DR KIRAN GREWAL, *a senior research fellow at the Institute for Social Justice at the Australian Catholic University, conducted research on torture prevention. She writes about some of the findings.*

Preventing Torture: From Norms To Reality

PHOTO: AMI VITALE

There have been many advances in recent years in the areas of international law prosecuting perpetrators of torture and in counselling and rehabilitation forsurvivors. However, sadly, the most vexed question of how to effectively prevent torture remains largely unanswered.

It is true that since the events of 9/11, and the subsequent War on Terror, the international consensus on the absolute prohibition of torture has come under attack. But setting aside this difficult political context, we know that even when everyone agrees in theory that torture is wrong, it still continues to happen in practice with shocking frequency.

So, why is it the case? Is it a sad fact of human existence that torture will continue? Are we willing to accept this? While many of us would argue no to the last question we are often silenced by both, the apparent universality and historical continuity of the problem. At the same time the first question – of why torture happens – is surprisingly often ignored by human-rights advocates.

All too often we either treat as homogenous what are in fact incredibly diverse practices or accept explanations that focus on individual actors rather than the larger institutional, social, political, economic and cultural contexts within which these individuals operate. It was to challenge these tendencies that, as part of a team of researchers from the University of Sydney; Colombo Centre for the Study of Human Rights (Sri Lanka); and Kathmandu School of Law (Nepal), I have spent the last three years researching and testing new approaches to preventing torture.

For the purposes of this article I will just use the term 'torture' as shorthand for all forms of torture, cruel, inhuman and degrading treatment. The project described in this article was funded by the European Commission, under the European Instrument for Human Rights and Democracy.

We sought to find out not only the current approaches to preventing torture but also what might be some of the reasons for torture and torture-permissive cultures existing within certain contexts.

As the lead field researcher this essentially means I have spent the last three years trying to get inside the head of a Sri Lankan or Nepali police officer to better understand how he or she views torture, why he or she may think it is appropriate, necessary or at least justifiable, and what might act or do, as incentives to encourage not to torture?

In this article I will present some reflections from the research. But first let me summarise the dominant existing approaches to torture prevention.

Boudhanath Stupa is the largest stupa in Nepal and the holiest Tibetan Buddhist temple outside Tibet. It is the centre of Tibetan culture in Kathmandu and rich in Buddhist symbolism. The stupa is located in the town of Boudha, on the eastern outskirts of Kathmandu. PHOTO: BEHIND LENS

"The majority of torture that occurs pretty much everywhere in the world is not the high–end, politically motivated, regulated forms of systematised violence."

Preventing torture: the current dominant approaches

In brief, up until now approaches to preventing torture and ill treatment have tended to focus on:

1) Lobbying states to ratify and abide by international human-rights treaties (in particular the ICCPR and the Convention against Torture)
2) Naming and shaming the perpetrators and governments (or others) that support them
3) Pushing for the implementation of international human-rights standards into domestic legal systems and where necessary reforming systems to ensure there is legal regulation and redress (so criminalisation and prosecution of perpetrators, establishing avenues for complaints and possible compensation
4) Awareness-raising (for state officials regarding their responsibilities, for potential and actual victims, so they are aware of their rights and for the community more generally, to build consensus and encourage action against the use of torture)
5) Monitoring places of detention to ensure international standards are being followed.

While these strategies have contributed something, each in their own way, towards the struggle against torture, most advocates working in this field also agree

that we are in need of new approaches.

This is particularly so for addressing the 'supply' side of torture (ie. working with potential or actual perpetrators).

For me, this search for new approaches requires us first to explore some of the assumptions within existing strategies that often pass unnoticed but raise doubts about their potential effectiveness.

Do governments (or others) respond to shame?

While naming and shaming remains a dominant model for human-rights activism, the idea that this in itself is sufficient to lead to a complete change in policy and approach is idealistic to say the least.

We only need to look at the Australian government's attitude to being repeatedly named and shamed in relation to its treatment of refugees to see this. In the case of Sri Lanka, we have seen a growing belligerence in response to accusations by the international community of war crimes and other serious human-rights violations.

Not only has this not necessarily stopped these acts from taking place, it has made the position of survivors and human-rights activists within the country even more precarious. Are we right to think that governments

will simply accept it when they are told the actions of their officials are wrong? And what makes us think that even if they do accept this, they will respond in the ways we demand over other potential motivations for allowing 'business as usual'?

What do we do when there is no legal or political will to punish?

If all our strategies rely on external surveillance we are in fact left rather impotent in the face of a regime like the one in Sri Lanka (let's wait and see whether things change with the new government) who has already made it clear that there would be no genuine accountability efforts.

With torture, given that it is often used by states as a means of maintaining power and control, to focus on legal and political responses, essentially means we have to wait until there is a change of regime. Sadly dictators and authoritarian regimes often last a long time so, are we willing to simply tread water waiting for a more favourable climate and allow hundreds, or even thousands, to suffer in the meantime?

Is it really a lack of knowledge that leads people to violate other people's rights (and bodies) in such

violent ways? Do they not know what they are doing is wrong?

During the research I was often told that the solution laid in more training and awareness-raising. One human-rights advocate even compared it to the ways in which mindsets have been changed around traffic regulations through the passing of laws and public awareness campaigns. For me this analogy does not make sense.

While laws and knowledge of these laws do have an impact on individual behaviour to a certain extent, are we really saying that we think the only reason people do not intentionally cause pain and suffering to others is because they have been taught that the law requires them not to?

And does knowing that the law prohibits certain actions necessarily override other motivating factors? If so, why do we still see acts that everyone know are crimes (such as theft, assault, murder) being committed?

Is punishment the answer?

Following on from the previous point, often the assertion that more education is needed is combined with the demand for accountability. This, it is claimed, will send a message of deterrence. Again, there is undoubtedly a case to be made that facing punishment can act as a deterrent in some cases.

At the same time, while it may only be the fine that stops me from driving 100 km/hour in a 60 km/hour zone (although that might also depend on how responsible a citizen I am), I am not convinced that it is only the threat of prison that stops me from assaulting my annoyingly loud neighbour.

Moreover, if punishment alone could guarantee compliance with norms and rules we would expect to see much less crime than we do, especially in states with effective criminal investigation and justice systems.

Even – to go back to the speeding example – the very real threat of a fine has not prevented me from, on occasion, driving too fast.

How do we deal with the fact that monitoring has simply led to more sophisticated methods that avoid detection?

In his 2007 book, *Torture and Democracy,* scholar Darius Rejali documented the ways in which torture practices have not necessarily died out as a result of states moving to become more democratic and apparently transparent regimes.

Rather the types of torture used have changed from the more obvious use of brute force to techniques that leave few if any visible traces and rely more on subtle, psychological forms of coercion and intimidation.

We found similarly in both Nepal and Sri Lanka that a greater fear of being monitored had led to police officers developing more easily disguised forms of torture but had not changed their attitudes regarding the appropriateness of its use.

Understanding Why Torture Happens

In examining and critiquing each of the existing strategies and the assumptions we saw underlying them, we found ourselves continually returning to one basic question: what do we assume about the reasons why torture is committed with these models for prevention?

Surprisingly, we found that in fact we have very little research that allows us to understand why different actors use, condone, or justify torture in different places at different times.

Therefore the idea behind our project was simple: if we know more about why people do it, we may find ways in which we might better stop them or at least create disincentives. Of course, one of these may well be an effective legal system that holds people to account.

Another may be a regime change away from a government or leadership that thinks it is acceptable to use violence against individuals. But these are not the only possibilities. Nor will they completely address all the possible causes.

It was in an effort to identify other possibilities and better ensure that the strategies that were being used in fact responded to the reason for the problem that we set out to do field research.

Through the examples of Nepali and Sri Lankan police officers, we sought to explore the various factors that might lead them to commit or at least condone the use of torture.

What we found was a range of factors: some fairly self-evident, others less so. For example, common reasons that emerged were: my boss tells me to; my colleagues are all doing it; I think it is the only option to solve my case/ensure justice; I am angry; I can get away with it. Many of these are perhaps what you might expect, if you really thought about it. But how do we then see the torture-prevention strategies used up until now addressing these reasons?

For example, will telling someone it is against the law necessarily stop him or her from lashing out when he or she is frightened, stressed and/or angry? Will the threat of individual prosecutions help if the police officer is being told he or she will be sacked if he or she does not do as he or she is told?

It is thanks to these insights into the reasons behind torture that we were able to start thinking about other potential strategies for intervening.

Among other things, it supported the decision by various organisations (governmental and non-governmental) to increase investment in developing the investigative and other 'soft skills' of police officers.

In our own project we tried working with police officers on developing their inter-personal skills to help them cope better with conflict. We looked at techniques for de-escalating situations early on to avoid ending up in a place where the police officer felt compelled or justified to use violence.

Another strategy we tried was to workshop with police officers practical ways they might be able to resist pressure from their superiors or colleagues that would cause them the least risk.

There will of course always be those who stand up for what they know is right but it is unrealistic to expect us all to do this. Many (perhaps most?) of us will take the path of least resistance, even if that means going along with something we don't like. Therefore, rather than expecting police officers to automatically reject torture when those around, and above them are encouraging it, it may be more effective to instead help them think through ways they can resist more strategically.

Addressing the Torture Spectrum

Returning to our research, aside from what we expected to find, we were also presented with some surprising, but also potentially informative, justifications.
For example:

- it provides what is seen as an essential tool for disciplining 'wayward' society members and therefore is a social good;
- it responds to the expectations of society who want to see justice done quickly;
- it is less cruel than forcing someone through a slow and corrupt criminal justice system.

Indeed one of the most important findings of our research - and I was very pleased to have it confirmed by the former UN Special Rapporteur against Torture, Manfred Nowak, at a conference on the project held in Bangkok in September last year - is that "the majority of torture that occurs pretty much everywhere in the world is not the high-end, politically motivated, regulated forms of systematised violence. It is the far more banal everyday violence of policing or maintaining 'security."

Sadly the victims are also often the most forgotten - they are generally poor, socially excluded, or marginalised, with little social or political status or power. In Sri Lanka it may be trishaw drivers, sex workers and illegal liquor producers. In Nepal it may be street-kids and drug users.

> *"The more we create bogeymen and trade away our freedoms in the name of security, the more we run the risk of escalating violence in the long run."*

Part of the reason why these individuals are targeted may be because there is little risk of sanctions, but it also points to a more complicated picture of torture than simply deviant security personnel, acting on behalf of evil governments to wipe out dissent. It also potentially suggests that we are all implicated in the perpetuation of torture.

Without a doubt there are certain institutional cultures that make torture more likely. Certainly militaries and to some extent police forces that see themselves as 'forces' often have cultures that allow them to dehumanise others (the 'enemy', the 'criminal') and this make them more amenable to using violence than other members of society might be.

However police and military personnel do not operate in a vacuum. Societal attitudes are also extremely influential.

In both, Sri Lanka and Nepal we found that punitive attitudes about justice, discipline and order, mean that ordinary people often tolerate quite high levels of everyday violence.

For example, the school teachers that we interviewed asserted the need for corporal punishment to ensure discipline in schools. Parents sometimes actively endorsed the use of violence as a means of ensuring their children would grow up to be responsible, law-abiding citizens. In this climate, is it unrealistic to think that police officers (or others) will be horrified by the idea of beating up a potential or actual criminal?

Meanwhile these punitive attitudes are only made worse in situations where there is a general feeling of threat, insecurity and fear. In Sri Lanka, the 30+ years of terrorism and counter-terrorism has had a huge effect on the public psyche. Citizens have become at best resigned and at worst desensitised to state violence trading their rights in favour of the promise of greater security.

Finally, torture is an extreme end of a continuum. As I mentioned above, people at all levels of society can be tortured. But the lower you are in social status, material wealth and access to power the higher the risk. While the concept of 'human dignity' is often invoked as the reason for why torture is wrong, we spend far too little time establishing what we mean by this term.

In fact I have found that 'dignity' is a highly contested concept and in some cases it has worked to justify torture: for example, in the form of disciplinary violence aimed at bringing those deemed to have lost their dignity (sex workers, thieves, drug users) back into the fold of 'respectable society'.

This means that rather than simply advocating for 'dignity', we need to do much more work exploring how different individuals and groups understand the concept to make sure it is in fact serving our aims.

These findings are important not just for what they might tell us about torture in Sri Lanka and Nepal but also more generally about the conditions within which torture can flourish.

For example, the Sri Lankan experience in particular should provide a warning to all of us living in this era of terror threats and strong-arm government responses. The more we create bogeymen and trade away our freedoms in the name of security, the more we run the risk of escalating violence in the long run. At this point it may seem that the violence is safely confined to potential or actual terrorists, and does not affect us 'ordinary citizens' but we should not be confident that it will always remain so.

Finally, if we accept that torture is only the most extreme demonstration of where processes of discrimination and dehumanisation lead us, then to prevent it also requires us addressing much more mundane but equally pernicious forms of prejudice, discrimination and inequality.

This means that beyond simply punishing individual acts of torture, we need to much more seriously commit to addressing the structural and symbolic violence that makes certain individuals seem less worthy of protection, and certain lives less valuable than others. In this we all have a responsibility. ℞