



A child is seen outside the new temporary camp for migrants and refugees, on the island of Lesbos, Greece, September 23, 2020

Global Perspectives on Torture

The UN International Day in Support of Victims of Torture took place on 26 June amid Black Lives Matter protests around the world. To commemorate the event, STARTTS organised a webinar. Author and Emeritus Professor Stuart Rees, University of Sydney chaired the discussion. Speakers included Jorge Aroche, president of the International Rehabilitation Council for Torture Victims (IRCT) and CEO of STARTTS; Lisa Henry, secretary general of the IRCT; James Lin, Istanbul Protocol project coordinator and human rights barrister, author, academic and founder and head of Doughty Street Chamber, Geoffrey Robertson AO QC, spoke about human rights in the shadow of a pandemic.

JA: The main consequence of the lockdown is that it has made it more difficult for victims of torture to access services. Authoritarian governments are using the COVID-19 pandemic as a distraction to perpetrate human rights abuses on their citizens. We need to remember that some people in many regions and countries are far more vulnerable than others. I am referring to Palestine, Zimbabwe, Bangladesh, India and Afghanistan, to name a few.

COVID-19 continues to have disastrous impacts on lives and livelihoods around the world. The pandemic has also triggered an increased use of technology that has enabled us to transcend our limitations in time and space. A good example is this session. But as the impact of the pandemic begins to be felt at various levels, it has also become obvious it is impacting on some more than others, and of course the most vulnerable are the most impacted.

In Australia the most affected are people on temporary visas, including asylum seekers, because they lack access to the safety nets that support people financially and can't access services in general. Also included are most of our other clients, for whom the services provided by STARTTS and community organisations make a big difference to their mental health and wellbeing.

There is evidence that social isolation and uncertainty

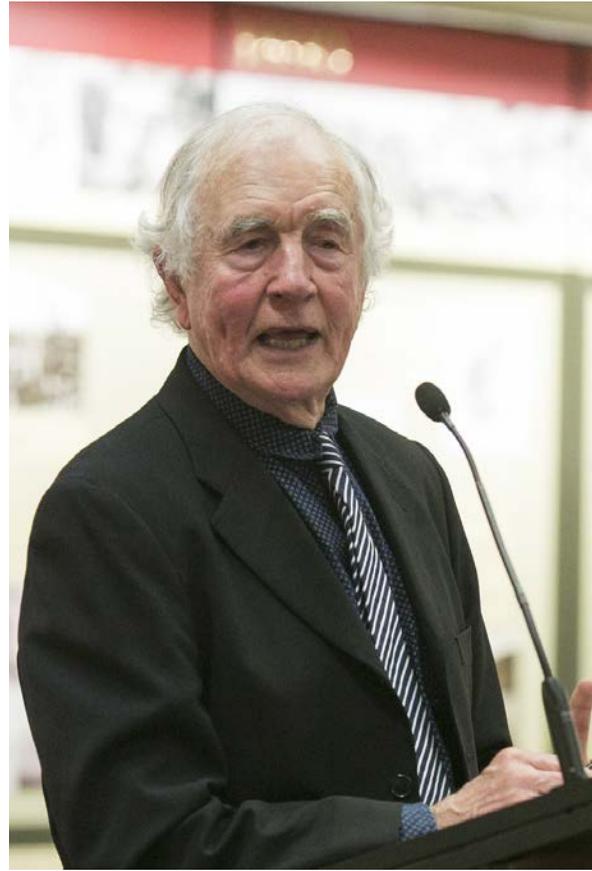
induced by the lockdown causes an abundance of traumatic triggers for refugees. Of course, this is certainly not a criticism of the lockdown measures put in place to contain the pandemic and save lives. We have, in fact, supported and embraced such measures. However, it's important to recognise that no matter how appropriate they are, they also have a lasting negative impact on our clients. We fear that this impact is also being felt by the 70 million refugees and internally displaced people around the world, particularly those in highly vulnerable situations such as refugee camps and detention centres. We are not even close to seeing the peak of that impact.

We fear COVID-19 containment measures might also provide the perfect cover for repressive regimes to escalate repression and conduct torture with much less risk of criticism from the international community. Unfortunately, reliable information is hard to come by and when access is restricted, it becomes very challenging. At the same time the impact of the pandemic on economies, particularly on the economies of developing countries, is also affecting the most vulnerable.

LH: With COVID-19 we have seen international leadership at its worst and at its best. We have seen



Lisa Henry



Stuart Rees

excessive use of force by armies and police crackdowns of human rights defenders, extra-judicial killing and arbitrary detention. The kind of harassment of human rights defenders is unprecedented. The language of violence is gathering momentum. I heard stories in Africa of people being stripped publicly because they were meeting. The humiliation [and] the lack of rule of law as a result of the pandemic is unprecedented and very worrying.

At the same time we have witnessed the Black Lives Matter campaign, the killing of George Floyd in the US which has triggered the retraumatisation of torture survivors. The IRCT represents 158 rehabilitation centres that have assisted 57,000 torture survivors around the world. I am aware that police have destroyed some of these centres. There has been an increase in torture in many member countries. At an individual level, many people are losing loved ones to the pandemic, they face the loss of jobs, loss of housing, lack of access to food and schooling, and an increase in domestic violence. Many rehabilitation centres offer counselling services online and have health online forums, do online socialising and have published short stories.

Today, the International Day in Support of Victims of Torture we remember all the injustices, and are fighting for justice and for the right to rehabilitation.

JL: We need to apply our experience in understanding the effects of torture. One of the most effective tools for ending impunity related to torture is the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Commonly known as the Istanbul Protocol, this UN document outlines international legal standards and sets out specific guidelines on how to conduct effective legal and medical investigations into allegations of torture and ill-treatment.

Because of the pandemic, many courts and community services have closed. Travel is restricted, social distancing is a must. These measures present many challenges when conducting investigations on asylum seekers waiting for court proceedings, living in detention facilities, who are entitled to forensic medical evaluations to prove their claims. From a legal perspective evaluations are like witness testimonies. Now we have no choice but to conduct them remotely – however, these remote investigations are seen as less credible by judges and decision-makers.

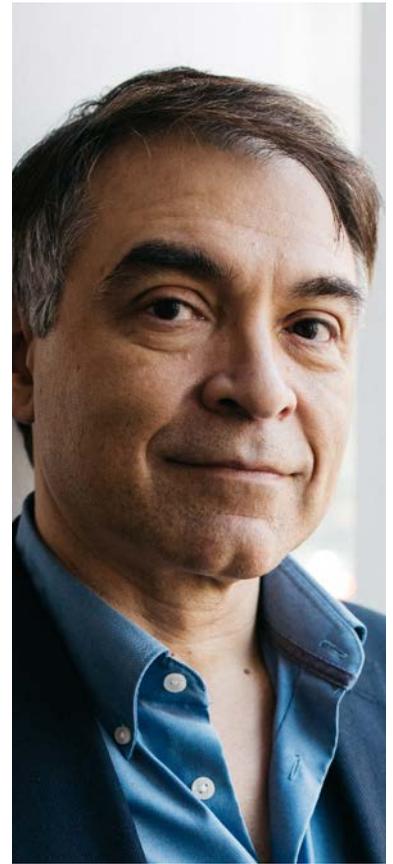
So we have been discussing if it is worthwhile continuing with the evaluations or better to wait until we have the opportunity – who knows when? – to evaluate their cases in person. From an ethical and medical



James Lin



Geoffrey Robertson



Jorge Aroche

perspective, this presents challenges. Evaluations must be holistic. It is difficult to conduct them online, as we may miss key information.

We are also trying to find out how refugees are experiencing quarantine. In the Philippines, for instance, individuals who violate the curfew are kept in cages in the heat as punishment.

We have published a report on the effects of Conversion Therapy, a practice that includes psychotherapy and social isolation, with the aim of changing an individual's sexual orientation and identity.

On the other hand, COVID-19 has also triggered innovation in developing alternative ways of offering assistance. I recently delivered training in Afghanistan and was surprised of how well it went. You develop new skills in difficult situations.

GR: I would like to talk about the one person who did not survive torture, George Floyd. His nine-minute ordeal seen around the world was described as murder. Prosecutors had to decide if it was a second-degree or third-degree murder. The first person to describe George Floyd suffering accurately was singer Bob Dylan who said: "I was sickened to see the man tortured to death".

He remains the only person to use the word torture

until the family's lawyer at the funeral said to the audience: "We can no longer cooperate with torture because torture – choking a person slowly to death, [which] was precisely what happened to George Floyd – a fate worse than death is being tortured to death."

Human Rights Watch told us last year that the most popular form of torture is suffocation as it leaves few marks. Torture in law is described as the affliction of severe pain, suffering – physical or mental – intentionally inflicted by a public official, such as a policeman. In this case it was horrific, because it was deliberate and intentional torture by a police officer.

Like many other states in the world, Minneapolis does not have the crime of torture. We have no crime of torture either. Very few of the 170 states that signed the Torture Convention have an actual local crime of torture. It is odd that so many countries don't have a specific crime to stigmatise the one form of killing that is the worst possible form of killing.

Commonwealth countries have "assault causing grievous harm". We don't label this utterly disgusting form of killing as torture. This has to change. There needs to be recognition of torture because in international law absolutely prohibits it.

There are problems with international law in relation



to torture, as it applies only to states. It doesn't apply to corporations, mercenaries, criminal gangs or security forces, who do a lot of the torturing. We should change the definition so the inflicting of serious pain on any powerless person amounts to the crime of torture, and it should also apply to international companies, mercenaries and security forces.

The other irony of the George Floyd case is that if the police had succeeded in taking him into the police van to the nearest police station, suffocating him to death there, it would have just been another black death in custody. There would have been no lawyers to visit him, no CCTV cameras recording the incident and no pictures as he struggled through the asphyxiation. There would have been no condemnation or anger around the world.

His case is a reminder of the importance of preventing and deterring torture in police stations, prisons and detention camps. Torture is prohibited even if governments are faced with a national emergency like the current pandemic.

When the lockdown began the European Commission for the Prevention of Torture issued a statement about the dangers of the pandemic. The UN Subcommittee on the Prevention of Torture followed with another statement that said: "States must recognise the reality that prisons and detention centres are hotbeds for the

spread of infection as are police cells, hostels, work camps and the like".

Indeed, we have already seen flare ups of the pandemic in work camps. All places where people sleep on top of each other, with social distancing, where there is no fresh air, exercise, sanitation and a lack of good food.

Looking at 28 countries with reliable statistics, by April this year there were 40,000 infections and 750 deaths in prisons. The state has a duty to protect the health and safety of those deprived of their liberty, otherwise failure to do so it turns a prison sentence into punishment of an inhumane and degrading kind.

How states protect the health and safety of prisoners? Simply by releasing low-risk offenders early and by emptying prisons as far as it is possible. The UK has released 300 low-risk prisoners, but in some of the worst countries in relation to human rights such as Egypt, Bangladesh and India, they refused to release a single prisoner, no matter how much danger they face. Governments should close refugee camps, even if that means accepting refugees.

For those who have to stay in detention, their stay must be proportionate and limited in time. For example, where COVID-19 restricts family visits, prisons must grant permission for prisoners to connect via Zoom and other means of electronic communication with families

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to help ameliorate uncertainty and isolation. Most importantly, police stations must have rules that allow immediate access to a lawyer or doctor. There must be [protective] equipment available in places of detention and staff must be trained to identify and treat patients.

Every state that deprives people of liberty has a duty to protect their health and safety. Failure in that duty exposes [people] to a form of mental torture that amounts to inhumane treatment. Freedom from fear is a very important freedom to remember in this time of the pandemic.

There have been some changes in the mechanisms we have available to deter torture in prisons and detention centres. The most important safeguard is visits. Police stations in every nation must have a law that permits prisoners to have a friend, a lawyer available. The evidence shows that when that is the case, fewer deaths and incidents occur. There are detention safeguards in relation to prisons that are generally effective only if they are unannounced visits, and this is important because the UN Convention on Torture recommends negotiating visits to prison. In Europe, visits are unannounced and seem to be effective. This means there is little torture as they will be afraid they will be discovered.

The UN system of requiring notification is less effective. People who get tortured are people who don't

have lawyers. There needs to be a proper system for lawyers to be available in prisons. Unfortunately, torture occurs behind closed doors – except for Pinochet, who made his torture centres public because he wanted to terrify his opponents.

Is the pandemic a problem for torture survivors? The most recent studies suggest that if a torture survivor contracts the disease, he or she will relapse and have nightmares and flashbacks. These are a result of the disease renewing their memory. Government needs to provide rehabilitation and counselling services in this time to prevent further traumatising.

I would also like to take this opportunity to mention an important human rights achievement, the Magnitsky Law that is being considered at the moment by the Australian Parliament. This law is named after a torture victim who did not survive. His name was Sergei Magnitsky, a tax lawyer in Moscow who discovered that senior police and tax officials were using his former client companies for a massive tax heist, so he reported them to the police. The police arrested him instead of the wrong-doers, he was tortured to death and died out of sight.

But a client of his, Bill Browder, identified the torturers and began a campaign to stop them transferring stolen money through Western banks and enjoying their ill-gotten gains in the West. Obama liked the idea and in 2016 he passed the Global Magnitsky Act to target sanctions on human rights abusers. Canada followed, Britain followed and Europe. Now a joint committee of the Australian Parliament is having discussions on whether to adopt the Act, which recommends targeted sanctions against torturers and other human rights abusers. These laws adopt the principle of human rights law, including the rule against torture, but they don't rely on international law because international law has so little force nowadays. They rely on national law, in this case Australian law. It will enable authorities to act against foreign torturers by stopping them from coming into the country or removing them if they are here, denying them places in universities, freezing their assets and imposing travel restrictions on foreign individuals who are deemed responsible for human rights violations. It doesn't send them to prison but it does stop them from enjoying the fruits of their crime. There are 120 submissions in favour of passing the law. But the decision is yet to be made.

I hope it will pass because there is nothing worse in setting back the rehabilitation of a torture survivor than meeting his torturer on the street. We must name, shame and blame torturers. Keep them and their money out of Australia. I hope it will be supported. ☞