifying either effective combinations of preventive measures or those factors deemed to explain the continuation of torture. Third, this review looks at global comparative studies of the factors explaining torture and other violations of physical integrity rights, or their reduction. Fourth, it concludes with a critical discussion of the main global indices of torture on which most of the global comparative studies are based.

1.2. Laws and norms on torture prevention

The legal/normative literature on torture offers a wide range of preventive measures regarded as being either legal requirements or potentially effective steps that can be taken to prevent torture.

The principal sources of the legal requirements to take preventive steps are the UNCAT and its Optional Protocol and, where appropriate, the ECPT. Although the OPCAT is generally seen as the specifically preventive international instrument, the Convention itself is entirely preventive in character. It does not prohibit torture – this was already done by the International Covenant on Civil and Political Rights, as well as by customary (and arguably peremptory⁹) international law – so much as lay out the obligations that states incur to prevent the occurrence of torture.¹⁰ Evans goes a step further, stating that the “primary purpose of the UNCAT is... to require states to assert jurisdiction over acts of torture, not to outlaw the practice of torture as a matter of international human rights protection.”¹¹ While this may be true, the UNCAT requires of states a series of other steps that are unconnected with the exercise of criminal jurisdiction, including educating

⁹ Rodley, *The Treatment of Prisoners under International Law*. 65.

¹⁰ Ahcene Boulesbaa, "The Nature of the Obligations Incurred by States under Article 2 of the UN Convention against Torture," *Human Rights Quarterly* 12, no. 1 (1990).

¹¹ Malcolm D. Evans, "Getting to Grips with Torture," *International and Comparative Law Quarterly* 51(2002). 376.

and training law enforcement personnel, regularly reviewing procedures and practices, prohibiting forcible return (*refoulement*) to countries where a person may face torture, inadmissibility of statements made under torture, and prompt and impartial investigation of allegations of torture.¹²

Rodley, one of the architects of the UNCAT, former UN Special Rapporteur on Torture and author of the standard work on international law norms relating to prisoners, explains the influence of Amnesty International's work in the 1970s and 1980s in developing norms aimed at eliminating the preconditions of torture:

...we were aware that torture happened to people when they were held at the sole mercy of their captors and interrogators (incommunicado detention). The longer they were denied access to and from the outside world (i.e. to family, lawyers, doctors, courts) the more they were vulnerable to abuse by those wishing to obtain information or concessions from them.¹³

Torture, he remarks, "is a crime and, like many other crimes, is a crime of opportunity."¹⁴

Rodley questions the distinction that is made between "preventive" visits of the CPT and those of the UN Special Rapporteur on Torture. He identifies two specific features of the former's visits that distinguish it: the sustained character of the visits and "its non-impugning of the public level of the government in respect of any torture or other abuses identified."¹⁵

So here we have it: prevention means we save the state's face, in return for which we hope to get more effective action than would be achieved by exposure. The subtext is that confidentiality is the price of sustained or regular access.¹⁶

Writing at an early stage of OPCAT implementation he remarks that the main difference between SPT visits and those of the Special Rapporteur may be the absence of the latter's public reporting. He concludes that activities now conventionally labelled prevention are in fact "remedial, rather than prophylactic."

The contrary argument is that the importance of preventive visits is to stimulate a general respect for human dignity, creating a general ethos in which torture will not flourish.¹⁷ There is a distinction between the preventive roles of the CAT under the UNCAT and the SPT under the OPCAT. In the UNCAT, the preventive functions are almost entirely delegated to the States Parties, with the role of the CAT essentially reactive and in principle little different from the traditional model of human rights treaty bodies. By contrast, the work of the SPT is directly preventive.¹⁸

The entire portfolio of preventive measures goes beyond the explicit requirements of the UNCAT, the OPCAT, and regional treaties. These include procedural safeguards for those deprived of their liberty, such as notification of detention to a relative, an

¹² Rodley, *The Treatment of Prisoners under International Law*. 49-50.

¹³ Nigel S. Rodley, "Reflections on Working for the Prevention of Torture," *Essex Human Rights Review* 6, no. 1 (2009). 15.

¹⁴ *Ibid.* 16.

¹⁵ *Ibid.* 19.

¹⁶ *Ibid.* 20.

¹⁷ Walter Kälin, "La lutte contre la torture," *Revue Internationale de la Croix-Rouge* 80(1998).

¹⁸ Wilder Tayler, "What Is the Added Value of Prevention?," *Essex Human Rights Review* 6, no. 1 (2009).

independent medical examination and access to a lawyer. There should be no secret, unofficial detention or incommunicado detention, with prisoners entitled to visits from relatives and medical professionals, as well as the right to consult a lawyer throughout the investigation, pre-trial process and trial. This would include the right to have a lawyer present at interrogation.¹⁹ These measures are premised on the assumption that torture is most likely to take place “while the victim is excluded from any contact with the outside world...”²⁰

Judicial oversight and the right to challenge the lawfulness of detention are important guarantees. Comprehensive written record-keeping is a means of increasing accountability, while the non-admissibility of evidence acquired through torture should apply in all proceedings. Mechanisms of oversight and monitoring are regarded as extremely important preventive tools. This includes an effective complaints procedure, as well as both national and international bodies to conduct regular visits to places of detention.²¹

The criminalization of torture, including the exercise of universal jurisdiction over alleged torturers, is part of the set of preventive obligations required under the UNCAT. Ending impunity for torturers is seen as crucial, along with the opportunity for redress to victims of torture.²² Some writers emphasize the preventive content in reparation, with the requirement of cessation and non-repetition, which are key dimensions of redress, also being essential elements of prevention.²³

The legal/normative literature is largely concerned with setting out the measures that states are obliged to take in order to comply with their torture prevention obligations, rather than empirically demonstrating the effectiveness of these measures. The political science literature discussed below, by contrast, is overwhelmingly concerned with more general background factors, such as democracy, economic development and judicial independence, or with treaty ratification (as distinct from implementation of specific measures contained in ratified treaties).²⁴

Several studies by political scientists have attempted to follow Hathaway in determining the correlation between ratification of the UNCAT and reduction in torture, in varying circumstances. The consensus seems to be that ratification has little positive effect (or worse).²⁵ Yet this addresses a claim that human rights advocates seldom advance: that ratification in and of itself has a direct impact on respect for human rights. A major study of the impact of human rights treaty ratification in general (not specifically the UNCAT) offered detailed observations on the effect of ratification on policy, law, judicial decisions

¹⁹ Edouard Delaplace and Matt Pollard, "Torture prevention in practice," *Torture* 16, no. 3 (2006). 223.

²⁰ Rodley, *The Treatment of Prisoners under International Law*. 11.

²¹ Edouard Delaplace and Matt Pollard, "Visits by human rights mechanisms as a means of greater protection for persons deprived of their liberty," *International Review of the Red Cross* 87, no. 857 (2005).

²² Nigel Rodley and Matt Pollard, "Criminalisation of torture: state obligations under the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment," *European Human Rights Law Review*, no. 2 (2006).

²³ Carla Ferstman, "Reparation as Prevention: Considering the law and practice of orders for cessation and guarantees of non-repetition in torture cases," *Essex Human Rights Review* 6, no. 2 (2010).

²⁴ A major and significant exception is Sikkink's work on the impact of the "justice cascade" on respect for human rights, including the right not to be tortured, which is discussed below.

²⁵ For example Hollyer and Rosendorff, "Do Human Rights Agreements Prolong the Tenure of Autocratic Ratifiers?"; James Raymond Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture," *International Organization* 62(2008).

and so on.²⁶ But this does not tell us the impact of the measures taken on human rights themselves. A study of the work of the Committee Against Torture, the treaty body established under the UNCAT, is similarly limited. It reaches a mixed conclusion on the impact of CAT Concluding Observations on the practice of eight Western European states. It identifies “concerns as regards the effectiveness of the Committee,” but once again these relate to compliance with the treaty body’s recommendations, not actual respect for the prohibition of torture.²⁷

In a work primarily aimed at describing the mandate, standards and methods of the European Committee for the Prevention of Torture, Morgan and Evans discuss in passing the impact of the CPT’s missions.²⁸ Evaluation of the CPT is of particular importance since it is essentially a precursor of the Sub-Committee for the Prevention of Torture established under the OPCAT, yet the literature on the OPCAT has so far focused far more on its innovative character – and in particular the creation of national preventive mechanisms (NPMs) – rather than evaluating its impact.²⁹ Morgan and Evans stress that CPT recommendations may be only one voice among many advocating reform so that it “is therefore inevitable that the links between the recommendations of the CPT and the final outcomes are generally shrouded in some mystery.”³⁰ They conclude:

What is certain is that many CPT recommendations concerning conditions of detention have been implemented and that these have undoubtedly had beneficial effects. Whether these qualify as examples of ill-treatment reduction is in most instances debatable, however. Equally clearly, many recommendations have not been implemented. Whether the protective safeguards put in place for the protection of those taken into initial custody have proved effective in reducing incidents of ill-treatment is almost impossible to tell.³¹

A UN Special Rapporteur on Torture concludes in a similar vein:

It is also difficult to objectively assess whether or not my country missions have any direct or sustainable effect on the eradication of torture and/or the improvement of the conditions of detention in the respective countries. However, it is certain that they contribute to raising awareness of the continuing widespread use of torture and ill-treatment by State authorities all over the world and to an understanding of the very specific problems in the respective countries.³²

²⁶ Christof Heyns and Frans Viljoen, "The Impact of the United Nations Human Rights Treaties on the Domestic Level," *Human Rights Quarterly* 23(2001).

²⁷ Ronagh McQuigg, "How Effective is the United Nations Committee Against Torture," *European Journal of International Law* 22, no. 3 (2011).

²⁸ Rod Morgan and Malcolm Evans, *Combating torture in Europe* (Strasbourg: Council of Europe, 2001).

²⁹ Malcolm Evans and Claudine Haenni-Dale, "Preventing torture? The development of the Optional Protocol to the UN Convention against Torture," *Human Rights Law Review* 4, no. 1 (2004). Richard Carver, "A new answer to an old question: national human rights institutions and the domestication of international law," *Human Rights Law Review* 10, no. 1 (2010).

³⁰ Morgan and Evans, *Combating torture in Europe*. 158.

³¹ *Ibid.* 159.

³² Manfred Nowak, "Fact-Finding on Torture and Ill-Treatment and Conditions of Detention," *Journal of Human Rights Practice* 1, no. 1 (2009). 119.

The CPT has had some positive impact on the treatment of illegal immigrants in Italy held in temporary detention centres – an often neglected group: “The results of visits conducted by the CPT reveal deficiencies in the entire system, even though the situation seems to have improved since the CPT’s first visit.”³³ This contrasts with Spain. Comparing the treatment of Basque prisoners arrested under anti-terrorist legislation in the early 1990s and early 2000s, Morentin et al conclude that the Spanish government has failed to implement the recommendations of the CPT.

The comparison between the two periods of time shows little improvements in the last 15 years, even though CPT and the United Nations Special Rapporteur on the question of torture have visited Spain on several occasions, giving clear recommendations to improve human rights. The overwhelming number of allegations must be seen as a problem in itself, indicating that the internal and international measures of control of torture have failed.³⁴

An assessment of the African Union’s Special Rapporteur on Prisons draws a generally favourable balance sheet, contrasting the institution favourably with other special mechanisms in the African system.³⁵ Success is attributed to a number of factors, including “the urgency of the need, the clarity of the mandate, the support of a committed NGO, the availability of funding, the tangibility of results in the form of visit reports, some positive results demonstrated by follow up visits, the standing and devotion of the Commissioners appointed to the position...”³⁶ Even so, the positive assessment is one of “good performance” rather than particular effectiveness.

Beyond these examples, the literature on prison oversight is fragmentary, reflecting not only a relative lack of scholarly attention, but also the enormous variety of types and purposes of monitoring mechanisms.³⁷

Some consideration has been given to criteria for evaluating the impact of national human rights institutions,³⁸ which in one instance has included proposed indicators for measuring interventions in support of torture prevention.³⁹ What is so far lacking is any comprehensive framework for evaluation of the impact of national mechanisms. One of the problems identified with the designation of pre-existing national human rights institutions as NPMs is the inherent tension between their new monitoring/visiting role and the original function of the institution, which was usually primarily directed to the receipt of complaints.⁴⁰

³³ Carmelo Danisi, "Preventing Torture and Controlling Irregular Immigration," *Essex Human Rights Review* 6, no. 1 (2009). 115.

³⁴ Benito Morentin, Luis F. Callado, and M. Itxaso Idoyaga, "A follow-up study of allegations of ill-treatment/torture in incommunicado detainees in Spain," *Torture* 18, no. 2 (2008). 94.

³⁵ Frans Viljoen, "The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities," *Human Rights Quarterly* 27, no. 1 (2005).

³⁶ *Ibid.* 166.

³⁷ Michele Deitch, "Annotated Bibliography on Independent Prison Oversight," *Pace Law Review* 30(2009).

³⁸ Rachel Murray, "National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness," *Netherlands Quarterly of Human Rights* 25, no. 2 (2007). Julie Mertus, "Evaluating NHRI: Considering Structure, Mandate, and Impact," in *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, ed. Ryan Goodman and Thomas Pegrum (New York: Cambridge University Press, 2012).

³⁹ Richard Carver, "Assessing the Effectiveness of National Human Rights Institutions," (Versoix: International Council on Human Rights Policy, 2005).

⁴⁰ Silvia Casale, "A System of Preventive Oversight," *Essex Human Rights Review* 6, no. 1 (2009). 13.

Another potentially significant preventive measure at the international level is the imposition of sanctions, either as a specific response to gross human rights violations⁴¹ or within the framework of trade and economic agreements or membership of regional economic blocs.⁴² Even strong advocates for the use of sanctions against regimes that are serious human rights violators, conclude that it “is rarely, if ever, possible to demonstrate a one-to-one cause-and-effect relationship between their imposition and a particular advance for human rights.”⁴³ There is a distinction between situations where significant economic and geopolitical interests are at stake and those where “interests of lesser geopolitical significance do not overwhelm human rights issues.”⁴⁴ In the former, “the most that human rights proponents can achieve... is certain modest gains for human rights by small-scale sanctions that are narrowly targeted.”⁴⁵

European Union enlargement is frequently cited as an example of incentive-based human rights compliance.⁴⁶ More detailed case studies on EU accession countries are often sceptical about the precise importance of the incentives of Europeanization among the various drivers for reform.⁴⁷ Even a study that focuses on the EU’s “transformative power” warns that “EU influence cannot be assumed to be the primary variable that determined the reform trajectory taken by any given country.”⁴⁸ The “uncritical assumption” that the EU was vital for democratization in Central and East Europe “is part of the comparative transitologists’ general over-readiness to believe in the benign power of western assistance in building democratic institutions...”⁴⁹

1.3. Country case studies

There is an extensive literature on country studies of torture. However, a fairly small part of this has been conducted by academics and most are aimed at documenting torture and its causes rather than the effectiveness of measures to curb or prevent the practice. The vast array of reports by international and national NGOs, or by treaty bodies and the UN Special Rapporteur on Torture, has been reviewed only highly selectively.

The small number of academic studies of successful torture prevention initiatives tend to stress the importance of a combination of steps, combined with relatively favourable political preconditions. Georgia is cited as an example of a country where a national human rights institution played a key role in the reduction of torture, through a

⁴¹ Aryeh Neier, "Economic Sanctions and Human Rights," in *Realizing Human Rights: Moving from Inspiration to Impact*, ed. Samantha Power and Graham Allison (Basingstoke: Palgrave, 2000).

⁴² Emilie M. Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," *International Organization* 59, no. 3 (2005).

⁴³ Neier, "Economic Sanctions and Human Rights." 307.

⁴⁴ *Ibid.* 307.

⁴⁵ *Ibid.* 306.

⁴⁶ Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." 611-612.

⁴⁷ Geoffrey Pridham, "The EU's Political Conditionality and Post-Accession Tendencies: Comparisons from Slovakia and Latvia," *Journal of Common Market Studies* 46, no. 2 (2008).

⁴⁸ Heather Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Basingstoke: Palgrave, 2006). 102. See also Tim Haughton, "When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe," *Political Studies Review* 5(2007).

⁴⁹ Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*. 102.

combination of measures: monitoring and reporting, promoting treaty ratification, lobbying for an anti-torture law, and educating both the public and officials. This coordinated and systemic approach is contrasted with the experience of other former Soviet states where the NHRI's work has been primarily complaints-driven and responsive, for example Moldova.⁵⁰

A Nepalese NGO, Advocacy Forum, has developed a torture prevention project based on a "holistic strategy" including monitoring of detention centres, advice to detainees, and documentation of torture. AF intervenes with *habeas corpus* applications and to seek access to health services. It initiates legal proceedings on behalf of victims of torture and uses its findings to advocate for legal reform.. An external evaluation concluded that "there is compelling evidence to suggest that the intervention is having a substantial and, most unusually, a measurable impact on reducing torture."⁵¹ AF's data is said to demonstrate a significant reduction in torture in centres visited by the organization. However, there was an apparent upturn in torture at the end of the period under review, which is not explained beyond saying that it corresponds to an upsurge of political insurgency in the Terai region.⁵² This would seem to suggest that the impact of the programme cannot be entirely detached from background political and security issues.

Lamwaka's case study of Uganda offers several different measures of the incidence of torture, based upon torture cases registered with the African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV), complaints of torture to the Uganda Human Rights Commission and a baseline survey of torture conducted by the ACTV and two other organizations in 2008. Not only are the actual numbers different in each measure, which is to be expected, but the trends are different, for reasons that are not explained. (The baseline survey data says that cases of torture peaked between 2002 and 2004, the UHRC shows a peak in 2004, and the ACTV data climb sharply from 2006.) The methodology of the baseline survey is not explained, although this may be more reliable than the other two. The numbers of complaints/patients may be affected by accessibility. It is apparent that the number of ACTV clients increases at the point when the organization opens an office in Gulu, in northern Uganda, although Lamwaka has the causal arrow pointing the other way, describing the opening of the office as a response to increased torture. Lamwaka describes the ACTV's preventive activities, including training of officials, but offers no evaluation of their effectiveness.⁵³

Uganda has been the subject of particularly extensive NGO reporting, as well as monitoring by treaty bodies. This reveals a fairly clear pattern of explanation for the persistence of torture, whether by police units against alleged common criminals or specialized intelligence or military bodies against insurgents or political opponents. Two elements recur: the detention of suspects in informal premises where normal legal protections do not apply, and the effective impunity of security personnel because of low levels of prosecution and conviction for torture. Although treaty body recommendations have a greater focus on tightening the existing legal protections, detailed research studies

⁵⁰ Richard Carver, "Central and Eastern Europe: The Ombudsman as agent of international law," in *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, ed. Ryan Goodman and Thomas Pegram (New York: Cambridge University Press, 2012).

⁵¹ Mandira Sharma, Ingrid Massagé, and Kathryn McDonald, "Lawyers' Intervention at Pretrial Stage Helps to Prevent Torture, Illegal Detention and Other Human Rights Violations: Experiences of Advocacy Forum - Nepal," *Journal of Human Rights Practice* 4, no. 1 (2012): 18.

⁵² *Ibid.* 2.

⁵³ Sharon Lamwaka, "Preventing Torture in Uganda," *Essex Human Rights Review* 6, no. 2 (2010).

suggest that it is the gap between legal protections and the prevailing reality where the problem lies.⁵⁴

There are few case studies that show the positive impact of preventive measures, but more that purport to demonstrate the persistence of torture in the absence of certain preventive steps. Impunity for alleged torturers is frequently cited as a key factor in the failure to prevent torture. For example, Fincanci argues in the case of Turkey that:

Impunity has a significant influence on the persistence of torture, since this result indicates a state policy for torture, despite ratified international treaties, and the expression of “zero tolerance for torture”.⁵⁵

Fincanci’s article is unusual for its detailed and quantitative documentation of the incidence of impunity, although its causal relationship with continuing torture is asserted rather than proved. Turkey is another country that has been the focus of extensive international human rights reporting, particularly because of the repeated, almost annual visits of the European CPT since 1990. This makes it a remarkably good case study of relatively small and nuanced reforms and their impact. Turkey differs from Uganda at least in the view of some observers, in that there is assumed to be a genuine political commitment to addressing the problem of torture. There is, however, a considerable gap between law and stated policy on the one hand and the reality of continued torture on the other. As in Uganda, the key problems are impunity and the non-implementation of legal protections of those arrested, creating de facto incommunicado detention.⁵⁶

Similarly the failure to prosecute US personnel alleged to have tortured prisoners in Iraq and in the context of the “war on terror” has been quantified and situated within a more general failure of accountability mechanisms.⁵⁷ In Zimbabwe it has been possible to demonstrate a continuity in methods of torture and even the personnel responsible, across successive political regimes and through repeated general amnesties.⁵⁸

Argentina provides a further case study of impunity in combination with other factors. Lessa’s study of continuities in human rights abuse between the military dictatorship of the 1970s and the democratic dispensation of 2010 identifies impunity as a problem in the persistence of torture, along with two other factors: police reform and public attitudes. She contrasts the failure to reform the police with post-dictatorship reforms to the armed forces and judiciary. The failure of training and adequate disciplinary procedure within federal, provincial and municipal police forces clearly overlaps with the issue of impunity. Rising crime has created fear in society and an audience for the argument that human rights damages public security (“no more human rights for criminals”). This in turn has helped to delay police reform.⁵⁹ Argentina is an important

⁵⁴ See, for example, Amnesty International, *Uganda: The failure to safeguard human rights*, AI Index AFR 59/05/92, 1992; Human Rights Watch, *State of Pain: Torture in Uganda*, 2004.

⁵⁵ Sebnem Korur Fincanci, "The role of jurisdiction on persistence of torture in Turkey and public reflections," *Torture* 18, no. 1 (2008).

⁵⁶ See, for example, Amnesty International, Turkey: briefing to the Committee Against Torture, AI Index: EUR 44/023/2010, 2010; Human Rights Foundation of Turkey, Submission to the Committee Against Torture, 2010.

⁵⁷ James Ross, "Black letter abuse: the US legal response to torture since 9/11," *International Review of the Red Cross* 867(2007).

⁵⁸ Richard Carver, "Zimbabwe: Drawing a Line Through the Past," *Journal of African Law* 37, no. 1 (1993).

⁵⁹ Francesca Lessa, "Beyond Transitional Justice: Exploring Continuities in Human Rights Abuse in Argentina between 1976 and 2010," *Journal of Human Rights Practice* 3, no. 1 (2011).

example because it is often cited on the other side of the balance.⁶⁰ Other studies show the impact of a reduction in protection against incommunicado detention,⁶¹ while treaty bodies have noted discrepancies between federal laws and provincial practice.⁶²

Chakma's case study of India contains several important observations. He describes a painfully slow process of compliance with the UNCAT, signed by India in 1997 but not yet ratified, with proposed anti-torture legislation falling far short of UNCAT requirements. Chakma notes the neglect of India's human rights problems on the international stage: "India's status as a democratic country has protected it from much criticism." Where pressure has come from reform, this has generally been from domestic civil society. Chakma discusses the compilation of statistics on torture. While there is an obligation to report torture within crime statistics, in fact the figures for torture fall far short of the numbers of deaths in police custody – whereas he notes that it is reasonable to assume that the "figures on the use of torture not resulting from death are likely to be a multiple of these statistics." Impunity is identified as a central problem. Prosecution of alleged torturers requires prior government permission that is seldom forthcoming. Similarly investigation and hearing of torture cases by the National Human Rights Commission (a potential NPM, if India were to ratify the OPCAT) has been deeply flawed.⁶³

Israel's use of torture has been particularly thoroughly studied,⁶⁴ partly because for a period of a dozen years, from 1987 to 1999, the government had followed the recommendations of the Landau Commission of inquiry into the interrogation methods of the General Security Service, giving prior authorization to the use of force and psychological pressure in the interrogation of terrorist suspects. This approach influenced those such as Dershowitz who advocated the use of "torture warrants" in the United States.⁶⁵ From 1999 onwards advance authorization was no longer available, but the Supreme Court has allowed the possibility of a defence of "necessity" in cases involving a "ticking bomb" where interrogators resort to torture. A number of commentators, looking at the periods both before and after 1999, attribute the persistence of torture to this formal impunity.⁶⁶

While in each of these case studies it is apparent that there was impunity for torturers (either in absolute terms, as in Zimbabwe, or through inadequate investigation and punishment, as in the US and Turkey) and that torture persisted, what none of these articles demonstrates is whether impunity was the factor that led to the continuation of torture or was simply evidence of insufficient official commitment to addressing the problem.

⁶⁰ See, for example, Kathryn Sikkink and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America," *Journal of Peace Research* 44, no. 4 (2007).

⁶¹ Centro de Estudios Legales y Sociales, Presentación ante el Comité contra la Tortura, 2004.

⁶² For example, Committee Against Torture, Concluding Observations on Argentina, 1996, UN Doc. CAT/C/34/Add.5.

⁶³ Suhas Chakma, "Lessons Learned from the ACHR's National Campaign for Prevention of Torture in India," *Essex Human Rights Review* 6, no. 2 (2010).

⁶⁴ For example, Eitan Felner, "Torture and Terrorism: Painful Lessons from Israel," in *Torture: Does It Make Us Safer? Is It Ever OK?*, ed. Kenneth Roth and Minky Worden (New York: The New Press/Human Rights Watch, 2005); Yuval Ginbar, "'Celebrating' a Decade of Legalised Torture in Israel," *Essex Human Rights Review* 6, no. 1 (2009).

⁶⁵ Alan Dershowitz, "Tortured Reasoning," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004).

⁶⁶ Felner, "Torture and Terrorism: Painful Lessons from Israel."; Ginbar, "'Celebrating' a Decade of Legalised Torture in Israel."

Several of the “negative” studies mirror the argument that a combination of measures is required for effective torture prevention. Blitz’s study of penal and justice sector reform in Albania notes that the prohibition of torture in the Criminal Code is inadequate, with few prosecutions of law enforcement personnel and overt judicial discrimination against private parties seeking a remedy. The result is de facto impunity for torture. In addition there is a lack of training, infrastructure and in-house monitoring. Blitz seeks to explain why European Union conditionality has proved ineffective in the Albanian case, despite the obvious incentives to comply with standards of protection against torture and ill-treatment. He identifies the weakness of the state and a lack of capacity as the key factors, with the reform of the judiciary being of paramount importance.⁶⁷

A similar picture of complexity can be found in Wei and Vander Beken’s extensive review of the literature on the causes of police torture in China.⁶⁸ They identify a series of factors that have been described as contributory factors to the continued use of torture – as in Argentina against criminal suspects rather than political opponents. The reliance on confessions in the judicial process is seen as being of particular importance, with torture or deliberate ill-treatment a quick route to the coercion of incriminating statements. Suspects have no right to the presence of a lawyer during interrogation. Under Chinese law, confession evidence secured by torture is inadmissible. However, this exclusionary rule has been ineffective in preventing torture for two reasons. First, it has been criticized for its incomplete nature: although confessions can be excluded, other evidence obtained as a consequence of the tainted confession is not. Secondly, there are no adequate procedural safeguards to enforce the exclusionary rule, with courts reluctant to probe claims of torture, accepting police statements that torture did not take place.

The non-enforcement of the exclusionary rule is an instance of a broader failure of judicial supervision of police actions. Police are also described as not being sufficiently competent in investigative techniques and skills, with inadequate internal supervision. Finally, public attitudes are deeply unsympathetic to criminals in a context of rising crime, and supportive of the police.⁶⁹

Interestingly, Wei and Vander Beken’s observations on China chime closely with Rejali’s conclusions on the preconditions for torture in democracies. He argues that one of three conditions is necessary, though not sufficient, for torture to occur: the national security bureaucracy partially overwhelming the democratic institutions; the judiciary placing a high priority on confessions; or the police setting about creating order. This hypothesis accounts for the occurrence of torture in both political and criminal contexts, as well as identifying the institutional or policy shifts that are necessary. But, as Rejali concludes, “[p]ressing beyond this conclusion for a fine-grained causal account of the necessary *and* sufficient is currently not possible given the fragmentary knowledge of the empirical cases.”⁷⁰

⁶⁷ Brad K. Blitz, "Post-socialist transformation, penal reform and justice sector transition in Albania," *Southeast European and Black Sea Studies* 8, no. 4 (2008).

⁶⁸ Wei Wu and Tom Vander Beken, "Police Torture in China and its Causes: A Review of the Literature," *Australian and New Zealand Journal of Criminology* 43, no. 3 (2010).

⁶⁹ *Ibid.* 570.

⁷⁰ Rejali, *Torture and Democracy*. 576.

1.4. Global comparative analyses of human rights violations

A number of global comparative analyses have attempted to explain why states violate human rights, or desist from doing so (generally, rather than looking specifically at the incidence of torture). To explain a dependent variable of state repression or human rights violations, social scientists have considered such causal factors or independent variables as democracy,⁷¹ internal and external violent conflict,⁷² economic development,⁷³ and domestic constitutional provisions.⁷⁴ These studies found that state respect for human rights is driven by systemic factors such as democracy, economic growth, and especially the absence of conflict. (Of course, none of these studies addresses the potential impact of small scale interventions that can be more or less easily manipulated.)

The primary advantage of such global analyses is that extensive coverage of cases allow strong inferences to be made about relationships between variables. The main disadvantages, however, are problems with the availability of data and the validity of quantitative measures employed – an issue that will be discussed in greater detail below.

Many studies have concluded that democracy is associated with greater respect for human rights, including physical integrity rights such as freedom from torture.⁷⁵ Transition from autocracy to democracy tends to lead to a decrease in repression.⁷⁶ There are, however, some differences over which elements of democracy are of particular importance: multi-party political competition, and hence democratic accountability;⁷⁷ an independent judiciary;⁷⁸ freedom of expression;⁷⁹ or more extensive civil societies.⁸⁰ Weak democracies do a poor job of protecting personal integrity rights, and democracy matters most for protecting these rights when domestic political institutions were strong.⁸¹

⁷¹ Steven C. Poe and C. Neal Tate, "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis," *The American Political Science Review* 88, no. 4 (1994); Steven C. Poe, C. Neal Tate, and Linda Camp Keith, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993," *International Studies Quarterly* 43, no. 2 (1999); Conway W. Henderson, "Conditions Affecting the Use of Political Repression," *Journal of Conflict Resolution* 74(1991); Christian Davenport, "Human Rights and the Democratic Proposition," *Journal of Conflict Resolution* 43, no. 1 (1999).

⁷² Poe and Tate, "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis."; Poe, Tate, and Keith, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993."; Henderson, "Conditions Affecting the Use of Political Repression."; Davenport, "Human Rights and the Democratic Proposition."

⁷³ Henderson, "Conditions Affecting the Use of Political Repression."; Neil Mitchell and James M. McCormick, "Economic and political explanations of human rights violations," *World Politics* 40(1988).

⁷⁴ Davenport, "Human Rights and the Democratic Proposition."

⁷⁵ Ibid.

⁷⁶ Sabine C. Zanger, "A Global Analysis of the Effect of Political Regime Changes on Life Integrity Violations, 1977-1993," *Journal of Peace Research* 37, no. 2 (2000).

⁷⁷ Bruce Bueno de Mesquita et al., "Thinking inside the Box: A Closer Look at Democracy and Human Rights," *International Studies Quarterly* 49, no. 3 (2005).

⁷⁸ Emilia Justyna Powell and Jeffrey K. Staton, "Domestic Judicial Institutions and Human Rights Treaty Violation," *International Studies Quarterly* 53(2009).

⁷⁹ Courtenay Ryals Conrad and Will H Moore, "What Stops the Torture?," *American Journal of Political Science* 54, no. 2 (2010).

⁸⁰ Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington DC: Georgetown University Press, 2005).

⁸¹ Christian Davenport and David A. Armstrong, "Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996," *American Journal of Political Science* 48, no. 3 (2004).

Several studies have looked at the effects of human rights treaty ratification, often with a focus on the UNCAT. Hathaway's was the pioneering study in this area. She examined 165 countries from 1985 to 1998. She was most interested in the influence of human rights treaty ratification of the UNCAT, and found that ratification only reduces the use of torture among democracies. Ratifying a treaty had no influence on state torture and, in certain cases, related to worsening torture, unless the regime had reached the highest levels of democratic government.⁸² Subsequent studies have tended to reach similar conclusions.⁸³

Conflict, whether international or internal wars or the threat of terrorism, tends to increase the risk of torture and other physical integrity violations in all types of state.⁸⁴ Democratic institutions only constrain the government's use of torture when the state is not faced with violent dissent.⁸⁵ However, while all regimes respond to violent dissent with repression, states with democratic institutions employ lower levels of repression than non-democratic states.⁸⁶

Several studies have linked violations of personal integrity rights with economic conditions.⁸⁷ It has been argued that the implementation of IMF structural adjustment agreements leads to less respect for personal integrity – that is, governments undergoing prolonged IMF structural adjustment have murdered, tortured, politically imprisoned and disappeared more of their citizens. (On the other hand, structural adjustment is also associated with an improvement in such democratic institutions as freer and fairer elections, and more freedom of speech and press.)⁸⁸

The studies cited above have focused on the general preconditions for enjoying freedom from torture and other physical integrity rights, rather than specific preventive interventions. Even discussion of the impact of treaty ratification has looked at the association of ratification with observance of rights, rather than examining the impact of implementing the particular concrete treaty obligations. The work of both Sikkink and Simmons differs in its focus on these more specific obligations.

Sikkink explored the impact of prosecution of human rights crimes in transitional societies on subsequent respect for human rights. Focusing on three types of transition – democratic transition, transition from civil war, and state creation – she found that

⁸² Hathaway, "Do Human Rights Treaties Make a Difference?."

⁸³ Michael J. Gilligan and Nathaniel H. Nesbitt, "Do Norms Reduce Torture?," *Journal of Legal Studies* 38, no. 2 (2009). Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press, 2009). Powell and Staton, "Domestic Judicial Institutions and Human Rights Treaty Violation."

⁸⁴ Conrad and Moore, "What Stops the Torture?." Poe and Tate, "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis."

⁸⁵ Christian Davenport, Will H Moore, and David A. Armstrong, "Waterboarding and Democracy: Do Democratic Institutions Inhibit Torture?," (International Studies Association, 2008).

⁸⁶ Davenport, "Human Rights and the Democratic Proposition."; Christian Davenport, "Multi-Dimensional Threat Perception and State Repression: An Inquiry into Why States Apply Negative Sanctions," *American Journal of Political Science* 39, no. 3 (1995).

⁸⁷ Henderson, "Conditions Affecting the Use of Political Repression." Mitchell and McCormick, "Economic and political explanations of human rights violations."

⁸⁸ M. Rodwan Abouhard and David L. Cingranelli, "The Human Rights Effects of World Bank Structural Adjustment, 1981-2000," *International Studies Quarterly* 50(2006).

countries with human rights prosecutions tend to have lower levels of repression than those without such prosecutions.⁸⁹

Simmons looked at the impact of treaty ratification on human rights performance and concluded that the crucial variables for determining this were regime type and the possibility of domestic mobilization. Treaties tended to have minimal effect in consolidated democracies where the level of respect for human rights was already high and in consolidated autocracies, where the possibilities of mobilization around the treaty objectives was low. In transitional and unconsolidated democracies, however, treaty obligations could provide a focus for reform movements.⁹⁰

Two pieces of qualitative comparative research on torture are also of particular importance. Einolf emphasizes the ameliorative impact over the past two centuries of democratic institutions on the use of torture: he argues that the scope of torture has narrowed to exclude citizens and focuses solely on foreigners and traitors. He points out that the various theories that have explained the decline in torture from the European Enlightenment onwards are not satisfactorily able to explain its resurgence in the twentieth century.⁹¹ Rejali contends that democracies have led a revolution in torture techniques. During the twentieth century, police departments in democracies have had to develop interrogation techniques that do not leave evidence of their use (i.e., do not scar the body). He argues that three different goals account for the varying levels of reliance on “stealth” torture in countries with democratic institutions: the desire to collect security information, coerce confessions to crimes, and intimidate and demobilize members of socially marginalized groups.⁹²

1.5. Measuring torture: some global indices

Several efforts have been made to construct global indices that will show the level of torture by country-year, making the incidence of torture comparable between countries and year-on-year in specific countries. Most of the studies discussed in the previous section use one or other of these indices.

The longest standing such index is the Political Terror Scale.⁹³ The PTS five-point coding scheme was based upon a scale developed by Freedom House in 1980. The data coded comes from the US Department of State Country Reports on Human Rights Practices and the Amnesty International annual reports. Two separate indices are published corresponding to each of the two sources. Coding addresses several aspects of “political terror” – imprisonment on grounds of conscience or non-violent political activity, torture and ill-treatment, extrajudicial executions, disappearances – without disaggregating these. The five levels of coding are clearly defined and reasonably distinct one from the other. The argument against disaggregation is that the impact of the

⁸⁹ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton, 2011).

⁹⁰ Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*.

⁹¹ Christopher J Einolf, "The Fall and Rise of Torture: A Comparative and Historical Analysis," *Sociological Theory* 25, no. 2 (2007).

⁹² Rejali, *Torture and Democracy*.

⁹³ Reed M. Wood and Mark Gibney, "The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI," *Human Rights Quarterly* 32(2010).

different types of human rights violation is not necessarily additive. For example, military dictatorships in the Southern Cone of Latin America largely stopped imprisoning (and torturing) political opponents in the late 1970s, instead “disappearing” them. The proponents of the PTS argue that having a separate score for political imprisonment or torture would give the misleading impression of an improvement, despite the fact that the score for disappearance would increase.⁹⁴

The Cingranelli-Richards (CIRI) indices were developed in part because of perceived shortcomings in the PTS.⁹⁵ CIRI has several separate indices. Torture is included within the index of physical integrity rights, which covers the rights not to be tortured, extrajudicially executed, disappeared or imprisoned for political beliefs. This more or less corresponds to the Political Terror Scale, but data within this index is available in disaggregated form – indeed the country score is arrived at by summing the score for each of these rights. Hence, unlike the PTS, the scores are calculated separately for each right. Data are coded primarily from the State Department country reports, supplemented by the Amnesty International annual reports, with the latter taking precedence in the event of a discrepancy.⁹⁶ The CIRI dataset currently covers the years 1981-2010.

Each right within the physical integrity index is coded on a three-point scale, consisting of 2 (full respect), 1 (moderate respect), and 0 (no respect). Cingranelli and Richards have described how coding is done on the basis of numeric thresholds. Hence a score of 2 would mean that there had been no violations; 1-49 violations would lead to a score of 1; and 50+ violations would lead to a score of 0.⁹⁷ These were chosen on the basis of reliability, to ensure intercoder consistency.⁹⁸ In response to criticism about the arbitrary nature of these numeric thresholds,⁹⁹ Cingranelli and Richards have explained that codes are normally assigned to qualitative descriptions, not numbers, since this is what is available in most instances.¹⁰⁰ This is done on the basis of a number of key terms (“gross,” “widespread,” “routine,” etc), although there does not seem to be complete consistency between the coding guidance provided by CIRI and the description of it provided by Cingranelli and Richards. The crucial role played by keywords in coding points to another underlying problem with the construction of indices from qualitative descriptions. This is, in essence, a form of content analysis. However, whereas content analysis is normally used to study communication – that is, the medium that is being analysed – in this instance the analysis is simply a route to understanding the reality being described. With the exception of the Ill-Treatment and Torture (ITI) project, which will be discussed below, none of the various indices appears to acknowledge the problems deriving from the fact that the sources used – the State Department and Amnesty International reports – have been compiled with a very different purpose than the ranking of countries’ human rights practices.

⁹⁴ Ibid.

⁹⁵ David L. Cingranelli and David L. Richards, “The Cingranelli and Richards (CIRI) Human Rights Data Project,” *Human Rights Quarterly* 32(2010).

⁹⁶ Ibid.

⁹⁷ David L. Cingranelli and David L. Richards, “Measuring the Level, Pattern, and Sequence of Government Respect for Physical Integrity Rights,” *International Studies Quarterly* 43(1999).

⁹⁸ Cingranelli and Richards, “The Cingranelli and Richards (CIRI) Human Rights Data Project.”

⁹⁹ For example, from Wood and Gibney, “The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI.”

¹⁰⁰ Cingranelli and Richards, “The Cingranelli and Richards (CIRI) Human Rights Data Project.”

Wood and Gibney criticize CIRI for data truncation in its “top” category.¹⁰¹ Hence a country with 50 cases of torture will be coded the same (0) as one with 5,000 cases. Cingranelli and Richards respond that all ordinal scales suffer from truncation to some extent and that the coding applied is all that is reliable on the basis of the available sources. CIRI might equally be criticized for the fact that one case of torture will place a country in the same group as 49 cases. One case is likely to be an exceptional phenomenon, with very little likelihood that it is officially sanctioned. Forty-nine cases indicate a more systemic problem.

A review of the CIRI dataset on torture shows that these problems indeed manifest themselves as expected. The 0 category includes at various points: Afghanistan, France, Democratic Republic of the Congo, Argentina (post-democratization), Israel, Azerbaijan, and the United States. The enormous range of circumstances covered by this single classification suggest that it is a blunt instrument, at best, for measuring incidence of torture. At the other end of the scale, Denmark and Canada, for example, find themselves sharing a 1 rating with Afghanistan and the Democratic Republic of the Congo in some years. Once again, the categorization is simply too blunt to be useful. If Cingranelli and Richards are correct in stating that this is the greatest precision that can be reliably achieved, then the whole exercise must surely be called into question.

A third index of torture was constructed by Hathaway for her research on the impact of ratification of human rights treaties.¹⁰² Again the source was the State Department country reports, which were coded on a five-point scale. Hathaway’s coding was again based on keywords. It constitutes the clearest index in terms of distinguishing between the different ratings on the scale. With the exception of the lowest rating (ie no torture), a number of alternative and not entirely synonymous formulations are offered as a basis for coding. For example, the highest rating is described as follows:

At least one of the following is true: Torture is “prevalent” or “widespread”; there is “repeated” and “methodical” torture; there are “many” incidents of torture; torture is “routine” or standard practice; torture is “frequent”; there are “common,” “frequent,” or “many” beatings to death or summary executions; or there are “widespread” beatings to death.¹⁰³

One signal advantage of the five-point scale is that it avoids to a large extent the truncation that is apparent in the CIRI dataset. A review of Hathaway’s dataset shows in particular a sensitivity to the differences at the lower end, so that countries that have isolated instances of torture are not coded in the same category as those with a systemic torture problem. However, the intercoder reliability score, at 80%, was lower than CIRI’s (94%).¹⁰⁴ Hathaway’s dataset covers the period 1985-1999, not using State Department reports before this because they were felt to be unreliable.¹⁰⁵

A review of Hathaway’s coded data on torture indicates that, as with CIRI, there are some improbable results – such as Guatemala only scoring 2 in 1989, at the height of its

¹⁰¹ Wood and Gibney, "The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI."

¹⁰² Hathaway, "Do Human Rights Treaties Make a Difference?."

¹⁰³ Ibid. 1971.

¹⁰⁴ Ibid. 1972. Cingranelli and Richards, "The Cingranelli and Richards (CIRI) Human Rights Data Project." 403.

¹⁰⁵ Hathaway, "Do Human Rights Treaties Make a Difference?." 1972.

civil war.¹⁰⁶ In several instances there are large variations in the same country, year on year. For example, Israel in 1986 scored 1 (no torture at all), for the next three years scored 4 (torture is common) and then reverted to 1.¹⁰⁷

A recent index specifically measuring torture allegations is the Ill-Treatment and Torture Data Collection Project (ITT).¹⁰⁸ This dataset differs from those described above in a number of respects. The ITT project makes explicit that it is a quantification of allegations of torture by a single non-governmental organization “rather than conceptualize INGO reports about human rights as evocative of the performance of states vis-à-vis their international obligations.”¹⁰⁹ They point out that the distinction between actual violations of human rights and allegations “result in validity and reliability challenges,” but that previous human rights data collection projects “have not grounded their efforts conceptually in allegations.”¹¹⁰

The ITT data are also coded to reflect various specific features that are not reflected in the other indices. These include coding variables for Agency of Control (AoC) and Victim Type (PT). This gives greater texture in understanding who is torturing and who is being tortured. The common tendency – reflected for example in the name of the Political Terror Scale – is to subsume torture as a subcategory of political repression, when in many instances it may be directed largely, or even exclusively, at non-political criminal suspects. The ITT data also distinguish between specific allegations of torture and the level of torture alleged to have occurred over the country-year in question. Hence, for example, if there are allegations of torture during an election campaign these will be coded as specific allegations, even if severe and extensive. Conrad, Haglund and Moore regard this difference in coding practice as an important part of the explanation for a divergence in their country-year level of torture measure and the comparable CIRI and Hathaway measures.¹¹¹ Another important distinction is that the ITT project uses all Amnesty International reports as sources of data, not only the annual reports.

The distinction between specific allegations and a broader claim that torture is “routine” or “widespread” may seem reasonable, but appears to misunderstand the nature of Amnesty International’s events-based reporting. Particularly in situations where access is limited, AI will tend to confine itself to reporting those cases about which it has definite information, without drawing any explicit one way or another about the general level of torture. (The ITT does have a separate coding category of Restricted Access, where AI has stated that it, or another international NGO, had difficulty gaining access to detainees.)¹¹²

Although these four approaches are not the only attempts to construct an index of respect for human rights, they are the only current indices to specifically address the

¹⁰⁶ Ibid. 2034.

¹⁰⁷ Ibid. 2035.

¹⁰⁸ Courtenay R. Conrad, Jillienne Haglund, and Will H. Moore, "Disaggregating Torture Allegations: Introducing the Ill-Treatment and Torture (ITT) Country-Year Data," (Charlotte, NC: University of North Carolina, 2012). In their earlier article, discussed below, Conrad and Moore use the CIRI dataset: Conrad and Moore, "What Stops the Torture?."

¹⁰⁹ Conrad, Haglund, and Moore, "Disaggregating Torture Allegations: Introducing the Ill-Treatment and Torture (ITT) Country-Year Data." 1.

¹¹⁰ Ibid. 1.

¹¹¹ Ibid. 9.

¹¹² Ibid. 6.

incidence of torture.¹¹³ Three other approaches must also be considered for the lessons that they may offer in constructing a global index: the Freedom House “Freedom in the World” index, the Transparency International “Corruption Perceptions Index,” and recent efforts by the United Nations Office of the High Commissioner for Human Rights to develop indicators for state compliance with human rights obligations.

The Freedom House index has undergone considerable refinement over the years and is currently compiled as follows. A report for each country is written by a specialist analyst on the basis of news reports, academic studies, NGO material, and first-hand information. There are currently 52 analysts covering 194 countries and 14 territories. Each report author proposes numerical ratings under a number of subheadings in the two broad categories of political rights and civil liberties. Countries are scored on a scale of 1 to 7. The analyst’s proposed scores are reviewed by academic advisors and by Freedom House staff. Particular attention is paid to scores that change year to year.¹¹⁴

The Corruption Perceptions Index is of interest because it is an attempt to measure an activity that, like torture, is conducted in secret and systematically denied or concealed by governments. The CPI uses perception of corruption as a proxy for the level of corruption itself, basing the index on 13 different surveys and assessments (in 2010) produced by a variety of different international institutions.¹¹⁵ The CPI has been heavily criticized on a number of grounds, including the lack of definitional clarity on corruption in the various source materials and the shifting methods used in compiling the index, which makes year-on-year comparison impossible (although still the CPI is used for these purposes).¹¹⁶

The OHCHR has in recent years developed a set of indicators to measure compliance with states’ human rights treaty obligations. This includes indicators on the prohibition of torture and other ill-treatment. Although there are several indicators that would be useful in any attempt to measure the level of torture, their weakness for this purpose is that their intention is rather to measure treaty compliance, so they are directed at a state’s obligations and only secondarily at incidence of torture.¹¹⁷

1.6. Some observations on the torture indices

Using the source data for a purpose for which it was not intended: When the quantitative study of human rights was in its infancy, Goldstein sounded a warning about the gathering of valid and reliable data, citing a presidential address to the American

¹¹³ Although Hathaway’s published index only goes up to 1999, other scholars have used her coding method to update the data. See, for example, Gilligan and Nesbitt, “Do Norms Reduce Torture?.”; Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*.

¹¹⁴ <http://www.freedomhouse.org/report/freedom-world-2011/methodology>.

¹¹⁵ http://www.transparency.org/content/download/55815/891318/CPI2010_sources_EN.pdf;
http://www.transparency.org/content/download/55903/892623/CPI2010_long_methodology_EN.pdf.

¹¹⁶ Fredrik Galtung, “Measuring the Immeasurable: Boundaries and Functions of (Macro) Corruption Indices,” in *Measuring Corruption*, ed. Charles Sampford, et al. (Farnham: Ashgate, 2006).

¹¹⁷ “Report on indicators for promoting and monitoring the implementation of human rights,” UN Doc. HRI/MC/2008/3, 6 June 2008. For a critique, see AnnJanette Rosga and Margaret Satterthwaite, “The Trust in Indicators: Measuring Human Rights,” in *Center for Human Rights and Global Justice Working Paper* (New York: NYU School of Law, 2008).

Economic Association warning against a tendency to perform “sophisticated statistical analysis” on grossly unreliable data – a warning that has often not been heeded.¹¹⁸

Much research in the social sciences and humanities uses raw data that were compiled for a quite different purpose. (The records of the medieval European inquisitions, for example, were intended to offer proof of heresy, but provide the modern historian with evidence of torture in judicial proceedings.)¹¹⁹ However, there are serious problems with the validity of these indices as an accurate comparative measure of the incidence of torture. The compilers of the indices stress the *reliability* of their own coding process, but this rests upon the clarity and consistency of the coding frame, so there is no inherent reason why a high level of intercoder reliability could not be achieved. What is extraordinary is that neither the compilers of the indices, nor the scholars who use them, offer any serious exploration or defence of their validity.¹²⁰ What discussion there is of validity focuses only on secondary issues such as data truncation or thresholds between scores, but these relate to the coding process, not to the fundamental question of whether the source material is susceptible to such coding.

Landman notes that the types of data on human rights generally fall into one of the three categories: events-based, standards-based scales, and survey-based data.¹²¹ Examples of the first would include reports of human rights organizations and NHRIs. Standards-based scales include the Political Terror Scale and the CIRI database. Survey-based data has been gathered in certain limited instances to determine population’s experience of human rights violations. Landman identifies the main shortcomings in the three approaches thus. Events-based data are prone to either under-reporting or over-reporting. Because it is impossible to document every human rights violation, country comparisons are problematic. Standards-based data are comparable, since they raise the level of abstraction. However, they have a tendency to truncate the variation of human rights enjoyment, grouping together various countries that may in reality exhibit a great difference in their protection of human rights. Survey data, Landman says, are prone to cultural biases.¹²²

The additional problem, however, is that standards-based scales are overwhelmingly based upon events-based reports, such as the Amnesty International reports, that have the shortcoming of not being directly comparable. Indeed, Amnesty International explicitly states that its data are not intended to be interpreted thus. The nature of these reports is that they are based upon the events known to the reporting organization. The tendency to under-report is going to be far greater in cases where access is limited or monitoring and reporting is restricted. Hence there is a general tendency for states with more open reporting to appear worse, simply because a larger proportion of actual torture cases will figure in events’ based accounts.

¹¹⁸ Robert Justin Goldstein, "The Limitations of Using Quantitative Data in Studying Human Rights Abuses," *Human Rights Quarterly* 8(1986).

¹¹⁹ Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*.

¹²⁰ A partial exception must be made for the compilers of the ITT scale, who readily acknowledge that their database is a record of *allegations*, not of real levels of torture. Conrad, Haglund, and Moore, "Disaggregating Torture Allegations: Introducing the Ill-Treatment and Torture (ITT) Country-Year Data."

¹²¹ Todd Landman, "Measuring Human Rights: Principle, Practice, and Policy," *Human Rights Quarterly* 26(2004). 919.

¹²² *Ibid.* 923.

The “human rights information paradox”: This measurement fallacy is associated with another one that has been identified by a small number of commentators. Goodman and Jinks, in their response to Hathaway’s article on the impact of treaty ratification, point out that one of the requirements of ratifying a treaty is precisely to report on their compliance with its provisions.¹²³ This is particularly striking in the case of torture, which by its nature is conducted in secret and tends otherwise to be concealed. The paradox will thus be that an increased commitment to prevent and curb torture may actually lead to increased reporting – a point that is apparently not reflected either in the compilation of the global indices or in the articles of those who use them. This is presumably why, for example, the ITT records a consistently worse record for the United Kingdom (the worst possible, in fact), compared with, say, Belarus. Clark and Sikkink describe the broader situation – of increased reporting making human rights situations appear worse – as the “human rights information paradox,” arguing that it creates “information effects” on scholarly analysis based upon “the two major data sources and two major data bases used in much quantitative human rights research.”¹²⁴

Torture as subset of political terror: Much of the scholarship based upon the two principal indices, PTS and CIRI, is founded on an assumption, usually unstated, about the nature of torture – namely, that it is a subset of political terror. This assumption is, of course, contained explicitly within the name and coding method behind the Political Terror Scale. There is also bias in the information published by the data sources. Especially in countries where the flow of information is restricted, it is far more likely that accounts of torture relating to political opponents of the regime will reach human rights organizations (or foreign embassies). Common criminal suspects usually do not have either the knowledge or access to the necessary reporting networks, although this is likely to change in more open societies, especially those with formal complaints and reporting procedures (see above).

Organizations working to document and prevent torture – including Amnesty International – understand very well that torture is not confined to political cases, nor do these constitute more than a tiny minority of cases in many countries. Yet, precisely because their reporting is primarily events-based, this may not be clearly reflected in the source material from which the global indices are constructed. Several of the country case studies discussed make it apparent that while torture may in some circumstances be associated with political risk factors such as terrorism and conflict, in very many instances it is primarily directed at ordinary criminal suspects. (See, for example, the discussions above on Albania, Argentina, and China.)¹²⁵

¹²³ Ryan Goodman and Derek Jinks, "Measuring the Effects of Human Rights Treaties," *European Journal of International Law* 14, no. 1 (2003).

¹²⁴ Ann Marie Clark and Kathryn Sikkink, "Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?," in *Hanser Globalization Colloquium* (New York University 2010).

¹²⁵ Blitz, "Post-socialist transformation, penal reform and justice sector transition in Albania."; Lessa, "Beyond Transitional Justice: Exploring Continuities in Human Rights Abuse in Argentina between 1976 and 2010."; Wu and Beken, "Police Torture in China and its Causes: A Review of the Literature."

2. METHODOLOGY

2.1. *Measuring torture*

As noted in the original project document, one of the most difficult challenges of this research is to find a valid measure for the dependent variable: namely, the incidence of torture (or more precisely the reduction in the incidence of torture). Two particular and related obstacles were noted:

First, that torture, being nominally prohibited in all instances, is invariably conducted in secret.

Second, where records of torture cases are available – through court proceedings or monitoring or complaints bodies – this is most likely to be the result of institutional efforts to prevent torture. Hence recorded instances of torture may increase at the very moment when the actual incidence may be expected to decrease.

The literature review has shown that scholarly efforts to explain factors leading to an increase or decrease in torture levels have not generally succeeded in overcoming these obstacles. Much of what has been written from a legal or normative perspective tends towards circular reasoning, with adoption of certain pre-identified norms being taken as evidence of reduced torture. Quantitative social science studies have almost invariably used one of three global indices of torture: the Political Terror Scale, the Cingranelli-Richards index (CIRI) or the Hathaway index, of which the shortcomings have been discussed. Of the three existing indices, Hathaway's is the most suitable for our purposes. It is aimed solely at measuring torture, not other forms of political terror. It is a five-point scale, which makes it possible to capture variations in the incidence of torture without excessive truncation. The criteria for coding are clear:

1: There are no allegations or instances of torture in this year. There are no allegations or instances of beatings in this year; or there are only isolated reports of beatings by individual police officers or guards all of whom were disciplined when caught.

2: At least one of the following is true: There are only unsubstantiated and likely untrue allegations of torture; there are "isolated" instances of torture for which the government has provided redress; there are allegations or indications of beatings, mistreatment or harsh/rough treatment; there are some incidents of abuse of prisoners or detainees; or abuse or rough treatment occurs "sometimes" or "occasionally." Any reported beatings put a country into at least this category regardless of government systems in place to provide redress (except in the limited circumstances noted above).

3: At least one of the following is true: There are "some" or "occasional" allegations or incidents of torture (even "isolated" incidents unless they have been redressed or are unsubstantiated (see above)); there are "reports," "allegations," or "cases" of torture without reference to frequency; beatings are "common" (or

"not uncommon"); there are "isolated" incidents of beatings to death or summary executions (this includes unexplained deaths suspected to be attributed to brutality) or there are beatings to death or summary executions without reference to frequency; there is severe maltreatment of prisoners; there are "numerous" reports of beatings; persons are "often" subjected to beatings; there is "regular" brutality; or psychological punishment is used.

4: At least one of the following is true: Torture is "common"; there are "several" reports of torture; there are "many" or "numerous" allegations of torture; torture is "practiced" (without reference to frequency); there is government apathy or ineffective prevention of torture; psychological punishment is "frequently" or "often" used; there are "frequent" beatings or rough handling; mistreatment or beating is "routine"; there are "some" or "occasional" incidents of beatings to death; or there are "several" reports of beatings to death.

5: At least one of the following is true: Torture is "prevalent" or "widespread"; there is "repeated" and "methodical" torture; there are "many" incidents of torture; torture is "routine" or standard practice; torture is "frequent"; there are "common," "frequent," or "many" beatings to death or summary executions; or there are "widespread" beatings to death.¹²⁶

Hence the proposed starting point is the Hathaway index, supplemented by scores for the period 1980-84 and updated to the present. However, it will be essential to modify the Hathaway scores, using all other available data sources: treaty body reports and reports of the Special Rapporteur on Cruel, Inhuman or Degrading Treatment or Punishment; reports of visiting mechanisms and national human rights institutions; official government data, including judicial proceedings; national and international NGO reports; interview data; and also the PTS and CIRI scores.¹²⁷ Particular focus will be on changes in the score by country-year. In the quantitative studies discussed in the literature review, the various independent variables are tested for their relationship with the year-on-year changes in one or other of these indices. Yet, as illustrated by the examples cited, changes frequently reflect nuances in the source text rather than any actual alteration in the practice of torture.¹²⁸ Hence, in recoding the Hathaway scores, it will be particularly important to review and justify any change in the score (using a similar approach to that taken by Freedom House).

This will obviously be a highly labour-intensive exercise, which could not at this stage be the basis for constructing a *global* torture index. It will, however, be perfectly feasible for the five pilot countries and later the 12 countries selected for the main research project.

¹²⁶ Hathaway, "Do Human Rights Treaties Make a Difference?" 1970-1971.

¹²⁷ As well as by reference to the State Department reports from which it was originally coded.

¹²⁸ This is true even if a longer interval than a single year is scored. In the five country worksheets attached to this report, we have recorded five-yearly scores for each country on the PTS, CIRI and Hathaway indices. As well as diverging considerably one from the other, the scores for each country by any one of the indices does not obviously correspond to accounts of the level of torture by comparison with other source material consulted (treaty body reports, NGO reports etc).

2.2. Preconditions and preventive mechanisms

The various possible causal factors leading to a reduction in the risk of torture fall into two categories: broad political and social preconditions and specific preventive interventions.

Broad preconditions identified in much of the quantitative literature include democracy, economic development, and absence of conflict. In addition, various country case studies observe that fear of crime can be an important factor leading to torture. Some case studies, as well as observations by treaty bodies and the UN Special Rapporteur on Torture, identify a particular issue with federal states, usually where treaty commitments undertaken by the national government are not implemented by authorities in the subsidiary governmental units of the state.

Various preventive interventions can be identified from a combination of the normative literature, drawing primarily on states' international legal obligations, and case studies. These interventions are both legal (treaty ratification, criminalization of torture etc) and practical. It will be necessary to determine both the procedures existing in law and the extent to which these are observed in practice. In addition, we compiled a spreadsheet of recommendations by various international bodies in order to identify potential variables.

A working list of these variables is as follows:

Democracy

- Elections
- Checks on executive power
- Independence of the judiciary
- Freedom of expression, association and assembly
- Independent and active civil society

Conflict

- Internal armed conflict
- International armed conflict
- Terrorism

Crime

- Homicide rate

Federalism

- Central v regional control

Law

- Incorporating international law
 - Treaty ratification

- Criminalization
- Exclusionary rule
- Right to a remedy
- Rules and procedures
 - No incommunicado detention
 - Prompt access to a lawyer
 - Prompt presentation before a judge
 - Medical supervision from moment of detention

Detention procedures

- No incommunicado detention
- Prompt access to a lawyer
- Prompt presentation before a judge
- Medical supervision from moment of detention
- Independent prosecutorial supervision

Complaints

- Access to complaints mechanism
- Investigation of all allegations of torture
- Recommendations to authorities (redress/prosecution)

Prosecution

Monitoring

- Domestic mechanism
- International mechanism

National human rights institution

Training

We have developed a worksheet (Appendix 1) that scores each of these variables by country-year at three-yearly intervals. Incidence of torture has been scored according to the three main global indices: Political Terror Scale, CIRI, and Hathaway. Broad conditions are scored according to existing indices: Polity IV for regime type; Freedom House for civil liberties and political freedoms; Correlates of War for conflict; UN Office of Drugs and Crime data (and sometimes World Bank data) for homicide rates.¹²⁹ Legal conditions are scored by consulting legal and treaty databases. Actual practice is scored by consulting treaty body reports and concluding observations, monitoring reports, and reports of NHRIs and national and international NGOs. In the course of country studies these will be supplemented with additional quantitative data, as well as extensive information derived from interviews.

¹²⁹ These are not all entirely adequate measures and are used for working purposes. For example, old Freedom House data are not readily available, Correlates of War data appear to have serious gaps for some of the countries reviewed; and UNODC numbers have large gaps.

2.3. Data analysis

We will use a combination of detailed qualitative histories and quantitative analyses to explore the relationship between the preventive intervention mechanisms we have identified as potentially important and the degree of torture found in the seventeen countries included in our study. A quantitative analysis is possible because, although we have only a limited number of countries included in the study (especially in the initial, pilot phase), each country will be represented several times in the database, at different periods in time. For example, Turkey will appear as 11 cases: Turkey 1980, Turkey 1983, Turkey 1986 and so on until Turkey 2010. (We will use three-yearly intervals rather than successive country-years, as used by most of the comparative studies cited, because of the difficulty of accounting accurately for year-on-year changes in score.)

The primary quantitative technique we will use is multivariate regression. Regression allows us to determine the relative strength of the relationships between a host of potential causal factors, or independent variables, and the dependent variable, in this case, the degree of torture. However, because the data we will employ is time-series cross-sectional data, “corrections” typical for this type of analysis will be adopted.

In addition to a time-series quantitative analysis, we will employ Qualitative Comparative Analysis (QCA) to examine the relationship between the preconditions we have hypothesized as accounting for the lack of torture: democracy, the absence or perceived threat of conflict, and relatively low levels of serious crime (especially homicide).

QCA has been developed for providing a rigorous approach to comparative case studies in instances where the relevant information may be difficult to quantify or where one of the objects of study is the interplay of a variety of causal factors. It works by using Boolean logic, expressing outcomes and causal conditions in dichotomous terms (e.g., Does the country employ torture? Is the country a democracy? Is the country involved in an external or internal conflict?) The information is assembled as a “truth table” that includes all logically possible combinations of causal conditions and outcomes (whether or not they actually exist).

QCA will make it possible to determine which factors, or combinations of factors, are necessary or sufficient to prevent torture. It will allow us to go beyond such relevant preventive interventions as treaty ratification, visits to closed institutions, training, and legal reforms, to conditions in the broader political and social context. A common scenario for improved torture prevention is one in which preventive interventions result from an improved political environment, such as the end of an authoritarian governmental system. Yet it will be important to determine whether improved torture prevention would result from the change in political environment alone, or whether the specific interventions are required. Conversely, it would be important to establish whether a similar portfolio of preventive interventions would be effective in the absence of these political preconditions. In other words, it should be possible to determine both the necessity and sufficiency of particular factors that tend to lead to a reduction in the risk of torture.

2.4. Country selection

We have used our review of the literature to identify five countries for the pilot phase. There were several criteria for selection, beyond the practical consideration that it should be possible to visit and conduct research in each of them. We were seeking a spread of geopolitical regions, at least some countries that exhibited an apparent reduction in the incidence of torture over the past 30 years, and some variance across countries in the hypothesized causal factors. The five countries for the pilot are:

Argentina
Nepal
Turkey
Uganda
United Kingdom

The “long list” of possible countries for the main study is as follows:

Africa:
Benin
Ghana
Kenya
Madagascar
Mali
Rwanda
Senegal
South Africa
Togo
Zimbabwe

Americas:
Brazil
Chile
Colombia
Honduras
Mexico

Asia-Pacific:
Cambodia
India
Indonesia
Maldives
New Zealand
Pakistan
Philippines
Sri Lanka
Thailand

Europe & C Asia:
Armenia
France
Georgia
Kazakhstan
Kyrgyzstan
Moldova
Montenegro

Russia

MENA:

Egypt

Lebanon

Morocco

The list is not necessarily exhaustive (although already three times too long), and further suggestions are still welcome. This list will be finalized on completion of the pilot phase.

Checks on Executive Power												
Independence of Judiciary												
Independent and Active Civil Society												
Federalism: Central Government v. Regionalism												
Conflict: General Information												
<i>Correlates of War Index</i>												
War – International or Civil												
Political Insurgency short of civil war												
Threat of Terrorism												
Level of Crime: General Information												
Homicide rate												
<i>UNODC data</i>												

	1980	1983	1986	1989	1992	1995	1998	2001	2004	2007	2010	Comments
Law I: Incorporating International Law												
Treaty Ratification: CAT & OPCAT												
Criminalization of Torture												
Exclusionary Rule												
Right to a Remedy												
Law II: Rules and Procedures												
No Incommunicado Detention												
Prompt Access to Lawyer												
Prompt Presentation before a Judge												
Medical Supervision												
Detention Procedures												

No Incommunicado Detention												
Prompt Access to Lawyer												
Prompt Presentation before a Judge												
Medical Supervision												
Independent Prosecutorial Supervision												
Prosecution of Torturers: General Information												

	1980	1983	1986	1989	1992	1995	1998	2001	2004	2007	2010	Comments
National Human Rights Institution												
Complaints												
Access to Complaints Mechanism												
Investigation of all Allegations of Torture												
Recommendations to authorities (redress/prosecution)												
Monitoring												
Domestic mechanism												
International mechanism												
Training												
Police												

Prison Officers												
Judges/Prosecutors												