

Ill-treatment and torture in demonstrations and other non-custodial settings. How can academic research help in the discussion?

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The events in October 2017 in Catalonia exemplify the difficulty of establishing what ‘excessive use of force’ means¹. Images of violent repression of defenceless people of all ages waiting to vote accompany the Spanish government’s spokeswoman reiterating in the media that what the police forces are doing is “proportional” and therefore allegedly adequate. Can scientific research add to the debate on what is “proportional” and when an intervention in non-custodial settings enters into what is banned under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)? This is not a minor issue. According to international databases, from an epidemiological point of view, torture happens mainly in prisons and police stations linked to marginalised populations. Ill-treatment and torture against political dissidents and protesters is less frequent, but widespread, affecting around 70% of countries across the world (Conrad, Haglund, & Moore, 2013)

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (SRT) has recently not only made a set of recommendations on regulating the use of excessive force in non-custodial settings, but also made it clear that use of force can amount to torture. Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality), amounts to cruel, inhuman or degrading treatment or punishment (CIDT). Additionally, if the person is powerless (that is, a person who is under direct physical or equivalent control and is unable to escape or resist), and the action is intended to inflict pain or suffering for a certain purpose, he considers that it will amount to torture irrespective of the above considerations of lawful purpose, necessity and proportionality (SRT, 2017 p 23). This should be the standard of reference from now on.

Even the failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force, contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction (SRT, 2017 pp 23).

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¹ See for instance <https://www.amnesty.org/en/latest/news/2017/10/spain-excessive-use-of-force-by-national-police-and-civil-guard-in-catalonia/>

Until recently, International courts have always been reluctant to take this stance. The SRT follows and consolidates the doctrine stated by the European Court of Human Rights (ECHR) in *Cestaro v. Italy 2015*² and *Bartasaghi Gallo and Others*³ v. *Italy 2017*. In both these cases, the Court found that the violent punching, kicking and beating with rubber truncheons of anti-globalisation protestors in Genova in 2001 amounted to torture. In contrast, judgments emanating from the Inter-American Court of Human Rights have, at the very most, considered such actions and even more serious physical abuse as only amounting to CIDT. In *Finca La Exacta vs Guatemala 2002*, the court considered “disproportionate” an intervention on peasants who were on private, occupied land⁴ that ended with three persons shot dead. The long-awaited outcome of the case of the women of Atenco, admitted in

September 2016, where 11 women claimed to have been sexually assaulted by the Mexican police after a demonstration and whether it will result in a finding of torture or CIDT is likely to be determinative for future similar cases⁵. Furthermore, the UN Committee against Torture has also expressed concern over the excessive use of force by law enforcement officials during the policing of demonstrations or crowd control.⁶

Can medical and psychological research contribute anything to this legal debate on the excessive use of force and its relation to torture?

Intentionality and purpose. Police brutality or police torture? Babovic (2000) argues for the need to distinguish police brutality from police “torture”. He claims that excessive use of force is often caused by the need—and potentially legal

² The case involved a 62-year-old demonstrator, who was being compliant and surrendering, by an Italian police officer who beat him with a hand-held baton to the point where he suffered fractures and other injuries amounting to torture.

³ The Court noted that, although none of the victims showed violence or resistance, and although all of them were manifestly unarmed, asleep or sitting with their hands raised above their heads, the police systematically and indiscriminately subjected each of them to violent beatings, intentionally inflicting severe physical and psychological suffering for the purposes of retaliation and humiliation through the use of excessive, indiscriminate and manifestly disproportionate force.

⁴ A group of families occupied a landowner’s property to protest over their salary and living conditions. The operation to detain three persons ordered by the local court involved 200 special agents with the use of tear gas and support by helicopters. It ended with three peasants dead and 11 severely beaten. The Court considered that the intervention was legitimate but disproportionate and amounted to CIDT.

⁵ There were clashes in 2002 in protests against the planned construction of a new international airport for Mexico City. In 2006, new clashes followed the expulsion of eight downtown flower vendors by the police from their traditional places in the local market. The latter confrontation marked the beginning of a series of demonstrations and riots, which lasted over a week and resulted in over 100 arrests and numerous allegations of human rights abuses committed by the police against the local population, including the detention of forty women, 11 of whom claimed they were sexually assaulted while in detention and in transport to the police station.

⁶ For example, Concluding Observations of CAT: Canada, UN Doc. CAT/C/CAN/CO/6 (2012) §22. 362 Concluding Observations of CAT: Denmark, UN Doc. A/52/44 (1997) §182; Sweden, UN Doc. A/52/44 (1997) §222. Concluding Observations of CAT: Syria, UN Doc. CAT/C/SYR/CO/1/Add.2 (2012) §20(j). 364 Concluding Observations of CAT: UK, UN Doc. A/54/44 (1999) §76(g). 365 Concluding Observations of CAT: Canada, UN Doc. CAT/C/CR/34/CAN (2005) §4(i); Canada, UN Doc. A/56/44 (2001) §58(a).

right—to “establish control” and that police officers often act improperly in anger, frustration or in fear of a real or imagined aggression⁷. In such a case, there would not be a clear purpose according to the examples suggested by the Convention against Torture (UNCAT) definition and it therefore should not be considered as CIDT or torture, but as “excessive use of force”. This position, quite popular in local and national courts to avoid sentencing police involved in violent actions in the repression of collective movements, is misleading: (a) purpose is a necessary requirement for torture, but not for CIDT. It is enough to credit severe mental or psychological suffering by State agents not being part of a lawful sanction (Neziroglu, 2007); (b) studies show that an important percentage of use of force actions are linked to officers confronted with situations that challenge their identity (e.g., displays of citizen disrespect). These actions to “defend identity” can often equate to the purposes of humiliation or punishment included in the Convention (Felson & Tedeschi, 1993); and, (c) selected jurisprudence and SRT reports have stressed the relevance of the criteria of “defencelessness” when analysing excessive

use of force incidents. Defencelessness in itself might turn a CIDT situation into torture (Nowak & McArthur, 2006; Special Rapporteur Against Torture, 2017)

Torturing system. Repression of dissidents. Additionally, although the definition in UNCAT arguably focuses on the interaction between one person (tormenting agent) and another (tortured person), torture has an undeniable social dimension. In its extreme form, torture is a social institution of power and dominance; it is part of a torturing system that designs, plans, hides and guarantees immunity and it uses victims to threaten and demobilise every layer of society. According to this sociological model, the purpose of violent actions in assemblies, demonstrations, protests and other non-custodial collective settings are demobilisation, fear, control and submission of the individual and the collective. There surely can be a purpose in police brutality that is covered by the examples given by the Convention.

Interestingly enough, political science has studied since the 1970’s the relationship between state repression and social mobilisation⁸. The available data show that there is not a linear relationship between repression and demobilisation. In a review of studies, Davenport (2007) surveillance/spying, bans, arrests, torture, and mass killing by government agents and/or affiliates

⁷ This idea that torture and police brutality are different things is reflected in the use of what could be considered euphemistic language. For instance, the Manual on Use of force and Detainee Injury Reporting of the Detroit Police Department labels *Serious Use of Force* to “Any action by an officer that involves: 1) The use of deadly force, including all critical firearm discharges; 2) A use of force in which the person suffers serious bodily injury or requires hospital admission; 3) A canine bite; and 4) The use of chemical spray against a restrained person”. All of them actions that for an external observer could perfectly be considered as potentially amounting to ill-treatment or torture. (DPD, 2012)

⁸ State repression is defined in political science as the actual or threatened use of physical sanctions against an individual or organization, within the territorial jurisdiction of the state, for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions. CIDT and torture are among the most severe forms of state repression (Davenport, 2007)

within their territorial jurisdiction. Over the past 40 years, the systematic study of state repression has grown considerably. The development of this work, however, has been uneven. Though unified in their focus on the problem of order (i.e., trying to ascertain how political authorities wield coercive power amid potential and actual domestic challengers finds what he calls the “Punishment Puzzle”: sometimes the impact of repression on dissent is negative, sometimes it is positive, sometimes it is represented by an inverted U-shape, sometimes it is dynamic and alternates negative or positive and sometimes it is nonexistent. We still do not have a clear map of key variables that help to explain the consequences of political repression on social and political movements.

Measuring use of force in citizen encounters. Use of force is difficult to demarcate and observe. It can be broadly defined as any situation where, in the execution of their duty, police use verbal or physical force or other techniques, including a weapon, instrument or implement to respond to an actual or perceived threat (Hine, Porter, Westera, & Alpert, 2016).

There have been several attempts to measure it for academic research. Alpert and Dunham (1997) developed the Relative Force Factor Model (RFFM) to measure the proportionate use of force by control agents. In the model, both officer’s force and level of suspicion of resistance is measured in a continuum. The relative force factor score is calculated by subtracting the suspect’s highest level of resistance to the force used by police. Terrill, Alpert, Dunham, & Smith (2003) refined this model in the RCFS (Resistance Force Comparative Schema) model. The RCFS model tries to define proportionality not as a static variable (the maximum level of force used by actors in

a certain encounter), but in a dynamic way by which a comparison is made at different time points.⁹ For example, if a police officer uses pepper spray on a calm person, this is likely to provoke an aggressive reaction in the person and bystanders may react, which may in turn lead to the police using maximum force, physically threatening the bystanders and beating and handcuffing the originally calm person. The RFFM model, based on its maximum measure, would set out that such a reaction is a proportionate intervention, as the detainee used physical resistance and the police answered with pain compliance. The RCFS measure would split the interaction in a sequence of events, measure proportionality in each moment of the sequence and obtain an overall score of whether the intervention was proportionate.

Using this dynamic model, Paoline and Terrill (2011) raise different scenarios of resistance of a citizen (verbal resistance, passive physical resistance, non-assaultive physical reaction (i.e. going away; hiding parts of their body to avoid arrest), and assaultive physical reaction). They analyse the response considered appropriate by the police in a coercive escalation (verbal threats, verbal commands and threats, pain compliance techniques (e.g., pressure point control), soft empty-hand techniques (e.g., grabbing, shoving), hard empty-hand techniques (e.g., striking with fists), chemical-irritant sprays (e.g., oleoresin capsicum), electronic devices (e.g., TASER gun), baton, and projectile launchers

⁹ By using this dynamic measure, the *immediacy criteria*, a fundamental criteria in some penal codes, would be included: If a threat to police has not yet materialised, a forcible response is too early and constitutes pre-emptive force; if the threat has passed, a forcible response is retaliation.

(e.g., beanbag). In a research study with a sample of more than 1000 police officers from different areas of the US, they found out that most of the respondents self-declared very conservative responses (zero to negative values in RCFS measures), although between 5% to 10% of police officers depending on geographical area, reported escalating to forms of maximum aggressiveness in the face of comparatively minor events (scores of +2 to +6) without the authors being able to define a clear sociodemographic pattern of the “high risk” policemen¹⁰. Academic research clearly points out the need of clear regulations in all kind of scenarios and for political decisions on accountability in cases of abuse.

Table 1 Resistance/force continuum and Resistance Force Comparative Scheme (RFCS)

Resistance/force continuum			
Levels of suspect resistance		Levels of police force	
1: No resistance		1: No force	
2: Passive		2: Command	
3: Verbal		3: Threat	
4: Defensive		4: Restraint and control	
5: Active		5: Pain compliance/takedown	
		6: Impact	

Resistance Force Comparative Scheme (RFCS)			
Suspect resistance	Less force	Commensurate force	More force
1	-	1, 2	3, 4, 5, 6
2	1	2, 3	4, 5, 6
3	1, 2	3, 4	5, 6
4	1, 2, 3	4, 5	6
5	1, 2, 3, 4	5, 6	-

¹⁰ Klahm & Tillyer (2010) reviewed all available research on use of force published in peer-reviewed journals between 1995 and 2008. Most of the variables used throughout the literature seem to have a mixed relationship with or appear to be poor predictors of use of force by police. For example, analysis of available evidence regarding officer experience and use of force shows that in some studies more experienced police were less likely to de-escalate, in others more experienced police recommended using less physical violence while some studies suggest that more experienced police were simply less investigated by internal affairs.

Research using the relative force model is just beginning and has relied mostly on samples from the US and Australia (Hine et al., 2016). It is promising not only as a measurement tool for force (Hickman, Atherley, Lowery, & Alpert, 2015) but the reliability of the method has yet to be intensively studied. Using official reports from the Seattle Police Department during a two-and-a-quarter-year period (n = 1,240, but also as a tool for policing agencies to identify ‘high at risk’ officers (Bazley, Mieczkowski, & Lersch, 2009) simply tracking the number these reports fails to appropriately identify problematic officers. We explore this concern by determining whether frequency and intensity of force use relative to resistance (as indicated by number of use-of-force reports submitted).

In a summary of available studies on violent interactions, results point out that police officers tend to use more physical violence when (a) the offence is perceived as more serious, (b) when they perceive the suspect to have less authority than themselves, (c) the subject is verbally but not physically aggressive, (d) a greater number of officers are involved in the situation, and, (e) the policemen have extra resources available to control the subject. Police officers are less likely to resort to physical violence (a) If the person is exceedingly resistant, (b) looks fit, (c) the officer perceives environmental risks, (d) bystanders are present (Alpert, 2004; Bolger, 2015; Terrill, 2005; Weisburd, Greenspan, & Hamilton, 2000) proportionality and incrementalism.

We need more refined and ecological models, which take into account the fact that police behaviour is not only based on personal characteristics but also on a constellation of factors ranging from patterns of encounters and personal experiences to community, political and

work contexts. Stewart (2013) has tried to build such a model by measuring use of force through a scale that takes into account what he calls circumstantial evidences: information that the police had previous to the intervention, characteristics of the citizen involved (age, mental health status etc), measures of threat that the citizen poses against himself or others, severity of the alleged offence etc. The result is the Constitutional Force Analysis Tool (CFA) a very complex integrative measure of use of force by state agents. Although this is a very comprehensive tool, the data are so specific that it can only be carried out through an administrative self-report done by the agents after an intervention.

It seems logical to assume that a report that can have legally and administratively adverse consequences for the security agents involved, probably is a poor source of reliable information. In CFA, no contrast with witnesses, other officers or the alleged victims is carried out. In relation to that, one of the black holes in academic research are estimates of the reliability of police reports of incidents. Klinger & Brunson (2009) offer some preliminary studies on a high frequency of perceptual distortions potentially leading to erroneous decisions and erroneous reporting during critical incidents. But as these same authors recognise “police officers have been known simply to lie” (Klinger & Brunson, 2009 p 135) to protect themselves. The extent of such lying is also one of the great unknowns within the policing world. A reliable measure of inaccuracy of police declarations in excessive use of force incidents would be of great help for an overall picture of the problem.

Bad apples or bad orders. A balanced use of force may well be the norm in non-custodial interventions, especially in democratic countries (Harris, 2009). The

idea that typically only a small number of officers account for a disproportionate percentage of the total number of complaints of use of excessive or unnecessary force was already suggested by the General Force Research, a multicenter US study in the 1990’s (Adams, 1996) and has consistently been confirmed since (William Terrill & Ingram, 2016).

These data do not however show whether there are simply always a number of “bad apples” in any given group, or whether there is a small trained group of officers (quite often not publicly recognised and recognisable) that is “allowed” to use excessive force and subsequently protected, or there is a lack of adequate control of violent units. Available academic data seems to give more support to this latter systemic hypothesis. Terril (2005) analysed 3,340 use of force incidents from three US agencies with the focus on policy direction and restrictiveness. The results show that officers working within the most restrictive policy framework used force less readily than officers who operated within more permissive policy environments. Data suggest it is a problem of environment and orders, not of bad apples. Chappel and Lanza (2009) used an anthropological observational methodology in a US police academy and found out that despite the philosophical emphasis on community policing and its themes of decentralisation and flexibility, the most salient lessons learned in police training were those that reinforced the paramilitary structure and culture.

Non-lethal weapons. The debate on excessive use of force as CIDT or torture is necessarily linked to the debate on the use of the so-called non-lethal weapons. Interestingly, in Terrill and Paoline’s study (2012) police officers considered the use of chemical and electronic weapons at very

early stages in a process of escalation of conflict, before physical force. This shows the widespread idea that these weapons are a legitimate way of avoiding violence, while in fact they are a very violent way to solve a conflict.

Amnesty International (AI) (2015) has recently produced a manual that endorses the use of the so-called less-lethal weapons to control riots and public demonstrations (chemical irritants, sound devices, electric shock devices (either projectiles or stun batons), kinetic impact weapons (and specially rubber balls and pellet firing shot guns) and water cannons. Amnesty's position is that, if

properly regulated, their use is an advantage over conventional firearms. Having different types of devices to confront a threat, in their view, would minimise the use of fire-arms and suggests they must be available as a standard for law enforcement agencies. The AI report is focused on the legal perspectives and does not develop in-depth social, medical or psychological considerations, where arguably the debate on CIDT/torture should be. Even the expression less-lethal weapons recognises the fact that no technology can be guaranteed to be non-lethal. They are weapons that are sold as having low risk of permanent injury or death, as if this were the only relevant criteria.

Table 2: *Less-lethal weapons as related to CIDT and torture*

Humiliating or Degrading	<ul style="list-style-type: none"> • Malodorant water cannon • Color painting cannon
Highly likely that third persons or bystanders are affected	<ul style="list-style-type: none"> • Pellet firing shot guns • Sonic weapons, chemical irritants, water cannons
Likely that vulnerable citizens might be badly damaged	<ul style="list-style-type: none"> • Gas and chemical irritants (asthma, hyper sensibility to components). Deaths have been reported. • Electric devices (cardiac patients). Deaths have been reported. • Sonic weapons (sonic bullets, cannons...). Damage to internal organs, hearing loss, eye damage. Deaths have been reported.
Highly likely that instructions of use regulations cannot be followed in a stressful situation eventually provoking severe damage or lethal consequences	<ul style="list-style-type: none"> • Rubber coated metal bullets (eye loss / brain concussions, kidney damage) • Water cannons (eye loss, head concussion)
Highly likely facilitating CIDT/ Torture by the level of suffering inflicted	<ul style="list-style-type: none"> • Electric shock devices that do not have a cut-off point • Electric gun that act as a direct contact weapon • Thumb-cuffs • Spiked batons, extendible defences • Whips
Inherently considered CIDT/ Torture	<ul style="list-style-type: none"> • Body-worn electric shock belts

Source: Re-working of information included in AI (2015).

The truth is that besides being humiliating, some of them are considered extremely dangerous, and that the available epidemiological evidence shows that their use entails a higher risk of injury to citizens than traditional use of force (Crowley, 2016; Haar, Iacopino, Ranadive, Weiser, & Dandu, 2017) due to at least four reasons: (a) it is very difficult to respect instructions of use amidst the chaos of an intervention (i.e. minimum distance at which a human being can be shot safely with a rubber ball); (b) some of them constitute collective punishments as it is almost impossible to act selectively and bystanders, third persons or even demonstrators who are trying to help in keeping an action as a non-violent movement will be equally affected; (c) there are always especially vulnerable populations (i.e. citizens with cardiac vulnerabilities, asthma or others); (d) it is very difficult to control abusive use (i.e. using electric shots in a defenceless person as a punishment). The use of body-worn cameras solves some but not all these problems.

Additionally, some of these implements (especially electric-shock devices) can be used as torture tools in the interrogation of detainees and their availability in countries where no control can be guaranteed is a real risk.

The necessity and legitimacy criteria. Reasons for using force against citizens. Felson & Tedeschi (1993) defined from a set of interviews with police officers three reasons for use of force against citizens: (1) establish control of a situation; (2) desire to achieve or restore justice according to an assessment of blameworthiness; (3) self-presentation or “to establish or to protect identities”¹¹. According to this classification,

only control situations would allow for force to be legitimate, while achieving justice and establishing identity should be considered as unlawful use of force.

Since disrespectful behaviour should not form the basis for a legal response, while resistance does, some countries have legislated to consider “disrespect” as legally punishable. If the measure of excessive use of force and the measure of resistance are complex, the measure of “disrespect” is simply impossible, opening a space for arbitrary actions from police. Even more concerning and objectionable is the fact that in some national penal codes offences linked to Disrespect or Resistance to Authority have severe penalties including sometimes measures of deprivation of liberty, the purpose of which is too often to deter social activists. This can also lead to police charging on these grounds to avoid accusations of excessive force, for example, particularly when, in the absence of witnesses or video-recordings, the police version of the encounter always prevails.

From the citizen’s point of view. Protests entail many emotions in participants. There are at least three objects of emotion: the opponent, the in-group, and contentious issues. Protesters are likely to experience negative emotions towards their opponent and the contentious issue, while they most likely feel positive emotions towards the group they identify with. The analysis of individual and collective emotions during protest have shown a

in the presence of third parties. Officers are socialised to “maintain the edge” and be “one up” on citizens not only to establish control, but to ensure proper respect. As a result, officers confronted with situations that challenge their identity (e.g., displays of citizen disrespect) may be countered by a more forceful response.

¹¹ This concern for self- presentation is even greater

direct relationship between police actions, collective positive or negative emotions and escalation of conflict potentially leading to violence (Troost, Stekelenburg, & Klandermans, 2013)¹².

Using data from the UK, where there are strong supervision mechanisms, Smith (2009) found out that only 7% of citizens suffering police misconduct filed a complaint (and an additional 6% tried unsuccessfully and gave up), while less than 5% of these complaints were substantiated after investigation. In a review of US studies Terrill and Ingram (2016) showed that only between 0 and 12% of complaints against police use of excessive use of force were later sustained by investigative bodies when the case was considered by an internal process of the police.

According to the UK data, the main reason (62%) for those who did not complain was finding it a useless action. This was not far from reality as in those cases where the officer was found guilty, the research showed that this led to no more than a conversation with a supervisor or a minor administrative sanction. The second more frequent reason not to complain was that it took a lot of time and work. In other countries, it must be added that, as stated above, filing a complaint can have strong negative consequences for the person if she is counter-denounced by disrespect or resistance to authority.

Additional ways to discourage or discredit citizen allegations of excessive use of force is to detain the person, which

also presents the police with an occasion to negotiate with the potential complainant and suggest not to bring charges if a legal claim is not made (Smith, 2009) or to inform through media only of violent intentions or behaviours in demonstrators creating a social climate of fear and a social narrative prone to social rejection of demonstrators and justification of torture (Bolshia, Gautier, & Flores, 2016).

Additionally, participation in social movements is a stressful event in itself (Lau et al., 2017; Matthies-Boon, 2017) and suffering police violence can be an extremely disturbing experience. In the short term, acute stress disorders, post-traumatic stress disorder (PTSD) and depression are common among victims (Unuvar et al., 2017) called Gezi Park Demonstrations. Between 31 May and 30 August, 297 people who had been subjected to trauma by several methods of demonstration control and Riot Control Agents applied to the Human Rights Foundation of Turkey Rehabilitation Centers to receive treatment/rehabilitation and/or documentation. 296 patients except one 5-year-old child were included in the study. Of the 296 patients; 175 were male, 120 were female, and one was a transgender individual. The highest number of applications was received by the Istanbul center with 216 patients. The mean age of applicants was 33.85, and the age range was 15-71 years. While 268 of applicants (91%, with in some cases a shattering of one's assumptive world in the long term (Matthies-Boon, 2017) precluding legal actions in the initial weeks after the clash, when the legal claim must be done. Psychosocial and psycho-legal accompaniment might help in this case, although non-governmental organisations also face the risk of being stigmatised or prosecuted (INCLO, 2013). Finally,

¹² This is why some scholars propose that any measure of excessive use of force should also include a scale of de-escalating of conflict to analyse tactics used by police to prevent use of violence (Stewart, 2013).

sometimes complainants lack support - and are even accused of deserving prosecution - from relatives or friends due to it being a free choice to participate in a social and political action knowing the risks potentially involved. However, more research is necessary.

More studies are needed generally on the physical and mental suffering caused by police violence in non-custodial settings and more particularly, research is clearly needed to document cases of potential CIDT or torture.

Who controls the controllers? The jurisprudence of the European Court of Human Rights (ECHR) uses the terms ‘hierarchical and institutional’ and ‘practical’ independence (or ‘organisational’ and ‘functional’ independence) when CIDT and torture claims are investigated in the national system. Claims that are investigated by a non-police institution does not necessarily mean that they are independent. Even if the process goes beyond administrative assessment, it is not an exception that police officers and local courts work together cooperatively on a day-to-day basis. We only have preliminary data and also need more studies on systems of independence indicators that allow for an organisational analysis of different schemas of complaints (Smith, 2009). Non-independence of review procedures has led to some favourable judgments of the ECHR related to excessive use of force (*Ramsahai v The Netherlands, 2007*).

A series of studies compared whether there were differences in the number of allegations of citizens depending on the investigative body. Overall, if allegations were investigated by commanding officers, the odds of a positive outcome decreased by a 39%. Success was only slightly better with allegations examined by either

an internal affairs department or by an external civil committee (probably due to difficulties in overcoming pacts of silence). The best results were obtained by those administrations where internal research was overseen by an external committee, which increased the likelihood of the allegations being considered by 76%. These research data might importantly illuminate how to adequately deal with citizens’ complaints to guarantee fair considerations of allegations of the use of force (Terrill & Ingram, 2016).

A good example of how accountability can decrease CIDT and torture at the hands of the police is found in Brazil. Police in the state of Rio de Janeiro killed more than 8,000 people living in *favelas* in the decade between 2005 and 2015. Human Rights Watch conducted in-depth interviews with more than 30 police officers, who attributed the excessive use of lethal force to a pervasive “culture of combat” and corruption within military police battalions (Human Rights Watch, 2016). In São Gonçalo, the state’s second largest city, between 2008 and 2010, a judge, a prosecutor, and civil police officers made a concerted effort to address extrajudicial killings and filed charges against 107 military police officers—about 15 percent of the troops in the military police battalion in São Gonçalo during that period. The number of police killings in the city subsequently dropped by 70%. Some police officers had warned that this effort to promote accountability would impede police work and result in a rise in crime, but the number of robberies and overall homicides in São Gonçalo also declined. Progress came to a halt when the judge was murdered by some of the police officers who were facing prosecution. In the absence of accountability, the number of police killings climbed again and is now higher than in

2008 (Human Rights Watch, 2016).

Media tolerance towards CIDT and torture. Finally, qualitative content analysis research has also shown that uncritical newspaper coverage of police-perpetrated ill-treatment may reflect and promote public and official tolerance for police violence (Gamal, 2017; Hirschfield & Simon, 2010)

Conclusion. In summary, the academic world provides very interesting and largely unknown data relevant to the debate on CIDT and torture in non-custodial settings. Surely more data is necessary to confirm and expand what we have reflected here. Especially relevant would be studies on criteria for assessing necessity, legitimacy and proportionality, elements that foster police misconduct and ways to prevent it using ecological models based on the interplay of the political, social, group, individual and interactive variables involved in this kind of situations.

The recent report of the Special Rapporteur underlines the fact that the medical and psychosocial field has much to offer the legal world in better defining these not uncommon cases. It also gives food for thought regarding the need to increase the use of science in courts e.g. moving from a judge or internal review body deciding what is proportionate based on statements, to the potential use of more academic and evidence-based models assisting judges' decisions.

Repression is not a thing of the past. Carey (2006) has studied the dynamic relationship between protest and repression using data from six Latin American and three African countries from the late 1970s to the early 1990s. The results suggest that democracies were least likely to display continuous repressive behavior. However, if faced with popular dissent, democracies were just as likely to respond with coercion

and negative sanctions as other regime types (restrictions on free speech, violations of life integrity rights, such as torture and political imprisonment, or other forms of state violence). In the end, repression has wide-reaching and negative consequences on society in terms of social control in that it can radicalize a minority, thus legitimise more violent actions and repression from the State and wide-spread political demobilisation of the majority due to fear.

This issue. The last issue of this year will hopefully give food for thought. For the last nine months the Journal has been conducting a Delphi Study on priorities of research in the field, involving the editorial board and more than 50 panellists from all over the world to reach a consensus. The results will surprise many readers, both in relation to the topics that were considered a priority and those that were not. The results are challenging as far as they draw, for the first time, a shared agenda for the sector. We have invited some leading authors in the field to comment on the results. As Jens Movdige, Chair of the United Nations Committee against Torture states in his comment, "these research priorities could form the backbone of an internationally agreed research agenda. For this to happen, stakeholders would have to get together and discuss and adopt a common research agenda, preferably with the presence of donors within the field. I can only encourage stakeholders to take such an initiative—a workshop—to facilitate that research".

All research studies, as this Delphi study is, depend somehow on sample and analysis. The results must always be considered in a cautious way. But this is a start. Not only the ten top ranked priorities, but the more than 175 potential lines of research collected in Annex 1 to the paper. The Torture Journal will launch in the year to come targeted

Calls for Papers on those topics considered a priority. This does not mean that other topics are not considered relevant and will not have a space in our pages. We hope you find the exercise useful and enlightening.

We have two additional quite technical and theoretical debates in this issue which are deeply interrelated. Prof John W. Schiemann accepted a challenge from the Journal: summarise and expand on his 2016 book *Does torture work?* The book applies mathematical models of game theory to an interrogational torture setting. The result is thought-provoking. As are the three comments by Lawrence Alison, researcher from University of Liverpool, Glenn Carle, former CIA interrogator for 25 years and Hans Draminsky Petersen, past member of the SPT, and the final reply of Prof Schiemann.

This debate is complemented by a second one concerning the APT-sponsored research (and book) on *Does torture prevention work?* The book analysed with data from thirteen countries whether the implementation of National Prevention Mechanisms (NPM) have been useful in the prevention of torture worldwide. Hans D. Petersen summarises the book and presents a critical paper questioning key aspects of the methodology and results. Carver and Handley, authors of the original book, respond, with a final right of reply given to the author of the paper.

These are complemented by a research paper by Ane Kirstine Viller Hansen, Nete Sloth Hansen-Nord, Issam Smeir, Lianne Engelkes-Heby and Jens Modvig on the Impact of Narrative Exposure Therapy (NET) on torture survivors in the Middle East and North Africa region.

Finally we collect and discuss a much awaited and well-received Statement by the World Psychiatric Association. After two

years of consultations of a task group of the Section on Psychological Consequences of Persecution and Torture, the General Assembly of WPA approved in October 2017 the statement 'Banning the participation of psychiatrists in the interrogation of detainees'. This is a landmark and very important declaration in the fight against torture. Though torture is illegal, as stipulated by a number of well-known conventions and treaties, and thus subjected to international prosecution, psychiatrists have been sometimes involved in situations connected to ill-treatment and torture which are ethically unacceptable on any grounds.

The purpose of this position statement is to provide ethical guidelines for practice, in which psychiatrists are explicitly forbidden, and must refrain, from participating in any procedure linked to the interrogation of a detainee. This statement helps to address accountability for physicians involved. Useful supporting commentaries are provided by Prof Stephen Soldz, member of the Coalition for an Ethical Psychology, and Prof Steven Milles from the University of Minnesota Center for Bioethics.

With the Delphi study contemplating the future of research in the anti-torture and rehabilitation sector, debates on mathematical models of whether torture works and whether torture prevention works as well, research data on psychotherapy for torture survivors and much more, this issue demands that time is taken over it. Responses from readers or the proposal of additional commentaries to any of the content in this issue are welcome.

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¹³ The Court noted that, although none of the victims showed violence or resistance, and although all of them were manifestly unarmed, asleep or sitting with their hands raised above their heads, the police systematically and indiscriminately subjected each of them to violent beatings, intentionally inflicting severe physical and psychological suffering for the purposes of retaliation and humiliation through the use of excessive, indiscriminate and manifestly disproportionate force.

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