



FIACAT and ACATs contribution to the thematic report of the Special Rapporteur on Torture

Accountability for torture and other cruel, inhuman or degrading treatment or punishment

The International Federation of ACATs (Action by Christians for the Abolition of Torture), FIACAT, is an international non-governmental human rights organisation, created in 1987, which fights for the abolition of torture and the death penalty. It has consultative status with the United Nations. FIACAT has about thirty member organisations, the ACATs, present in four continents. The present contribution is a result of a consultation of its members.

1. Challenges to accountability: What are the most important legal, practical and other challenges that are conducive to the current worldwide accountability gap for torture and ill-treatment?

Challenges to accountability for acts of torture and ill-treatment can be found at different level.

Legally, an important issue is the lack of criminalisation of torture or a gap in its criminalisation. For example, in Italy the definition of torture used in the Criminal Code is not in line with the definition provided by article 1 of the Convention against torture or other cruel, inhuman or degrading treatment or punishment. The current criminalization of torture contained in article 613 bis of the Criminal Code is not satisfactory. Firstly, the case differs from the Convention against Torture because it lacks any reference to the purpose of the conduct. Secondly, it does not require that the act of torture be committed, instigated, consented or acquiesced by a public official or other person acting in an official capacity. Even though, the law has rarely been applied yet, we can note that this is problematic since it has mainly been applied to private individuals rather than to public officials. Thirdly, it has a significantly more limited scope than that contained in article 1 of the Convention, since it requires multiple acts of violence or threats in order to be qualified as torture and psychological torture is limited to cases where psychological trauma can be verified. Thus, the legislator seems to want to exclude all cases in which torture and ill-treatment take place in a very limited period of time. This is all the more problematic since it has been documented that torture is more likely to happen in the first hours of detention. Even when torture is adequately criminalised there can be obstacles related to the lack of dissemination of information and a lack of initial and on-going training of public officials on this topic.

Another issue that strongly impacts accountability for acts of torture is the lack of means to properly investigate and prosecute authors of acts of torture. In fact, this begins in many countries at the identification of the responsible agents. Without specific measures in place to facilitate the identification of individual agents, many victims are unable to identify specifically the agents responsible to charge and prosecute them. Many obstacles are also found during the investigation and prosecution phase. In fact, in many States there is no fully independent mechanism in charge of investigating allegations of torture by public officials. It can also be very challenging for the victims to have access to proofs for example because of a lack of access to independent medical examinations by

professionals designated by the victim or his/her family or by the lack of access to a lawyer from the outset of his/her detention. Also, in many cases, more credibility is given to the police's word than to the victims. Furthermore, victims are often discouraged from filing a complaint for many reasons. First of all, victims often fear to engage in a long and costly procedure. Many of them also fear reprisals. For example, in France, some cases were documented where after a complaint for torture has been filed, the concerned public official retaliates by filing a complaint against the victim for verbal assault or rebellion¹.

Some obstacles are also identified regarding the right of the defence which is not always equitable between the public official accused and the victim. In fact, the lack of experience and expertise of legal aid lawyers or even the lack of access to legal aid completely can be a challenge that might create inequalities and prevent accountability.

Finally, in many cases where the national judicial system is flawed, obstacles to accountability are also found at the level of international and regional organisations promoting and protecting human rights because of the strict criteria that must be met before a case can be addressed.

2. *Functions, forms and levels of accountability: Please identify, explain, distinguish or compare the different functions (e.g., punitive/reparative, or proactive/preventative etc.), forms (e.g. legal, political, economic or social etc.) and levels (e.g. individual, collective, institutional, State etc.) of accountability for torture and ill-treatment.*

Most of the time, accountability happens at individual level. Institutional or State accountability is rare except in some cases of sentences handed down by international and regional organisations for the promotion and protection of human rights. Although, this level of accountability is of prime importance to carry out substantial and institutional changes to ensure such violations will not repeat themselves.

3. *Rights of victims: Who should be recognised as a victim of torture and ill-treatment, and what are – or ought to be – victims' procedural and substantive rights within accountability processes? Who else, if anyone, should be entitled to have access to and/or participate in accountability processes and mechanisms?*

It is important to recognise as victims, close relatives or close relations dependent of the direct victim of torture who have directly suffered from psychological trauma or social and economic consequences as a result of the acts of torture and ill-treatment.

As for the procedural rights of the victims one of the most important aspect is the right to have access to complaint and investigative mechanisms as well as the right to be heard in all legal proceedings. Victims' associations or other associations should also be able to have access to legal proceedings as they can be an important support to victims especially in order to fight inequalities that might exist with regard to the production of proofs or the right of defence.

Finally, regarding the substantial rights of the victims, the qualification of victims should entitle the person to have access to all forms of reparation being restitution, compensation, rehabilitation and guarantees of non-repetition as set out by the General Comment n°3 of the Committee against Torture on the implementation of Article 14 of the Convention against torture. This access to full reparation should be irrespective of whether the authors of the acts of torture has been identified. In order for this access to also be effective, it is important that States ensure that the victims are adequately informed of all forms of redress that are available.

¹ ACAT France, [L'ordre et la force – Enquête sur l'usage de la force par les représentants de la loi en France](#), 2016

4. Recommendations: Based on your experience and/or analysis of accountability in (2) and (3) above, what are the most effective mechanisms / measures and/or good practices that can or should be taken to respond to the challenges you identified in (1) so as to ensure accountability for torture and ill-treatment worldwide?"

As a result of the issues identified above, the FIACAT and the ACATs would make the following recommendations:

- Ensure the criminalisation of torture at the national level in full compliance with the provisions of the Convention against torture and other cruel, inhuman or degrading treatment or punishment;
- Disseminate information and conduct initial and ongoing training of public officials on the absolute prohibition of torture;
- Guarantee the identification of public officials in the course of their duty and strengthen the collection of proofs by victims in particular by ensuring access to independent medical examination, access to a lawyer from the outset of detention and the use of cameras in places of interrogations and other sensitive places;
- Put in place independent and effective investigative and prosecuting mechanisms to address allegations of torture and ill-treatment by public officials;
- Ensure that a strong and adequately funded legal aid system is put in place;
- Guarantee the protection of victims and witnesses against the risk of reprisals;
- Ensure access to legal proceedings to victims' associations and any other associations that might have an expertise and relevant documentation to contribute;
- Ensure accountability at all levels including at institutional and State levels to guarantee that structural and substantial pitfalls are addressed to prevent future acts of torture and ill-treatment;
- Provide all victims of torture with integral reparation including restitution, compensation, rehabilitation and guarantees of non-repetition in all cases including when the authors of the acts of torture have not been identified.