
Redress and Reparations for Torture Victims

DATA IN THE FIGHT AGAINST IMPUNITY



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DATA IN THE FIGHT AGAINST IMPUNITY
THEMATIC REPORT 2017

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The International Rehabilitation Council for Torture Victims (IRCT) is an independent, international health-based human rights organisation which promotes and supports the rehabilitation of torture victims, promotes access to justice and works for the prevention of torture worldwide.

The vision of the IRCT is a world without torture.

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The work of the IRCT

As a network of some 150 torture rehabilitation centres in more than 70 countries, the IRCT is the world's largest membership-based civil society organisation working in the field of torture rehabilitation and prevention. Its key distinctive feature lies in a holistic health-based approach to torture rehabilitation. In addition, the organisation defines itself as private, non-partisan and not-for-profit, as well as being governed by democratic structures.

The IRCT's diverse membership shares three common characteristics: **each member is a legally independent organisation that is rooted in civil society; each provides services to at least 50 torture victims annually; and each is committed to sharing its experiences throughout the IRCT and beyond.** IRCT member centres stem from all regions of the world. Given the very nature of the organisation, some of these centres may be newly established, small or fragile from an organisational perspective, while others have long trajectories of public service, appropriate budgets and solid funding structures. Together the movement is effective in fighting torture across the globe. The core strength of the movement stems from a triad of values: Solidarity, Equality and Democracy.

IRCT's network:

151

organizations

73

countries

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Cover Photograph

A torture survivor, Kenya. Photo courtesy of IRCT member Mwatikho Torture Survivors Organisation (Mateso).

SUMMARY

This report uses data collected by IRCT member centres in Kenya, Mexico, the Philippines, Serbia and Uganda over the course of the Data in the Fight against Impunity (DFI) project to illustrate some of the challenges faced by torture victims to access redress and reparations.

The data illustrates that even in countries where legislation to prevent and criminalise torture or to provide redress to victims has been enacted, torture victims still face challenges in accessing redress and reparations. There have been few, if any, convictions of perpetrators compared to the number of torture victims who have filed a complaint about torture. Complaints are often not investigated promptly, effectively or impartially and in many instances the documentation of the physical and psychological effects of torture on the victim is not carried out to the internationally accepted standards laid out in the Istanbul Protocol. This is despite there being clear obligations on states to enact legislation and establish mechanisms to effectively investigate and prosecute torture complaints.

The data further shows that very few victims have been awarded reparations, such as compensation or rehabilitation, through a court process; and where compensation is awarded, the payments are often not made to the victims. Moreover, the provision of rehabilitation services by states still does not exist in the majority of the countries in this report, or is not being effectively implemented. As a result, torture victims in all five countries rely heavily on the specialised rehabilitation services provided by IRCT member centres in the absence of adequate State services. This is despite clear international, regional and often domestic legal obligations on states to provide mechanisms for torture victims to access reparation, including compensation and rehabilitation. The data also illustrates various barriers for torture victims to access redress and reparations, including: lengthy court processes, the fear of reprisals and intimidation made worse by a lack of protection mechanisms and statutory limitation periods for filing complaints.

The ability of torture victims to access redress and reparations plays an important role in the fight against impunity. There is a danger that where there are non-existent or ineffective mechanisms to complain about, investigate and prosecute acts of torture and no effective means for the victims to seek reparations a culture of impunity and acceptance of torture will be perpetuated.

Torture victims in all five countries rely heavily on the specialised rehabilitation services provided by IRCT member centres in the absence of adequate State services. This is despite clear international, regional and often domestic legal obligations on states to provide mechanisms for torture victims to access reparation, including compensation and rehabilitation.

Looking to the future, there is considerable work to be done to ensure that states fully implement the anti-torture legislation they enact so that victims can access much needed redress and reparation measures. This requires both financial investment and political willingness, as well as continued pressure and scrutiny from civil society organisations. In addition, criminal justice processes including investigation and prosecution as well as protection mechanisms need improvement. States need to allocate budgetary resources to reparations, including compensation and rehabilitation in order to ensure these avenues actually exist. Finally, the continued collection of data is a critical tool to enable states and civil society to understand and identify where gaps lie in the implementation of obligations surrounding redress and reparations for torture victims.

Overview of the Data in the Fight against Impunity (DFI) Project

Central to the development of the torture rehabilitation sector's ability to evidence its work, is the collection of appropriate, consistent and comparable clinical information. The Data in the Fight against Impunity (DFI) Project is a system-wide response to creating this ability. Across the globe, hundreds of rehabilitation centres are providing services to thousands of torture victims on a daily basis. Through the DFI project, IRCT members have started to systematically collect data relating to their clients in order to create long-term change. With better data it is hoped that civil society organisations working in the field of torture prevention and rehabilitation will be able to identify trends relevant to their work and use the data to fight impunity more effectively.

In June 2014, 12 rehabilitation centres from around the world came together to develop and test a data collection system to enable them to collect clinical data and integrate the documentation of torture throughout the rehabilitation process. This data can then be used to create powerful evidence-based approaches with the potential to mobilise the public and to target governments to act and to disseminate evidence-based outputs to support anti-impunity work. The centres started to use the database in February 2015 and to adapt it to their clinical record-keeping practices. They have used the data to share reports about the identity of survivors, the places they were tortured, how they were tortured and by whom. The initial participants in the project have since been joined by 20 additional rehabilitation centres for the second phase of the project. Data is now being collected by 33 rehabilitation centres in 28 countries.



MATESO Rehabilitation Centre, Kenya
Photo courtesy of Mwatikho Torture
Survivors Organisation (Mateso).

METHODOLOGY

The IRCT member centres participating in the DFI project identified redress and reparations as one of the thematic issues they wanted to explore using the clinical data collected over the course of the project.

Based on feedback from the IRCT member centres involved in the DFI project and the relevance of the data they have collected, IRCT members from five countries were identified to be part of the report. The information in this report is based on anonymised client data that the torture rehabilitation centres recorded in their DFI database, interviews with the member centres to further explore the context and meaning of the data and other related background information.

The report uses data collected over the last two years of the DFI project by five IRCT member centres that participated in the project and as such highlights their experiences alone. Therefore, the data should not be seen as a representative sample of the situation of all victims of torture who seek redress and reparations. Rather it illustrates the experiences of the 2,230 individuals whose data has been collected.

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As the data set used in the report is in its infancy, it is necessary to note a number of limitations, which impact on the degree of certainty reached by the conclusions in this report. Firstly, the total number of clients or of clients with a full dataset that were analysed is low for some of the IRCT member centres in the report. This is in part due to the short period of the project as well as technical issues that the centres may have experienced when updating new versions of the database. However, it is also due to the nature of the data entry process, whereby a client's data may be recorded over a number of different interactions with the rehabilitation centre, and it may take some clients longer than others to disclose sensitive information in the course of their treatment. Secondly, there is a degree of discrepancy in the way some of the data categories have been interpreted by the IRCT member centres. However, where this may have been the case, the member centres have either clarified the specific context relevant to the data category, or the data category has not been relied on in the report.

The conclusions drawn from the data highlight various challenges the clients have faced in accessing redress and reparations. These merit further examination through research and data analysis in order to better understand the detail and root causes of the challenges and their geographical applicability and relevance.

The following IRCT member centres participated in this report

Region	Country	IRCT Member Centre
Asia	Philippines	Balay Rehabilitation Center, Inc (Balay)
		Medical Action Group (MAG)
Europe	Serbia	International Aid Network Center for Rehabilitation of Torture Victims (IAN)
Latin America	Mexico	Colectivo Contra la Tortura y la Impunidad (CCTI)
Sub Saharan Africa	Kenya	Centre Against Torture - Kenya (CAT-Kenya)
		Mwatikho Torture Survivors Organisation (MATESO)
	Uganda	African Centre for Treatment and Rehabilitation of Torture Victims (ACTV)



Protesters hold placards in a candlelit protest against extrajudicial killings in President Rodrigo Duterte's "War on Drugs" campaign in suburban Quezon city, northeast of Manila, Philippines, 2016.

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TORTURE AS EXPERIENCED BY THE VICTIMS TREATED BY IRCT MEMBER CENTRES IN THE PHILIPPINES, SERBIA, MEXICO, KENYA AND UGANDA

A torture survivor, Kenya
Photo courtesy of Mwatikho Torture
Survivors Organisation (Mateso)

The context and location of torture

The majority of torture victims treated by the IRCT member centres in the Philippines, Serbia, Mexico, Kenya and Uganda are male and either have a low income or are unemployed with no income. Centres from four of these countries (the Philippines, Mexico, Kenya and Uganda) have data indicating that the majority of their clients are tortured in the context of police and security forces operations or military operations.

In the **Philippines**, many of Balay's clients come from the southern areas of the country, where the government's anti-terrorism campaign against the Moro National Liberation Front (MNLF) has resulted in the torture and ill-treatment of Muslims by security forces and law enforcers. Since 23 May 2017 there has also been an armed conflict in the city of Marawi between government security forces and militants of jihadist groups. Around 200,000 civilians have fled the city and the government has declared martial law in the region.¹ In addition, many of MAG's clients have been tortured in secret detention facilities where police officers torture detainees for entertainment. A large roulette wheel was found with different forms of torture written on it, showing the casual attitude that police officers have towards torture.²

The data recorded by Balay and MAG indicates that torture is most commonly perpetrated on their clients in police stations, prisons, military camps or facilities and 'on the road', i.e. between the point of arrest and detention. Common methods of torture used are beating (blunt trauma), poor detention conditions,

Figure 1.1 Gender of torture victims: The Philippines

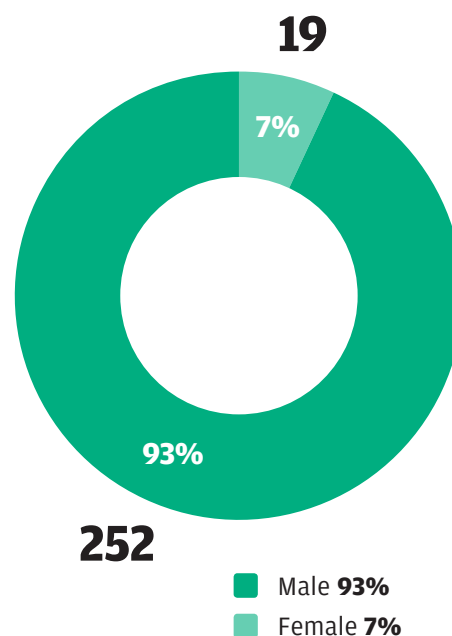


Figure 1.2 Gender of torture victims: Serbia

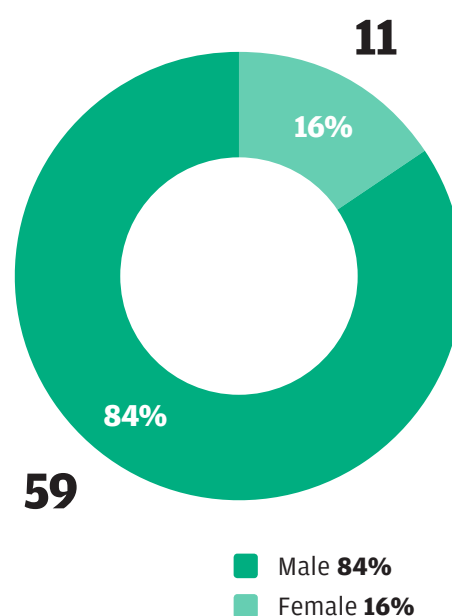


Figure 1.3 Gender of torture victims: Mexico

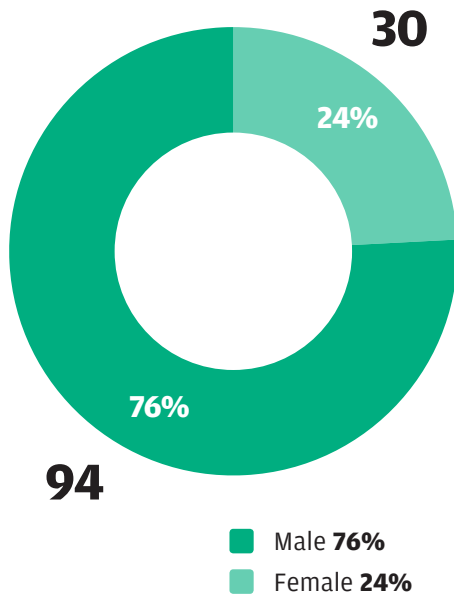
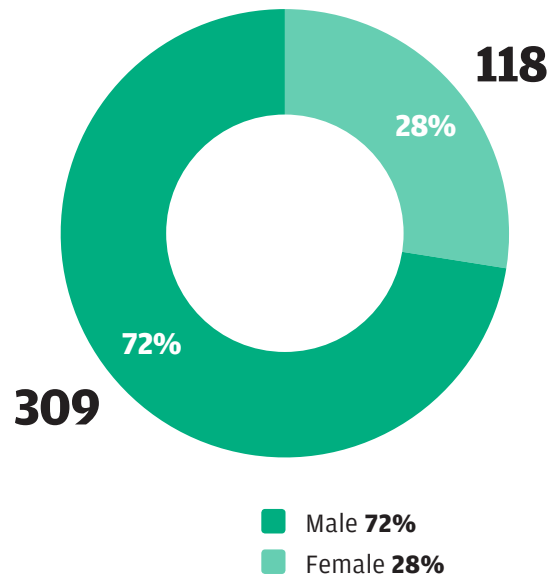


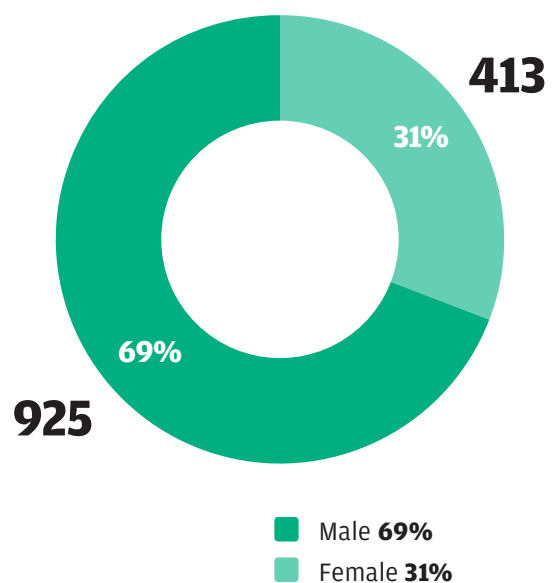
Figure 1.4 Gender of torture victims: Kenya



deprivation of normal sensory stimulation, humiliation, asphyxiation and positional torture.

In **Serbia**, the majority of the torture victims treated by IAN are torture victims from the Balkan Wars (1991-1995). They include ethnic Serbs who were refugees (from Croatia and Bosnia and Herzegovina), internally displaced persons (from Kosovo and Metohija) and citizens of Serbia. Many were forcibly mobilised in Serbia, sent to paramilitary training camps and then sent against their will to fight in the battlefields of Croatia and Bosnia and Herzegovina. A large proportion of IAN’s clients first suffered torture between the ages of 15 to 44 years old (80 percent). The majority indicate that they were subjected to torture

Figure 1.5 Gender of torture victims: Uganda



in military camps or facilities and prisoner of war, labour, concentration or extermination camps. These camps were either under the jurisdiction of the Serbian authorities (in the occupied territories of Croatia) or they were camps in Croatia and Bosnia and Herzegovina, under the jurisdiction of the Croatian and Bosnian authorities. The main torture methods used were beating (blunt trauma), humiliation of the victim, threats, conditions of detention and witnessing the torture of others.

In **Mexico**, torture also occurs in the context of the criminalisation of protests, and in the case of migrants, when they are transiting the country (recorded under the ‘Other’ data category, see figure 2.2), mainly at the hands of the immigration authorities or other state agents. The majority of CCTI’s clients have been tortured in detention or on the road. Torture victims are detained arbitrarily and often first tortured whilst in transit to the detention place, for example in patrol cars. Methods of torture used in such circumstances tend to be beating (blunt trauma), positional torture, threats and insults. The time between the person being detained and being brought before a judge is often lengthy, allowing for torture to be perpetrated on multiple occasions.

In **Kenya**, a high proportion of the clients suffer torture at the time of arrest or whilst the person is in detention. According to Mateso’s client data, the most common locations where torture occurs are the victim’s home, secret places of detention, police stations, military camps or prisons. The main torture methods used are beating (blunt trauma), with

Figure 2.1 Broader Context of Torture: The Philippines

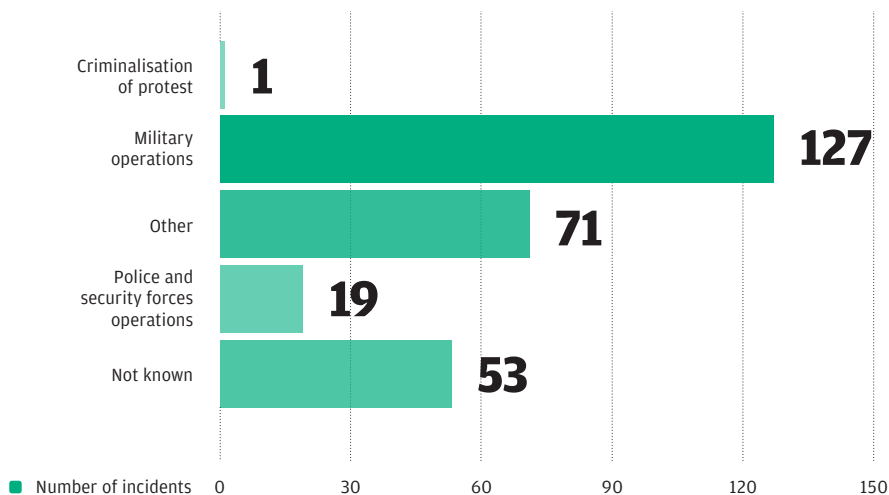
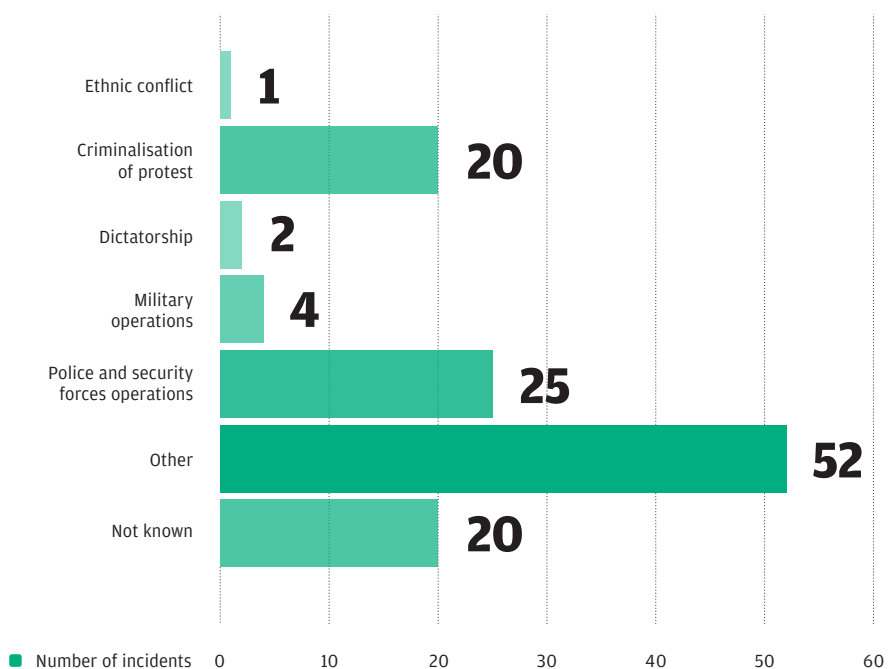


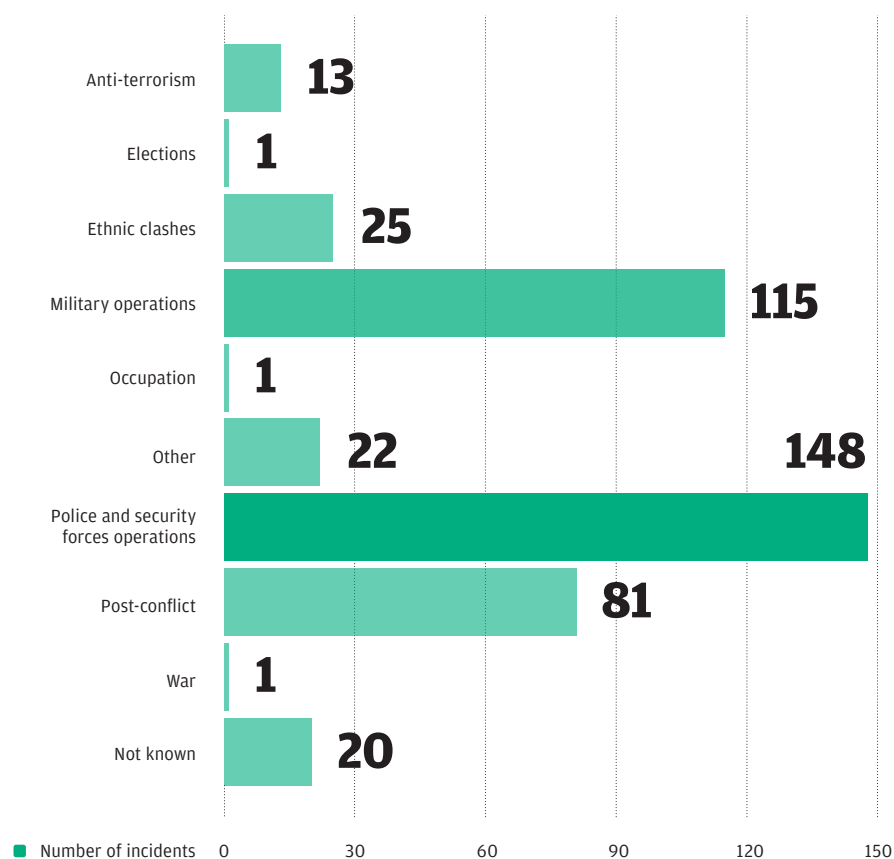
Figure 2.2 Broader Context of Torture: Mexico



10 clients reporting sexual torture and penetrating injuries. In addition, CAT-Kenya records a high number of victims that have experienced torture in ‘Settlements’. These clients are all under 18 years’ old and identified as ‘street children’ who live in Eldoret, in the Sosiani River Barracks Dumpsite. Police have carried out operations over the last two years to forcibly move the street children from the area. These clients all suffered severe multiple injuries from beating (blunt trauma), perpetrated by the police on more than one occasion.³

In **Uganda**, according to the data recorded, ACTV’s clients most commonly experience torture in police stations, at the victim’s home, or in military facilities. According to ACTV, police mainly torture at the point of arrest of suspects and in places of detention, often during interrogation in order to get a statement from the victim. This is particularly concerning because the Uganda Police Force is also tasked with investigating torture allegations. The victim’s home is attributed to those clients who are refugees who fled political unrest in their countries of origin. Other common locations of torture include in prison and on the road i.e. between the point of arrest and detention.

Figure 2.3 Broader Context of Torture: Kenya



In Kenya, a high proportion of the clients suffer torture at the time of arrest or whilst the person is in detention.

According to ACTV, police mainly torture at the point of arrest of suspects and in places of detention, often during interrogation in order to get a statement from the victim. This is particularly concerning because the Uganda Police Force is also tasked with investigating torture allegations.

Figure 2.4 Broader context of torture: Uganda

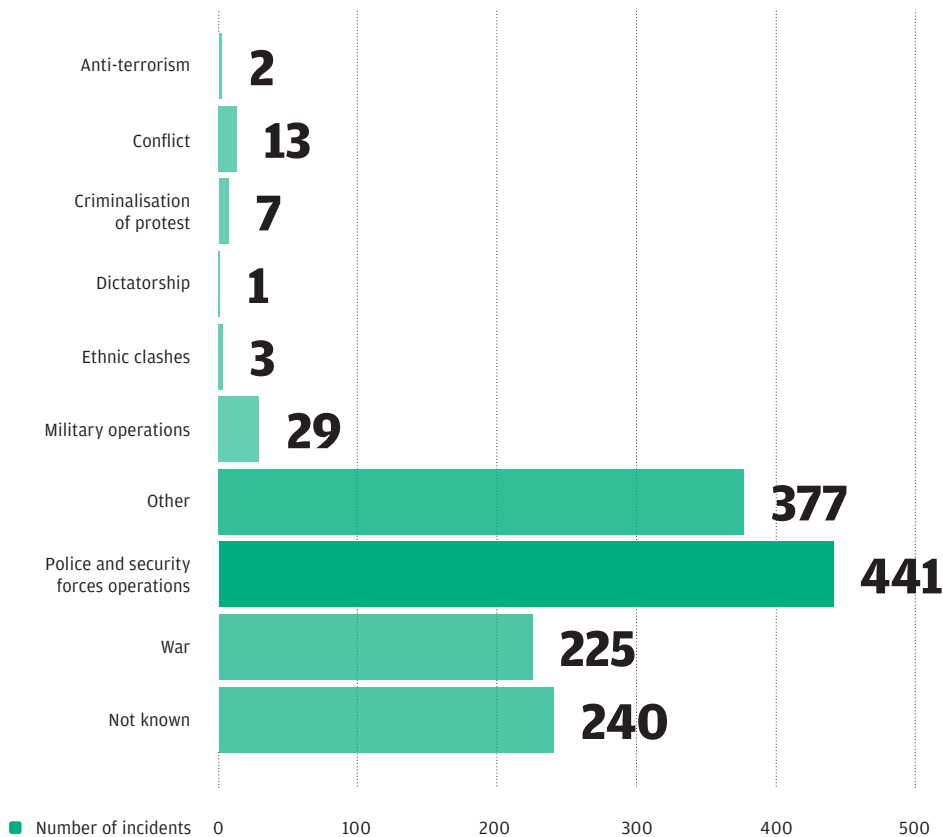
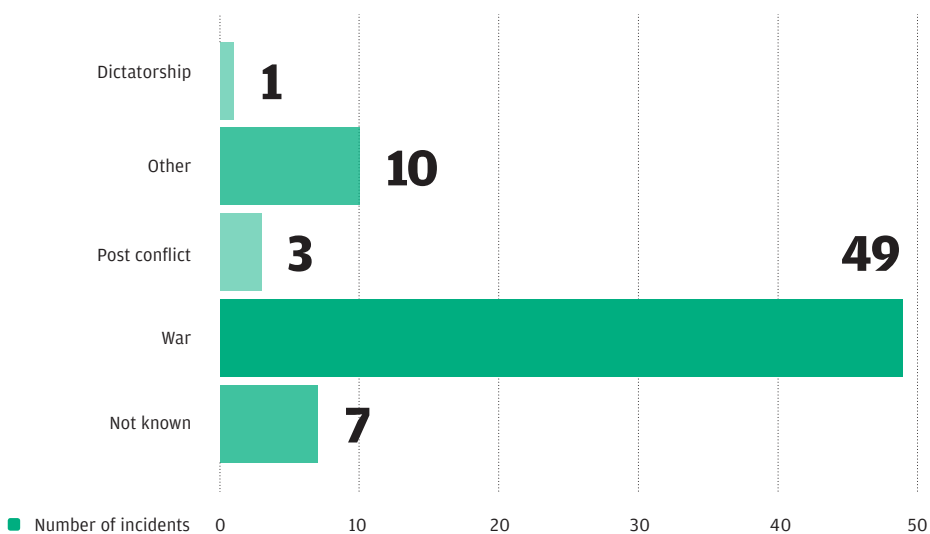
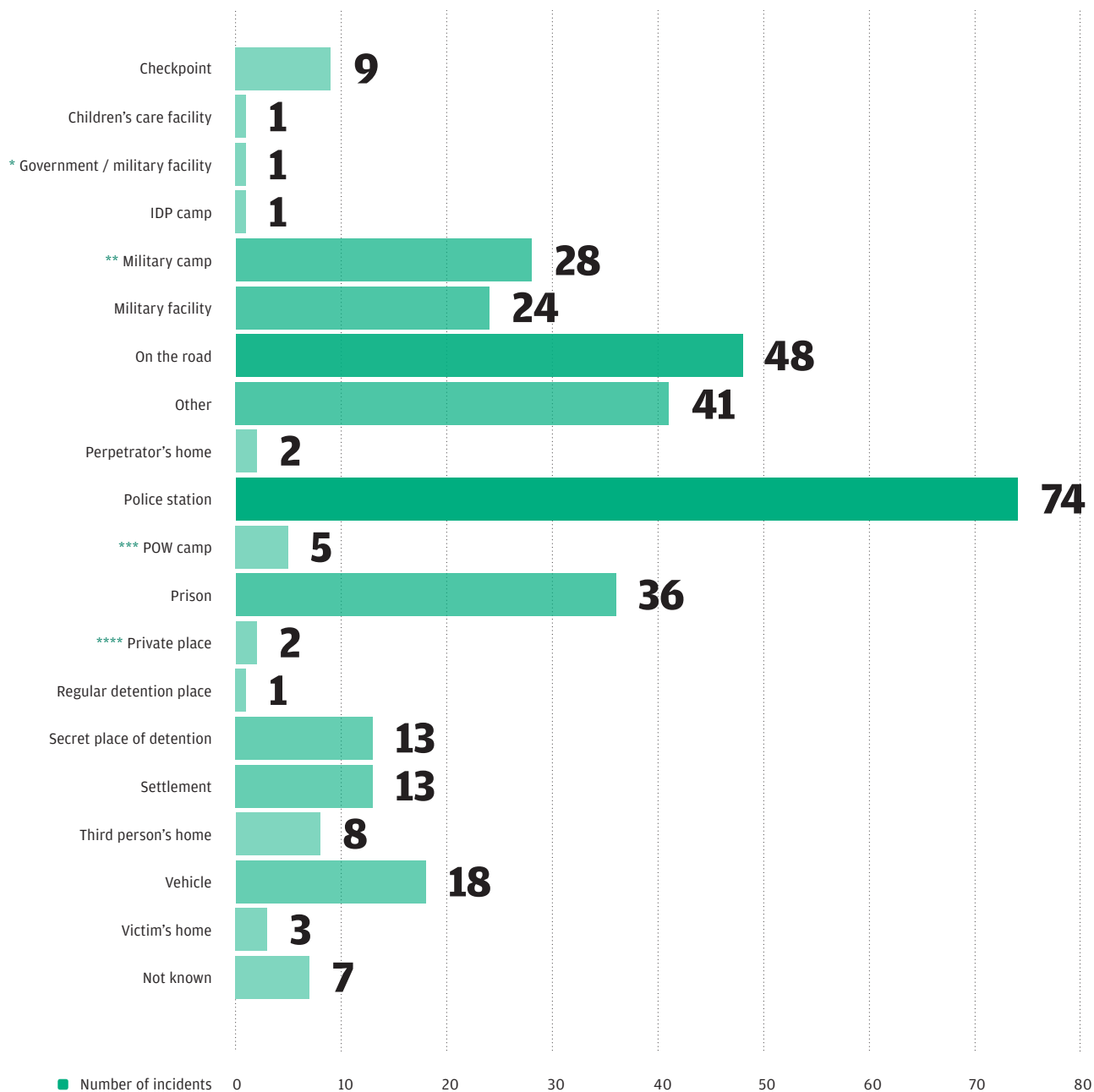


Figure 2.5 Broader Context of Torture: Serbia



**Figure 3.1 Location of Torture Incident:
The Philippines**



Notes to figures 3.1 - 3.5
 * Government or military facility without legal authorisation
 ** Labour, concentration or extermination camp
 *** Prisoner of war camp
 **** Private place, such as in the case of slavery or prostitution

Figure 3.2 Location of Torture Incident: Mexico

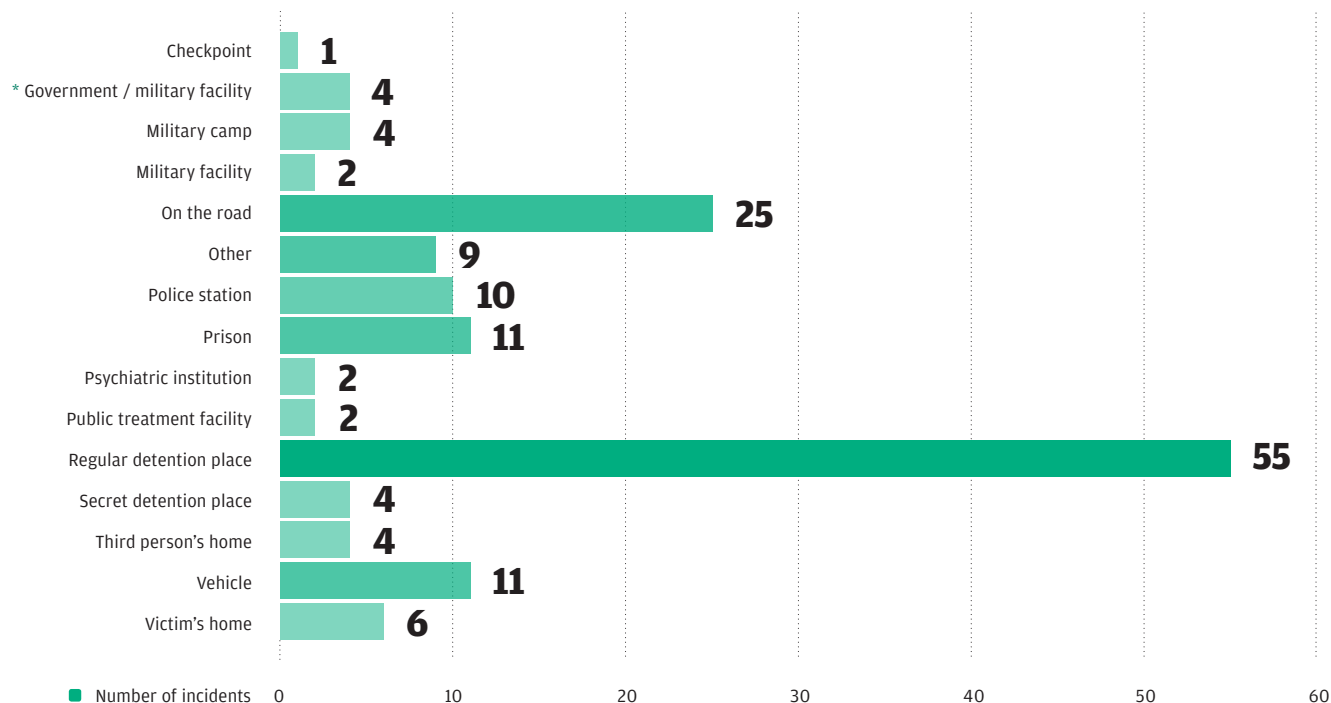


Figure 3.3 Location of Torture Incident: Kenya

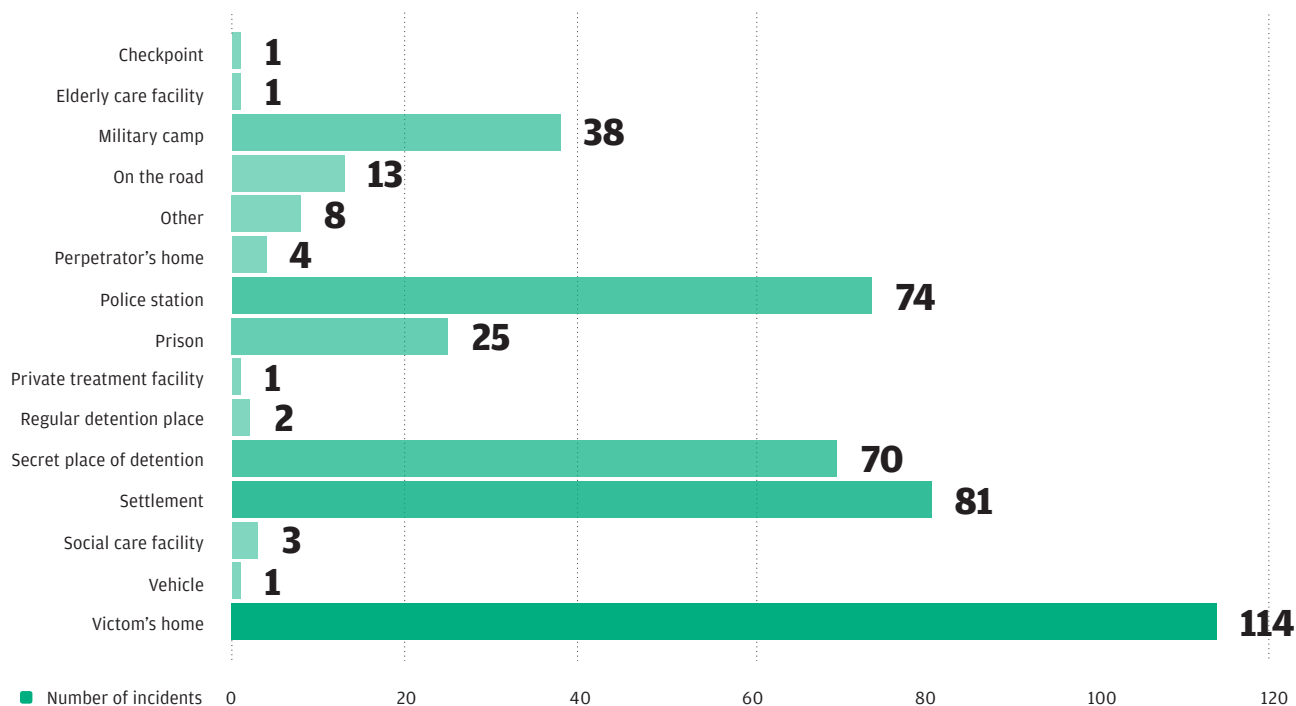


Figure 3.4 Location of Torture Incident: Uganda*

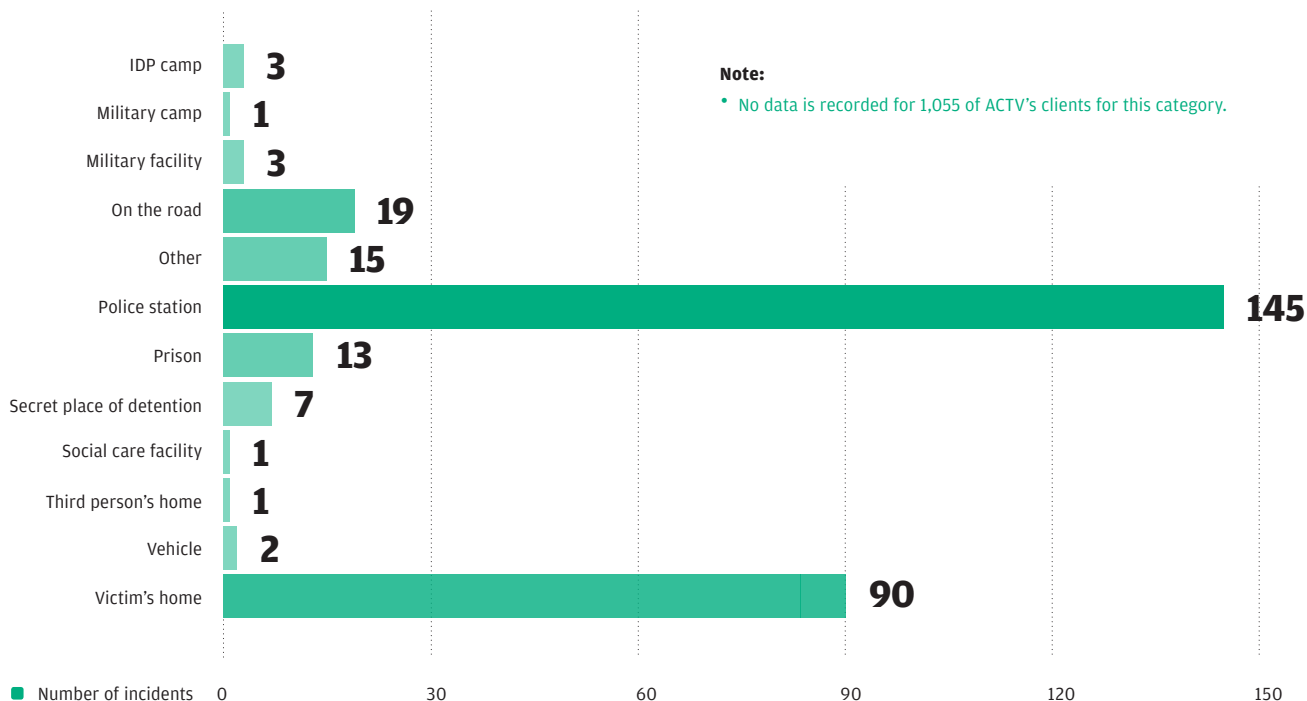
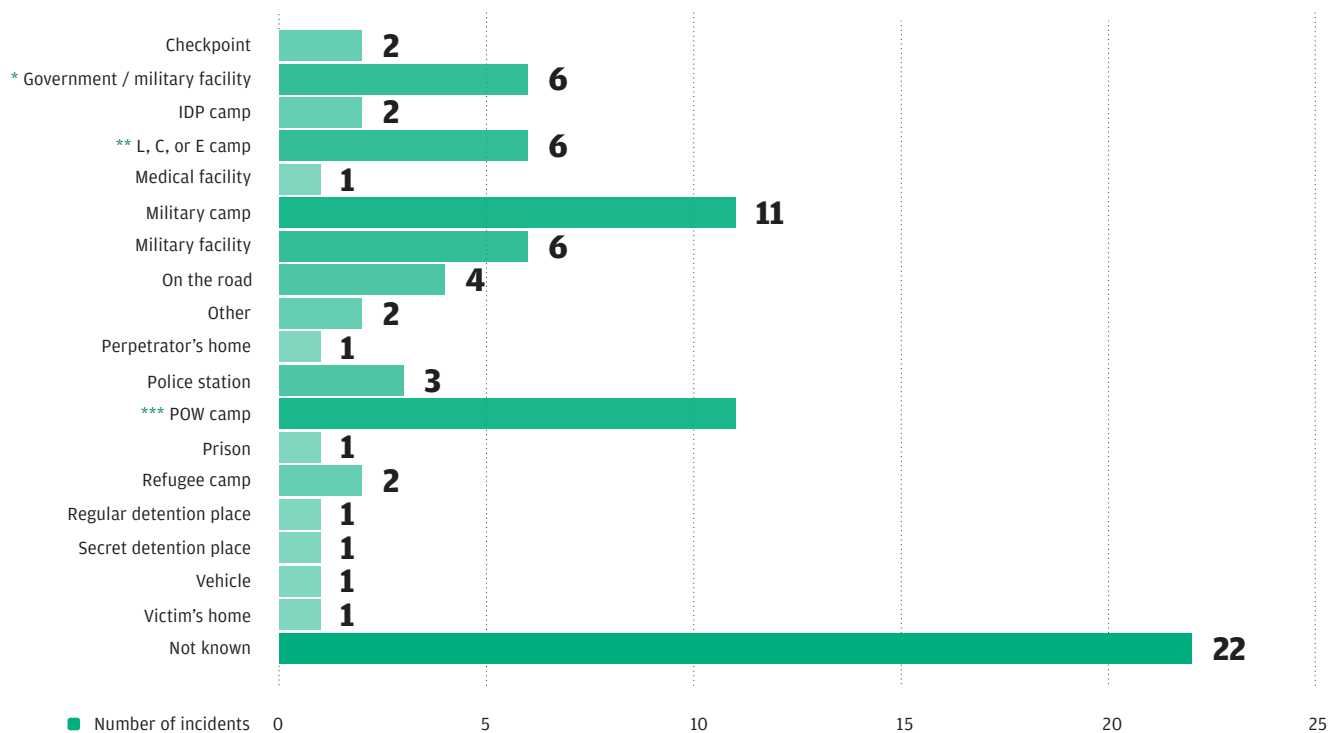


Figure 3.5 Location of Torture Incident: Serbia



Perpetrator affiliation

In all five countries torture is often perpetrated by the police or state commissioned armed forces.

In the **Philippines**, the main perpetrators are state commissioned armed forces and police. In addition, Balay's data records significant numbers of torture incidents perpetrated by local-level government officials. The numbers recorded in this category refer to a 'barangay tanod' which is the lowest level of law enforcement officer in the Philippines.⁴

In **Serbia**, IAN's data shows that the main perpetrators of torture are Serbian paramilitary forces, state commissioned armed forces or prison officials and police forces in the other Balkan countries where torture occurred during the war.

In **Mexico**, the main perpetrators are recorded as being government officials, employed at either local- or national-level. A significant number of perpetrators are recorded as

government officials because at the point of arrest and detention of the victim the perpetrators are dressed in civilian clothes or do not wear proper identification. Therefore, these perpetrators are unidentifiable in terms of which precise state body they belong to although it is presumed that they are employed either by a local- or national-level government institution. In reality, the majority of this category of perpetrator are later identified to be members of either the local or federal police force or state commissioned armed forces.

In **Kenya**, the majority of torture is perpetrated by the police, state commissioned armed forces, prison officials or intelligence agency officials. Likewise, in **Uganda** ACTV confirms that torture is most commonly perpetrated by the police.⁵ There are also a high number of cases (79) where the perpetrators were government officials from the Democratic Republic of Congo (DRC) government.

Figure 4.1 Perpetrator Affiliation: The Philippines

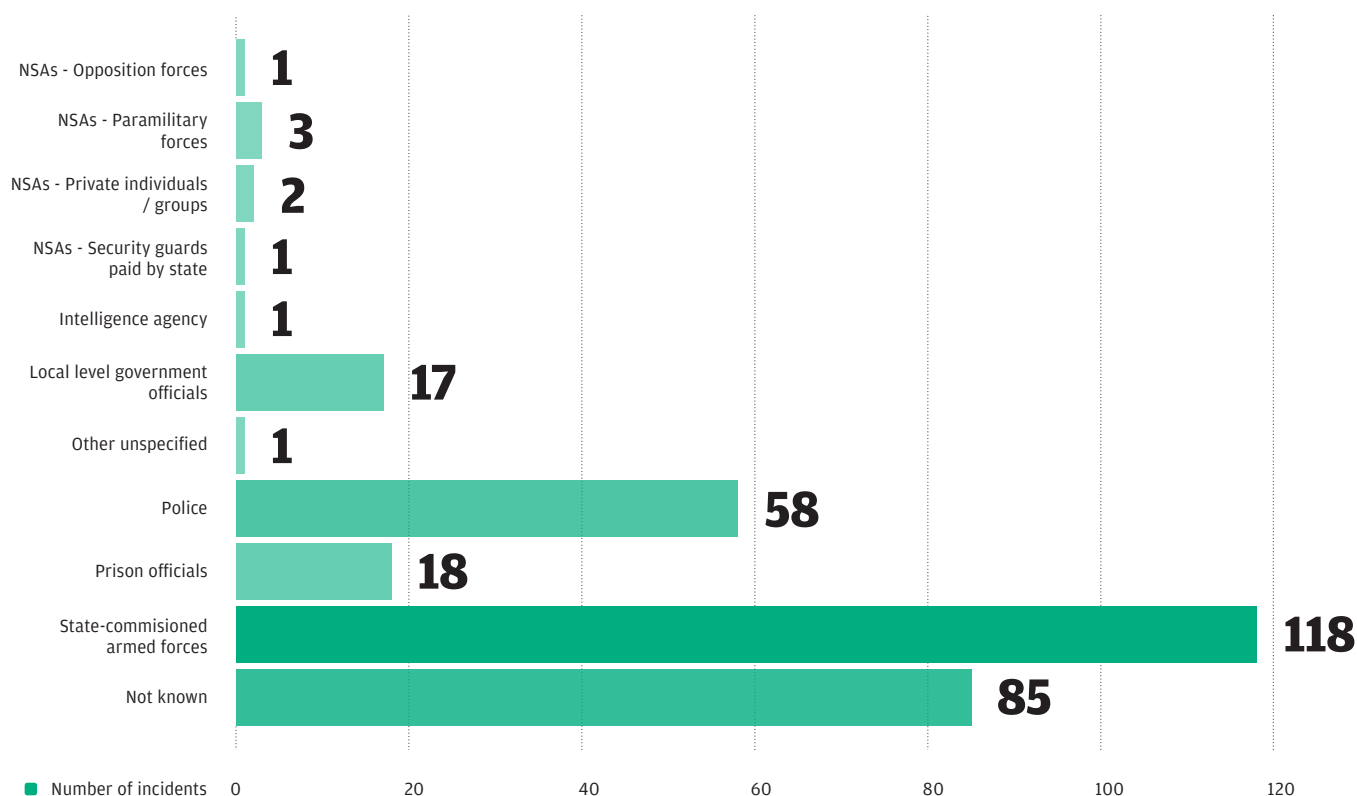


Figure 4.2 Perpetrator Affiliation: Mexico

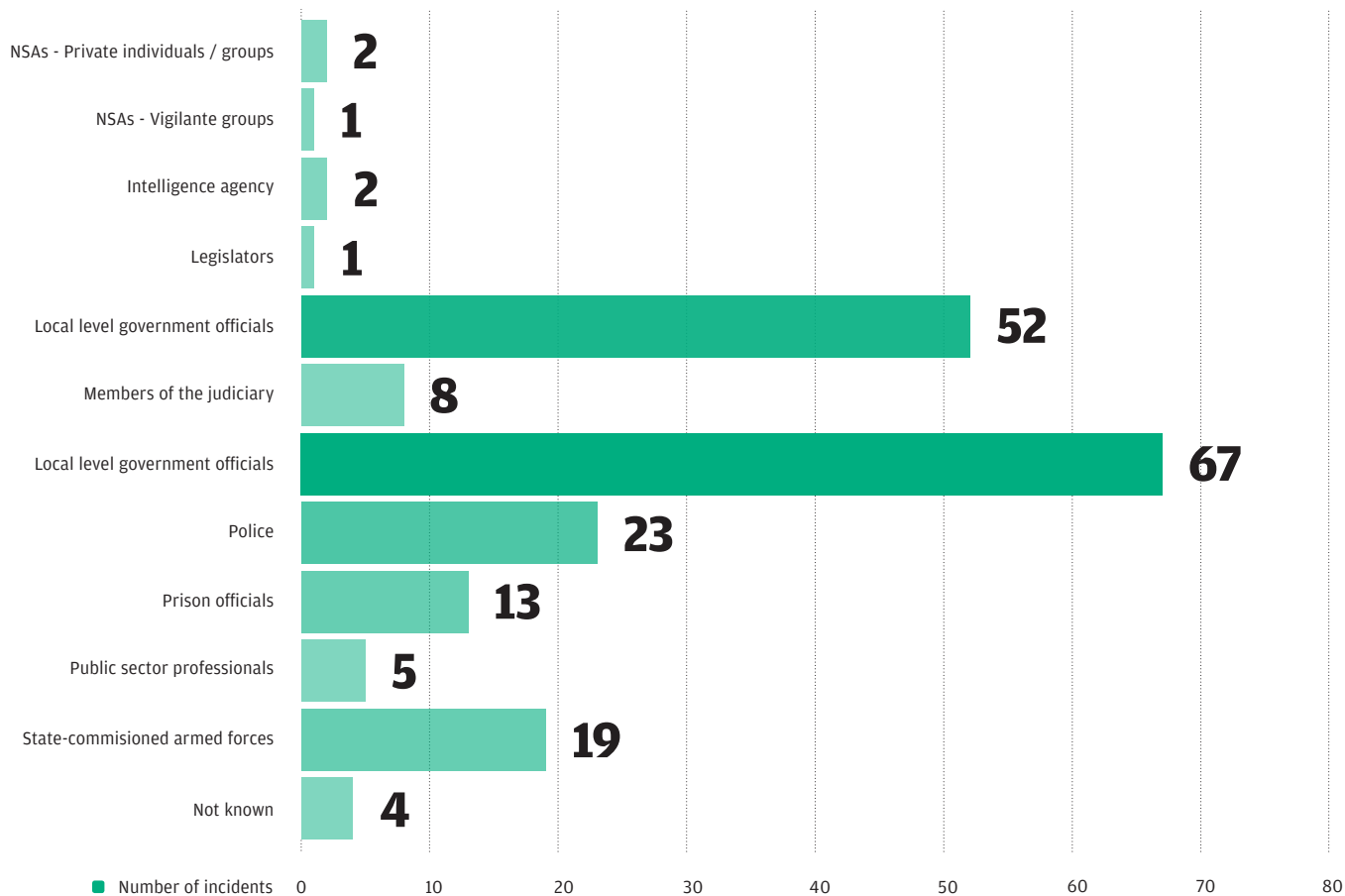


Figure 4.3 Perpetrator Affiliation: Kenya

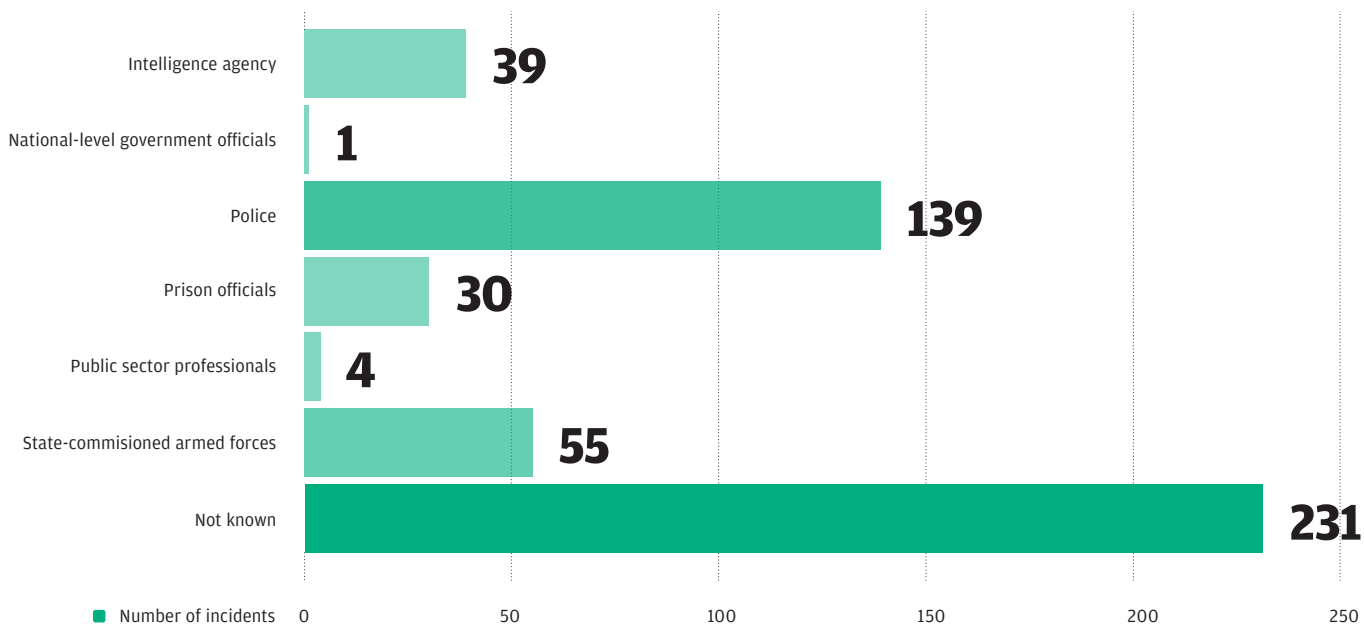


Figure 4.4 Perpetrator Affiliation: Uganda*

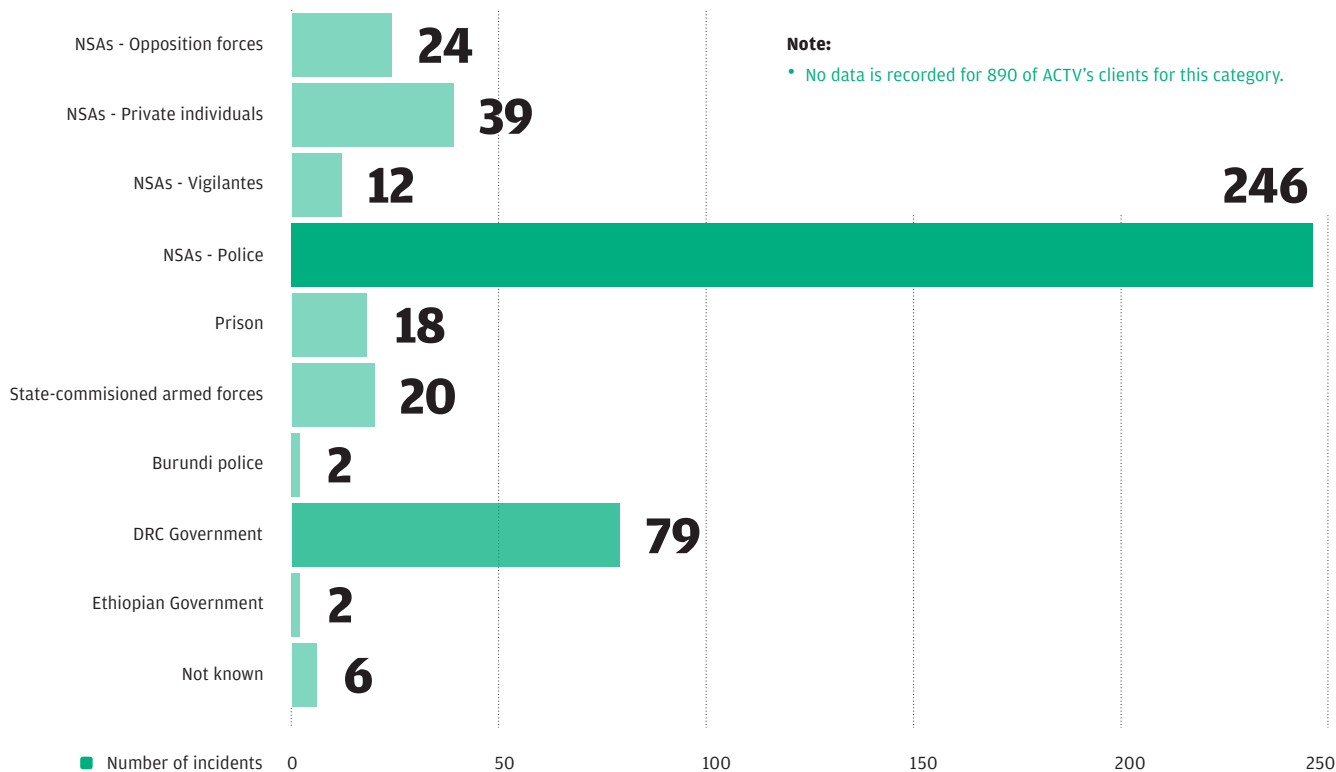
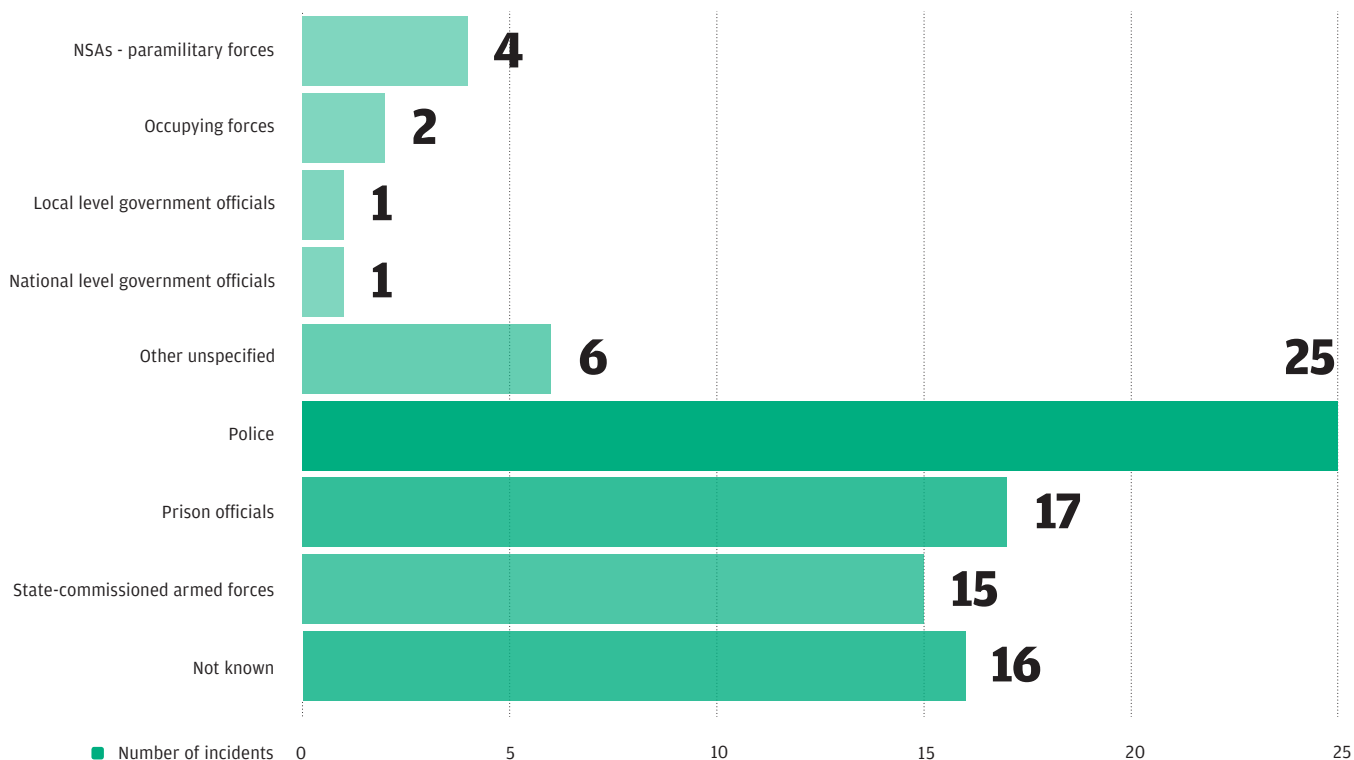


Figure 4.5 Perpetrator Affiliation: Serbia



Purpose of the torture

According to the data recorded, torture is most commonly used to force a confession from the victim. In addition, other common reasons to torture include: to sow fear or create pressure on others, to humiliate or intimidate the victim, to extract information about others, or to punish the individual.

81 cases where discrimination was recorded as a reason for the torture involve street children in Eldoret who were tortured partly because of their ethnicity.

In **Serbia**, IAN's clients were tortured to humiliate, punish or discipline them, to sow fear and create pressure on others or to destroy their personality. According to IAN, these were commonly used tactics during the Balkan Wars (1991-1995).

In **Mexico**, a large proportion of CCTI's clients are women or migrants and have been historically subjected to discriminatory treatment at the hands of state authorities. According to CCTI this discriminatory treatment is part of the reason why these particular victims are tortured.

In **Kenya**, some of the cases of torture are also linked to discriminatory practices. For example, 81 cases where discrimination was recorded as a reason for the torture involve street children in Eldoret who were tortured partly because of their ethnicity; most of the children are not members of the county's dominant Kalenjin community.

Anti-drug special forces police in Veracruz, Mexico.

© Gerardo C.Lerner / Shutterstock.com



Figure 5.1 Purpose of the Torture: The Philippines

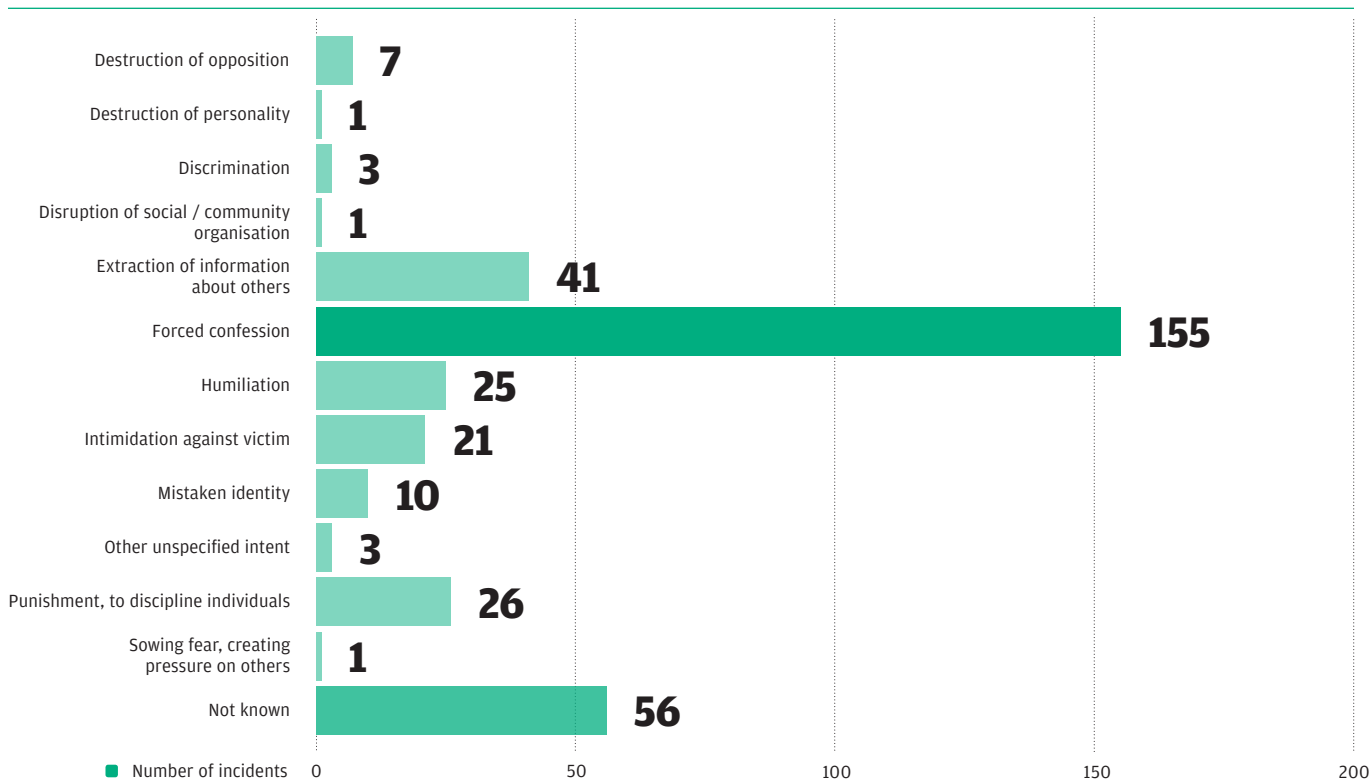


Figure 5.2 Purpose of the Torture: Mexico

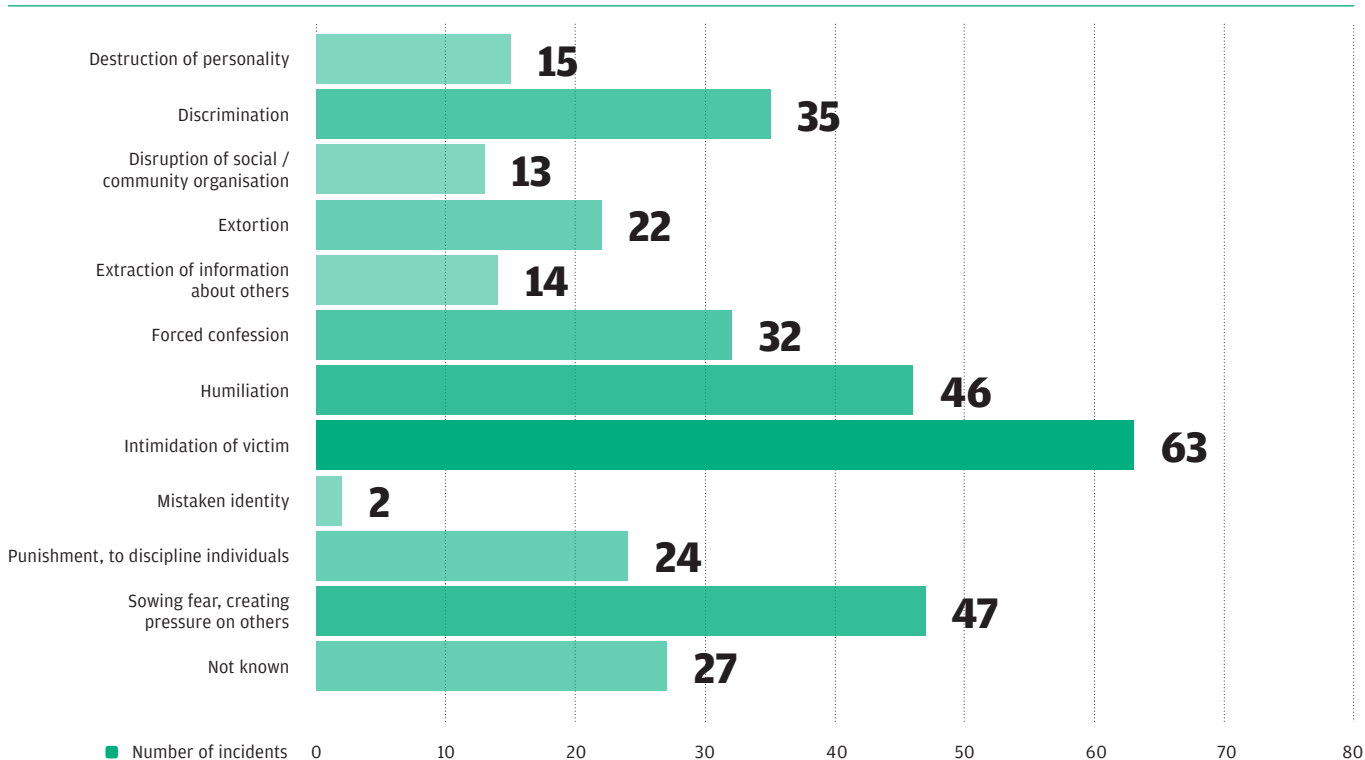


Figure 5.3 Purpose of the Torture: Kenya

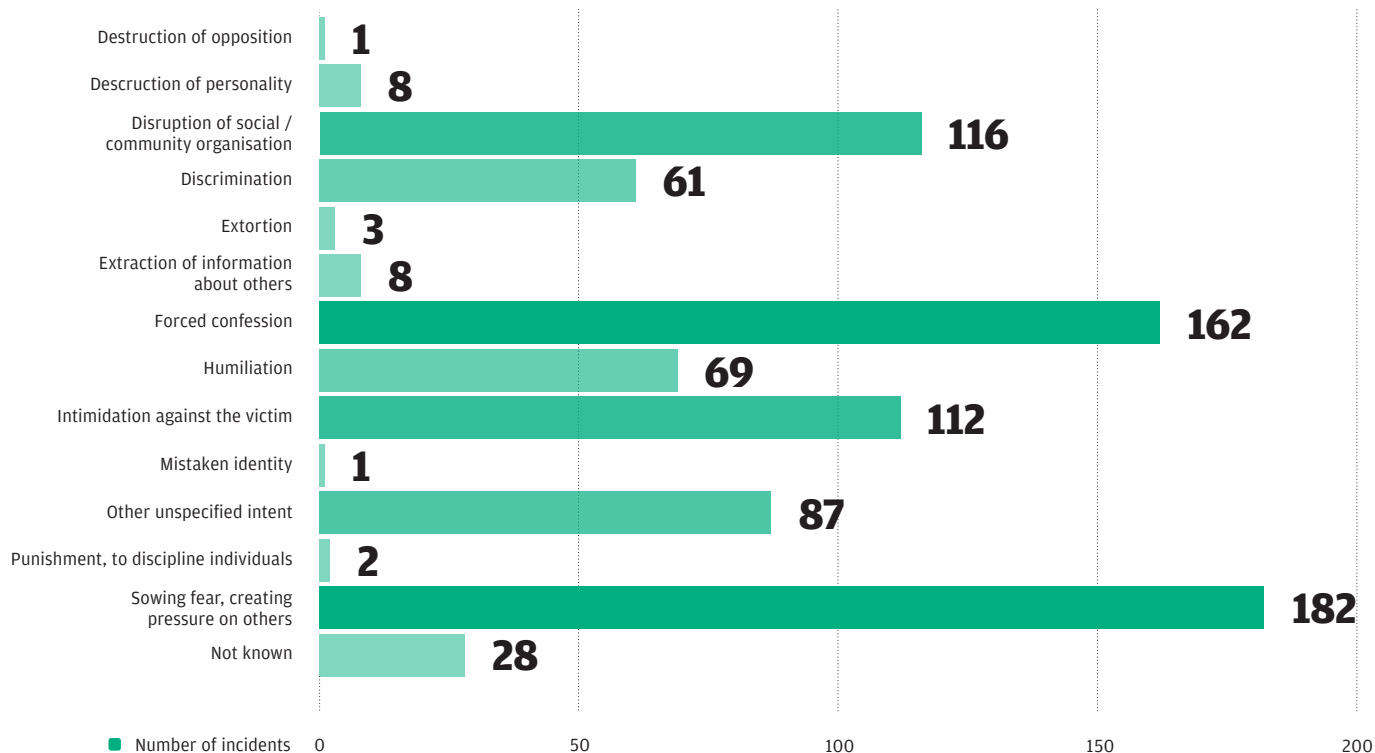


Figure 5.4 Purpose of the Torture: Uganda*

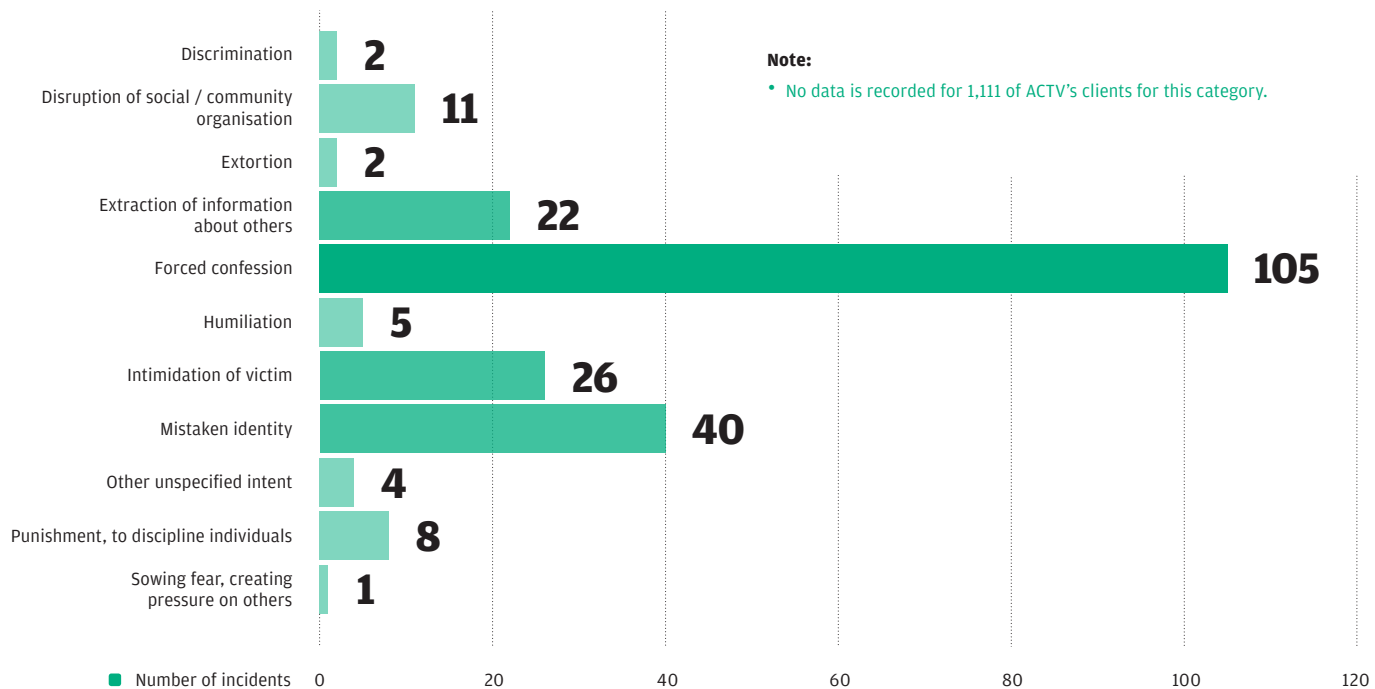
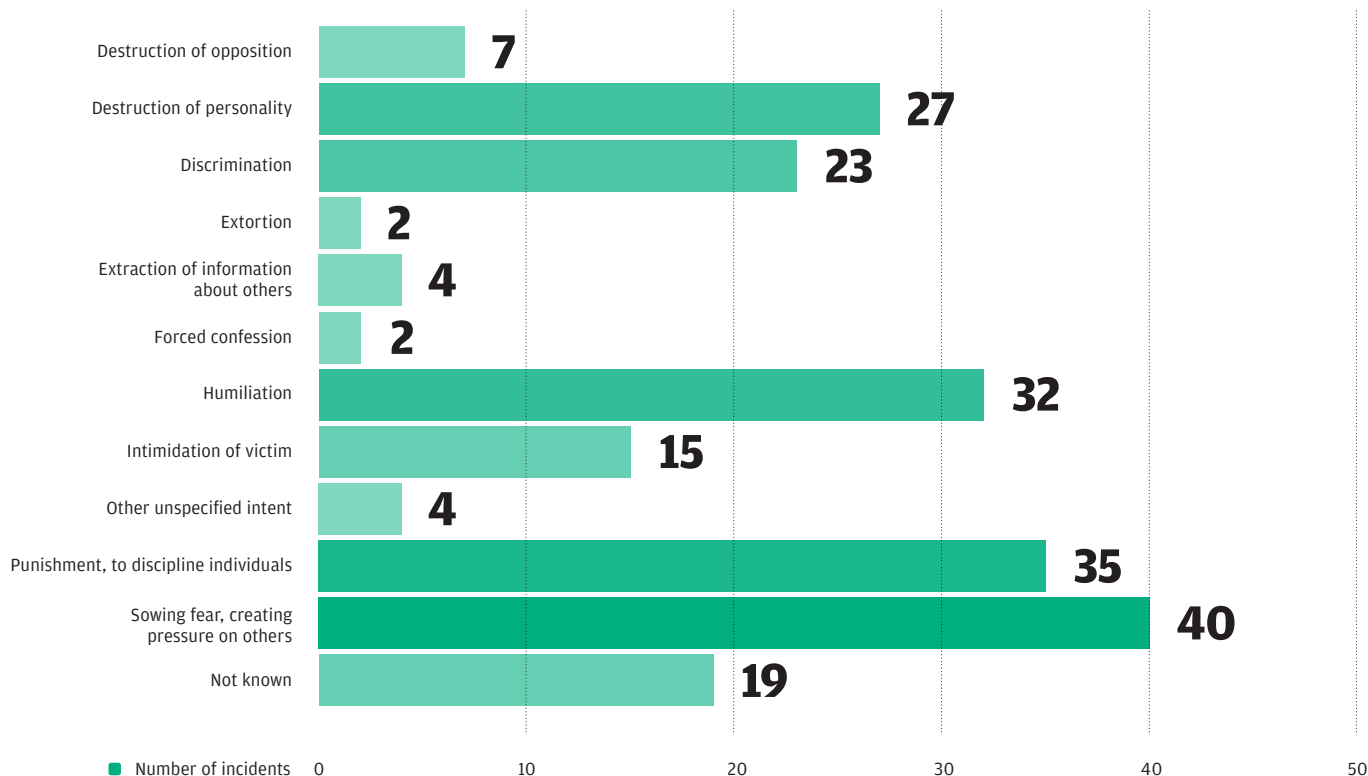


Figure 5.5 Purpose of the Torture: Serbia

In Serbia, IAN's clients were tortured to humiliate, punish or discipline them, to sow fear and create pressure on others or to destroy their personality. According to IAN, these were commonly used tactics during the Balkan Wars (1991-1995).

THE LEGAL AVENUES OPEN TO TORTURE VICTIMS



In all five countries there are legal avenues open to torture victims to seek redress and reparations, either through specific anti-torture legislation, or by using criminal or civil law procedures.

The Philippines enacted its Anti-Torture Act (RA 9745) in 2009, criminalising torture under all circumstances. The Act enables alleged victims to file a complaint of torture without time limitations. Perpetrators can be held criminally liable for acts of torture as either the principal actor, the person with command responsibility or as an accessory.⁶ The legislation intends to prevent torture by prohibiting secret places of detention and making confessions obtained through torture inadmissible as evidence.⁷ The Commission on Human Rights (CHR) and the Public Attorney's Office should provide legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and complaints about torture must be promptly and impartially investigated within 60 days of a complaint being filed.⁸ The Act also guarantees detainees the right to access a lawyer and an independent medical doctor of their choice.⁹ Torture victims have the right to claim for compensation amounting up to 10,000 Pesos.¹⁰ Various government agencies, including the Department of Social Welfare and Development (DSWD), the Department of Justice (DOJ) and the Department of Health (DOH), are tasked to work with human rights organisations to establish a comprehensive rehabilitation programme for victims and their families which would provide for their physical, mental, social, psychological healing and development. The legislation also provides for a parallel rehabilitation programme to be established for perpetrators.¹¹

In **Serbia**, the Criminal Code of the Republic of Serbia¹² criminalises torture and ill-treatment under the criminal offences of either “extortion of a statement” or “torture and ill-treatment”. The definition of torture under the Criminal Code is however not aligned with all elements of the crime of torture, as defined in article 1 of the UN Convention against Torture.¹³ The criminal offence “extortion of a statement” is punishable with two to 10 years of imprisonment, whereas torture and ill-treatment is punishable with one to eight years of imprisonment. However, under the Criminal Code there is a statute of limitations of ten years for the criminal offence of torture which prevents most of the victims tortured during the Balkan Wars (1991-1995) from using this avenue to seek redress and reparations. Instead, torture victims who were forcibly mobilised and tortured during the war, can seek compensation by filing a civil law claim for damages for unlawful deprivation of liberty under the Law of Obligations of the Republic of Serbia.¹⁴ However, this alternative legal avenue to seeking reparations is also subject to a statute of limitations of either five years from the event or three years from the date of the claimant's knowledge of the damage and the perpetrator.

In **Mexico**, the Constitution prohibits “torture of any kind” and punishes “any ill-treatment during arrest and confinement”. It also states that incommunicado detention, intimidation or torture is prohibited and punishable by criminal law and that victims have the right to redress and reparation.¹⁵ Torture is defined in the Federal Act on the Prevention and Punishment of Torture, article 3 with a penalty of three to 12 years' imprisonment, plus fines and debarment from public office. However, the definition of torture falls short of the definition of torture in article 1 of the UN Convention against Torture.¹⁶ The Ley General de Víctimas

In all five countries there are legal avenues open to torture victims to seek redress and reparations, either through specific anti-torture legislation, or by using criminal or civil law procedures.

(General Law on Victims)¹⁷ came into effect in 2013 and aims to guarantee the rights of victims of crime and human rights abuses in the ongoing violence resulting from the struggle against organised crime in Mexico. The law guarantees amongst other things: the right to a prompt and effective investigation of a crime and prosecution of the alleged perpetrators, reparation for the harm caused, protection and confidentiality, access to justice and legal assistance, access to specialised treatment to ensure the physical and psychological rehabilitation needed to ensure reintegration into society. The law also establishes a national registry of victims and mechanisms to set aside funds to compensate them, funded in part by the assets seized from organised crime groups. However, in his recent report, the UN Special Rapporteur on Torture criticises various problems in the implementation of the General Victims' Law including the re-victimisation of victims who seek the help of the authorities and the failure to allocate the necessary budget to effectively implement the reparation measures.¹⁸ In 2016, parts of the Ley General de Víctimas were reformed to make the delivery of support to victims of crime and human rights abuses more efficient by strengthening the capacity of the institutions tasked with its implementation. The reforms aim to optimise the access to assistance for victims, enable victims to access independent expert reports to document their allegations, and provide for the active participation of civil society organisations, victim groups and academics in implementing the reforms.¹⁹

Kenya has a number of different pieces of legislation that outlaw torture or provide access to redress or reparations for torture victims. The Constitution prohibits torture in Article 25 and also provides for the right to a fair hearing and for alternative forms of dispute resolution including mediation, arbitration and reconciliation to be promoted.²⁰ The Victims Protection Act was enacted in 2014, establishing a legislative framework to support victims of crime including victims of torture. The Act provides for better information, support services, compensation and reparation and to prevent re-victimisation during the court process.²¹ It also guarantees victims of crime the right to protection and security, including urgent medical treatment and immediate psychosocial support, and guarantees that their case will be investigated and prosecuted in a timely manner.²² Compensation awards made by a court can include damages for personal injury and to cover costs of medical or psychological treatment. In addition, the act established a Victim Protection Trust Fund to support the expenses arising out of providing assistance to victims of crime.²³ The National Police Service Act provides for the investigation, prosecution and conviction of police officers who commit acts of torture or ill-treatment with maximum sentences of imprisonment of up to 25 years for torture or up to 15 years for other ill-treatment.²⁴

Kenya recently enacted the long-awaited Prevention of Torture Act 2017 to give effect to Articles 25(a) and 29(d) of the Constitution and the UN Convention against Torture.²⁵ The new law makes all state agencies and officials accountable for acts of torture or ill-treatment, not just the National Police Service, the National Intelligence Service and the Kenya Defence Forces, who are covered by previous legislation. It defines and criminalises torture and establishes a legal and institutional framework for supporting victims of torture. Where complaints of torture are investigated, the court will be expected to order an investigation

In Kenya, the National Police Service Act provides for the investigation, prosecution and conviction of police officers who commit acts of torture or ill-treatment with maximum sentences of imprisonment of up to 25 years for torture or up to 15 years for other ill-treatment.

to include a medical and psychological assessment of the harm suffered by the victim.²⁶ It guarantees the right of victims and their families to adequate reparation, including compensation and rehabilitation and treatment and counselling, and it mandates that rehabilitation expenses should be covered by the Victim Protection Trust Fund.²⁷ Under this new law those perpetrating torture and ill-treatment will no longer be charged with crimes such as assault, but with the more serious crime of torture or ill treatment that will attract a sentence of not more than 25 years and 15 years respectively.²⁸ There are also sentences or fines for those convicted of aiding or abetting torture or knowingly using information obtained through torture or ill-treatment.²⁹

Uganda guarantees freedom from torture and other ill-treatment under the 1995 Constitution and the Prevention and Prohibition of Torture Act which was enacted in 2012.³⁰ Section 4 of the Act criminalises torture and anyone found liable can be convicted to imprisonment for fifteen years or to a fine, or both. Section 6 of the Act mandates the court the power to grant reparations to torture victims, including compensation, rehabilitation or restitution. Compensation can include the costs required for legal or expert assistance, medicines, medical services, and psychological and social services. Rehabilitation awards cover medical and psychological care, or legal and psycho-social services to the victim in case of trauma. However, although Uganda enacted its anti-torture legislation in 2012, implementing regulations were only passed in 2017. Therefore, although the law has existed for some years it has not been used as a means to access redress and reparations as it has not been fully implemented.

Although Uganda's anti-torture law has existed for some years it has not been used as a means to access redress and reparations as it has not been fully implemented.



School children perform an African dance in Soroti, Uganda while a military soldier walks by.

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SEEKING AN EFFECTIVE REMEDY AND REPARATIONS FOR TORTURE VICTIMS

Torture survivor, Kenya.

Photo courtesy of Mwatikho Torture Survivors Organisation (Mateso).

The client data in the previous section gives an overview of the context in which incidents of torture occur in the five countries in this report. It also demonstrates that the practice of torture continues despite the existence of anti-torture legislation and alternative legal avenues of redress. The following section will present some of the key challenges to seeking redress and reparations identified through the analysis of the data and interviews with the IRCT member centres.

The proportion of torture victims who file a complaint about torture is low

In the **Philippines**, a very low proportion of torture victims treated by the two IRCT member centres have filed a complaint about torture (1 percent of Balay's clients and 17 percent of MAG's clients). Most of MAG's clients who did not file a complaint about torture were victims of 'shaming' and accused of illegal drug use and trade. Although they were not physically injured, these victims suffered public humiliation when they were rounded up by the Mayor's Anti-Crime Group, made to wear signs stating them to be drug-users or dealers and paraded through the streets. These victims suffer from psychological symptoms as a result of the public shaming which also places them at risk of becoming victims of extra-judicial killings and causes them continued public humiliation and stigmatisation. MAG considers the psychological suffering to amount to torture or ill-treatment. Many torture cases also go unreported in the Philippines as torture often occurs in rural places where information about these cases does not reach the human rights groups that could offer victims the legal or rehabilitative assistance they need. Often authorities that come into contact with torture victims - for example social workers, public lawyers or prison officials - are not aware of their obligation to report allegations of torture so these cases go unreported and victims are not made aware of their right to seek redress and reparations. In addition, most victims harbour a distrust of the judicial system and do not think any benefit would come out of making a complaint. The fact that many torture victims are also charged with offences related to alleged criminal activities, rebellion, or terrorism creates stigma and discourages sympathy from the public.

In **Mexico**, 31 percent of CCTI's clients have made a complaint about torture, compared to 40 percent who

Figure 6.1 Number of complaints about torture filed: The Philippines

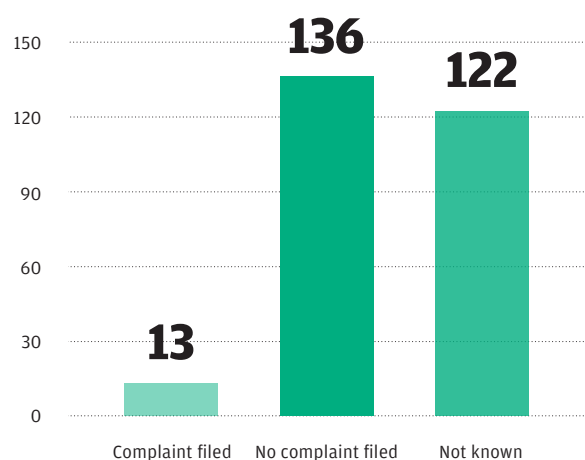


Figure 6.2 Number of complaints about torture filed: Mexico

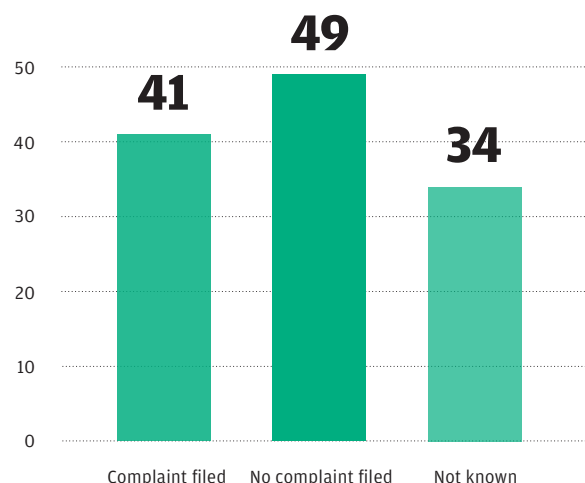
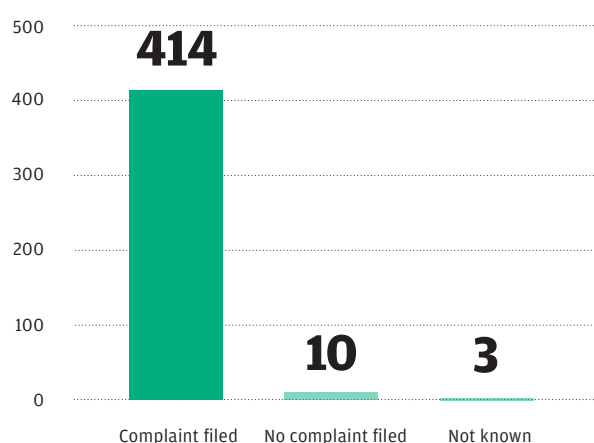


Figure 6.3 Number of complaints about torture filed: Kenya



chose not to. It should, however, be noted that no data is recorded for the remaining 29 percent of CCTI's clients for this category. According to CCTI's data, the most common reason that torture victims do not file a complaint about torture or ill-treatment is a lack of trust in what is perceived to be a corrupt and non-functioning legal system. The second most common reason is the fear that they will be subjected to reprisals or intimidation. These findings mirror the conclusions of the UN Special Rapporteur on Torture following his visit to Mexico in 2014.³¹

In **Uganda**, there is a very low number of complaints made about torture, despite the high number of torture victims treated by ACTV. According to ACTV, most of the torture victims that they support are only interested in seeking medical treatment and rehabilitation. This is in part because of a lack of trust in the criminal justice system coupled with a fear of reprisals from the perpetrators. According to ACTV, clients are in any event more focused on accessing rehabilitation services than making a complaint about torture and seeking redress or reparations through a court process.

In **Kenya**, in contrast to the other countries, a significant proportion of the total clients in both rehabilitation centres have made a complaint about torture (100 percent of CAT-Kenya's clients and 96 percent of Mateso's clients). However, this complaints procedure only covers offences that fall under the Criminal Procedure Code, such as grievous bodily harm (GBH) or assault. Therefore, although the victims allege torture or ill-treatment the remedy they can access only relates to other criminal offences under the Criminal Procedure Code. However, once the Prevention of Torture Act (PTA) 2017 is implemented, it will supersede other legislation as the main avenue for addressing torture complaints.

Documentation and investigation of torture is ineffective and lacks independence

In **Mexico**, 20 clients treated by CCTI have submitted evidence in support of their allegations of torture and ill-treatment in the form of a medico-legal report.* However, there is a shortage of independent medical professionals in Mexico who are able to document torture using medico-legal reports that meet the required standards in the Istanbul Protocol. Most medical examinations offered to torture victims are carried out by medical professionals

*Note:

The goal of medico-legal documentation is to examine an individual and to assess the degree of consistency between his or her allegations of torture and ill-treatment and the physical and psychological evidence that can be found. The examination includes interviewing the individual, recording his or her general information, collecting relevant background information, listening to his or her full account of the torture or ill-treatment, evaluating all physical and psychological symptoms before, during, and after the alleged events, and conducting diagnostic tests whenever necessary. This information is documented and analysed individually and then altogether in order to draw conclusions on the degree of consistency. The work is presented in a single report, known as a 'medico-legal report'. The Istanbul Protocol is the key international standard for investigating and documenting torture. It is a minimum standard adopted by the United Nations in 1999 and is now promoted by courts, governments, and professional bodies around the world. The Istanbul Protocol sets a benchmark on what medicine, science, health, and legal standards require. A report based on the Istanbul Protocol is of a high standard with findings and conclusions that are impartial and well-founded.³²

who work for the same state institutions that are involved either in the investigation or perpetration of the torture. Therefore, the majority of these examinations are far from impartial or independent and usually reach a negative conclusion about the allegations of torture.

Where a negative conclusion is reached, the burden is placed on the torture victim to produce their own evidence supporting the allegation they were tortured. In these cases the victims rely on non-governmental organisations that provide rehabilitation services - such as CCTI - to find independent experts to carry out a medical or psychological examination that complies with the standards of the Istanbul Protocol. Unfortunately, even where independent medico-legal reports are relied on in proceedings, the victim still has to contend with the undue weight that the court gives to government medical reports, over those submitted by independent experts.

Investigations of torture allegations are not conducted promptly, effectively, or independently in Mexico. The mechanism which is mandated to ensure that investigations and documentation of torture are carried out independently is in fact closely linked to the Procuraduría General de la República, PGR (Office of the General Prosecutor).

The recent reforms to the Ley General de Víctimas clarify that the same probative value should be given to expert reports produced by independent experts as to reports produced by experts employed by the state. It is hoped that this amendment will guarantee that the investigation and prosecution of torture is conducted more effectively and with a greater degree of independence in the future.

In **Kenya**, the National Police Service Act stipulates that every police station must have “a facility to receive, record and report complaints against police misconduct”. This procedure is known as filing a ‘P3 Form’ which is the main avenue used by victims to make a complaint alleging torture or ill-treatment by police officers. State-employed doctors are available at police stations to carry out medical examinations but the process is problematic for a number of reasons. Firstly, the medical examinations carried out by state-employed medical professionals fall well below the standards in the Istanbul Protocol. The impartiality and independence of the reports is questionable, given that the doctors are employed by the state. Secondly, many charge a fee which prohibits many torture victims from undergoing an examination. Finally, they have limited

Municipal police officers patrol the city of Guanajuato, Mexico.
© Takamex / Shutterstock.com



In addition to the problems associated with the quality of the medical evidence documenting the allegations of torture, the complaint about torture is filed at the police station, placing the victim at risk of intimidation or harassment and leaving room for the complaint to be altered or simply not recorded.

expertise, meaning that no psychological examination of the victim is carried out. In addition to the problems associated with the quality of the medical evidence documenting the allegations of torture, the complaint about torture is filed at the police station, placing the victim at risk of intimidation or harassment and leaving room for the complaint to be altered or simply not recorded.

Case Study

Medico-legal reports corroborate torture used to extract information

CCTI currently supports four victims involved in legal proceedings in which they were able to prove that statements they made, accusing a fifth person - “Carlos” - of organised crime, were obtained through torture. The victims’ allegations were proven by submitting medico-legal reports, carried out by members of the Red Nacional de Peritos Independientes en México (National Network of Independent Experts in Mexico), according to the standards in the Istanbul Protocol. The medico-legal reports corroborated the allegations of the four victims.

On 8 September 2016, the court handed down its judgement, in which full probative value was given to the independent medico-legal reports. As a result of this evidence, the court excluded the victims’ confessions obtained as a result of torture. “Carlos” was acquitted and his immediate release from detention was ordered. However, the trial of the four victims is still pending, demonstrating the lengthy judicial process and the impunity that persists in Mexico. It has taken seven years to prove that the allegations against Carlos were false. In addition, two years have passed since the court accepted the allegations that the four victims were tortured, yet these four individuals are still deprived of their liberty.

There is a low perpetrator conviction rate compared with complaints filed

There are very few criminal convictions of perpetrators compared to the number of complaints about torture or ill-treatment which are filed.

In the **Philippines**, there is only one known case where the perpetrator was convicted in 2016, in accordance with the Anti-Torture Act. However, the defendant filed a plea bargain and was therefore convicted of a lesser offence. Another

torture case involving a client treated by Balay resulted in the arrest of an Army Captain and the dismissal from service of two soldiers who are now awaiting trial. However, two other senior military officers who were implicated in this torture case were not prosecuted despite the fact that they had equal criminal accountability under the principle of command responsibility as provided by the Anti-torture Law. Another case implicated an Army lieutenant and his team members. A court issued a warrant for their arrest, but the military denied that the alleged perpetrators were on their list of members. The low perpetrator conviction rate exists despite the high number of cases of torture or ill-treatment reported by the Commission of Human Rights. For example 75 cases were recorded in 2013 and in 60 of these cases police officers were implicated as the perpetrators.³⁵ However, in many of these cases the police officers are transferred to work elsewhere in the police force pending an investigation into the case.

In **Mexico**, there have been no perpetrators convicted in cases related to the torture victims supported by CCTI. However, there have been some cases in the national courts in recent years that have acknowledged that torture happened in order to extract a confession. Although there have been no criminal convictions yet, the court has ordered further investigation of the cases and the prosecution of the perpetrators.³⁶ The UN Special Rapporteur on Torture also reported a low number of complaints made in comparison to acts of torture or ill-treatment in his follow up report on Mexico. Only seven out of every 100 criminal acts are reported and of those investigated only around 4 percent result in a conviction.³⁷

No criminal convictions of perpetrators are reported from torture victims treated by the two IRCT member centres in **Kenya**.

In **Uganda**, the Ugandan Human Rights Commission received and registered a total of 286 complaints on torture and conducted tribunal hearings on the same between January and October 2016. However, the tribunal is unable to convict perpetrators, but can award compensation to the victims.

There is a lack of investment and support for mechanisms established by law

The data demonstrates that very few torture victims file a complaint about torture and those that do complain have

Figure 7.1 Outcome of complaints about Torture: The Philippines

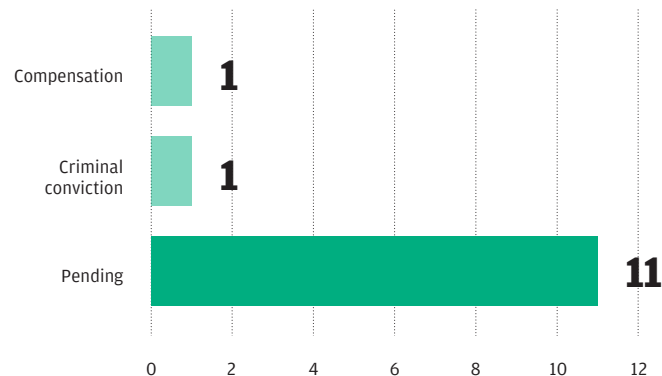


Figure 7.2 Outcome of complaints about Torture: Mexico

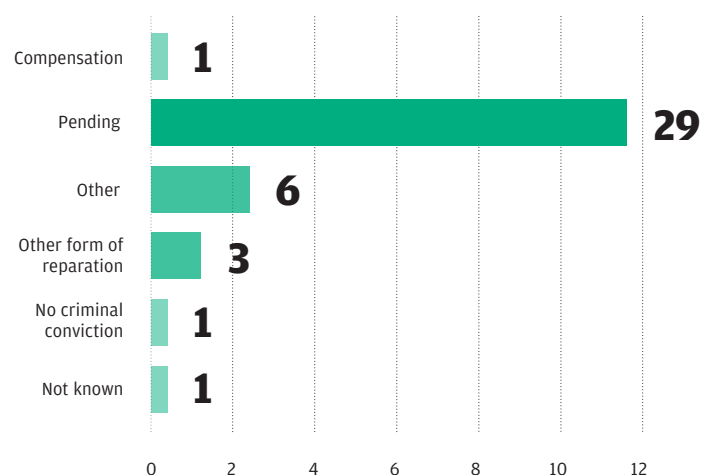
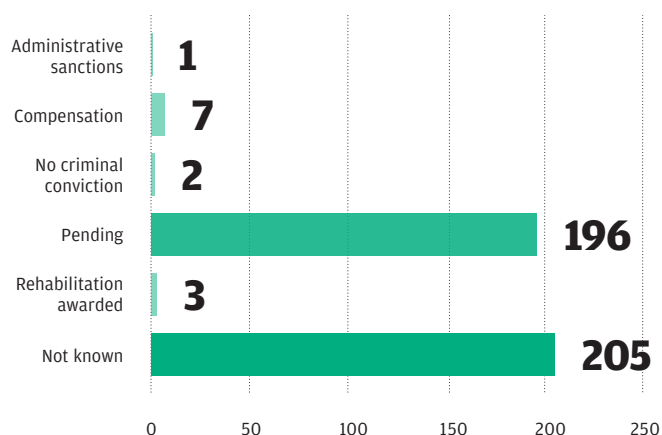


Figure 7.3 Outcome of complaints about Torture: Kenya



not seen a conclusion to their case. Many of the reasons for this stem from the lack of proper implementation of the legal and policy frameworks aimed at providing an avenue for victims to access redress and reparations. Some of the key challenges in ensuring these mechanisms are implemented are illustrated by the data and are described below.

Figure 8.1 Reasons for not filing a Complaint about Torture: The Philippines

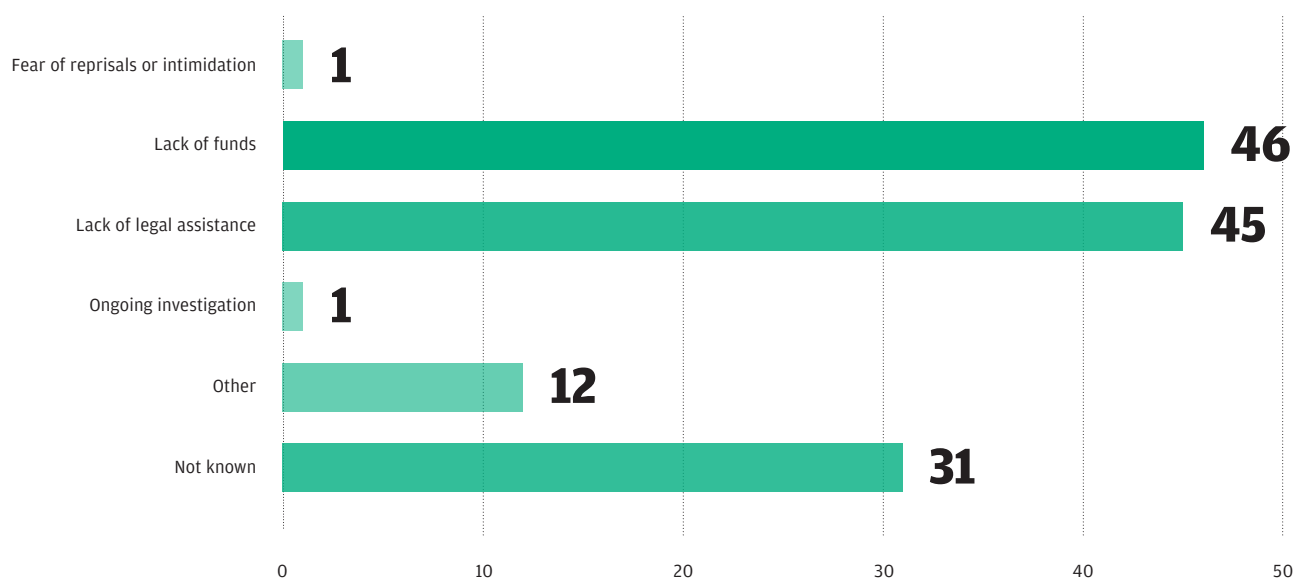
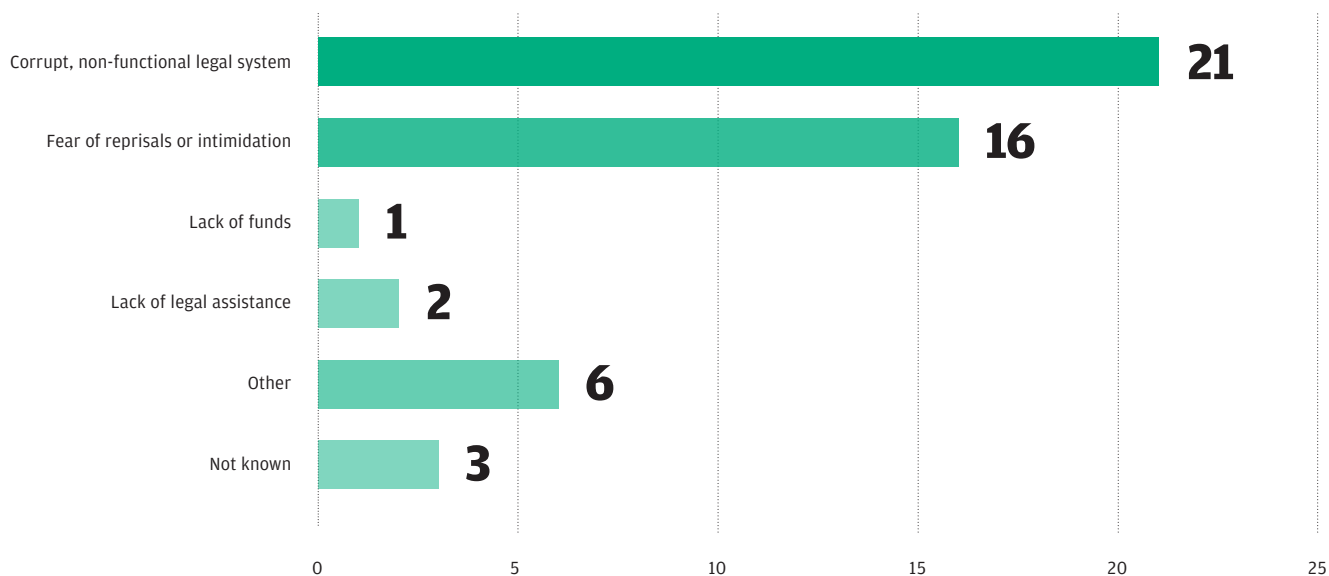


Figure 8.2 Reasons for not filing a Complaint about Torture: Mexico



Costly and lengthy legal processes deter victims from seeking redress

In the **Philippines**, the main obstacle to making a complaint about torture is lack of funds or lack of legal assistance. The majority of torture victims come from poor families and are often unemployed. The costly and lengthy legal process requires financial resources that victims simply do not have and exposes them to the risk of reprisals from the perpetrators. In addition, there is a general distrust of the judicial system amongst torture victims coupled by a poor state protection programme for torture victims.

Most of the complaints filed by MAG's clients are pending (nine cases in total). This suggests that the 60-day rule under section 9 of the Anti-Torture Act, which stipulates that torture victims have a right to a prompt and impartial investigation by the Commission of Human Rights and other agencies of the government, is not being implemented.³⁸ According to the legislation, a prompt investigation means that an investigation report or resolution should be reached within 60 working days from the time a complaint for torture is filed.

In **Mexico**, CCTI's data shows that 29 cases where a torture victim filed a complaint are pending. According to CCTI accessing justice in Mexico is a long and bureaucratic process both when a victim files a complaint about torture and seeks reparations. For example, five torture victims who were wrongly accused of crimes were released from detention in 2014. However, they have still not received any reparations three years later. See also, the case study: Medico-legal reports corroborate torture used to extract information (page 34), which also illustrates the lengthy legal processes that torture victims must endure.

In **Kenya**, almost half of all cases where a complaint about torture was made have been pending for more than two years (47 percent) and many of them have not even had a hearing scheduled. Delays in legal proceedings are caused by a number of factors: backlogs and staff shortages in the court process, limited numbers of judicial officers, regular transfers of prosecutors and judges and political interference. In addition, ongoing investigations of complaints are hampered by an overly bureaucratic police force which delays files being sent to the Director of Public Prosecution for action.



Philippine President Gloria Macapagal Arroyo declares martial law.
© 2009 Getty Images.

Low rates of compensation and non-payment of compensation awards

In the **Philippines**, compensation has only been awarded by the court in relation to one complaint filed by a client of one of the IRCT member centres. There have been no cases recorded where rehabilitation is awarded by the court. This is despite the existence of the anti-torture legislation which provides for victims of torture to access reparations for acts of torture, including compensation and rehabilitation.³⁹ As an alternative avenue, the Commission for Human Rights (CHR) is supposed to give financial assistance to torture victims amounting to up to 10,000 Pesos but many torture victims are not aware of this and so do not report their cases to the CHR. Balay has assisted nine of its clients to access the financial assistance provided by the CHR. Some of these clients also have an ongoing case in court where they have claimed compensation but a final decision has not yet been reached.

In **Mexico**, there are two ways to receive compensation, firstly through the judicial process and secondly on the recommendation of the Comisión Nacional de Derechos Humanos (CNDH). The Comisión Ejecutiva de Atención a Víctimas (CEAV) is mandated to oversee the reparations process for victims of crime and human rights violations. There is no set minimum or maximum level of compensation, the amount awarded is calculated according to the individual case. However, generally the amount of compensation awarded is low and paying the money out to victims is often delayed. It is hoped that the latest reforms to the Ley General de Víctimas will strengthen the areas of the CEAV which are mandated to provide direct attention to victims of torture.

In **Kenya**, CAT-Kenya reports that the court or tribunal has awarded compensation to seven of CAT-Kenya's clients and rehabilitation to three of its clients, out of a total of 122 clients who have filed a complaint about torture. The awards are granted under the Criminal Procedure Code⁴⁰ which has been used as an alternative avenue for torture victims to access reparations. However, the compensation awarded only covers criminal offences such as GBH or assault as torture is not covered by the Criminal Procedure Code. The rehabilitation awards granted by the court order the victim to be granted access to rehabilitation services provided by government hospitals and not to the more specialised rehabilitation services offered by IRCT member centres.

In **Uganda**, ACTV confirms that the Uganda Human Rights

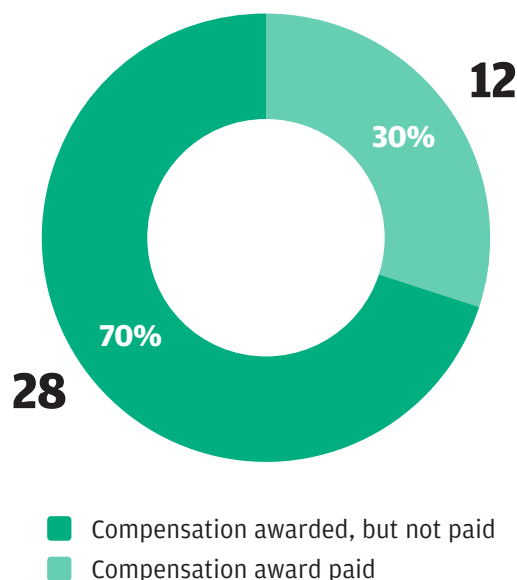
In the Philippines, compensation has only been awarded by the court in relation to one complaint filed by a client of one of the IRCT member centres. There have been no cases recorded where rehabilitation is awarded by the court.

Commission (UHRC) received and registered a total of 286 complaints on torture and conducted tribunal hearings on the same between January and October 2016. Once UHRC receives clients who have allegedly been tortured, they are referred to ACTV for treatment and rehabilitation and medico-legal reports are compiled and presented to the UHRC by ACTV. Importantly, the UHRC does not convict perpetrators of torture but rather, through its tribunal, awards victims compensation. Thus far, 24 decisions have been delivered and compensation granted for these cases. According to ACTV, the time taken to access compensation awards via this route takes several years and once the compensation has been awarded by the tribunal there is no guarantee that the funds will actually be released. ACTV has conducted its own study on compensation awarded to a sample of 40 torture victims it treats who had been awarded compensation by the UHRC. Out of this sample, 28 clients (70 percent) had not received their compensation awards while only 12 clients (30 percent) had received the compensation paid out (see Figure 9). This delay is attributed to the government taking a long time to release the funds through the ministry concerned.

Specialised state rehabilitation programmes are non-existent or ineffective

In the **Philippines**, the anti-torture legislation mandates the formulation of a rehabilitation programme within one year of the law taking effect.⁴¹ So far, the government agencies responsible for establishing the programme – the departments of Health (DOH), Justice (DOJ) and Social Welfare (DSWD) – have issued a framework for a rehabilitation programme but since then have failed to coordinate their work. The DSWD – in collaboration with Balay – has come up with its guidelines and programmes to provide services to torture victims and their family members. It has also allotted some funds to roll-out its rehabilitation programme in pilot areas. Seminars for social workers – and some health workers – have been initiated in partnership with Balay. To date, Balay has facilitated the access of more than 80 torture victims to the DSWD services. It has also referred some victims for treatment to government hospitals. The DOH has also issued a medical assistance programme for torture victims. The state rehabilitation programme is still a work in progress and an inter-agency forum has been set up to promote coordination among the government agencies. Without this coordination or a designated governmental agency to lead

Figure 9. Compensation Awards to Torture Victims in Uganda*



Note:

- * Based on a sample of 40 torture victims treated by ACTV.

the implementation of the programme, there is a risk that its implementation will become compartmentalised, depending on the individual interest and commitment shown by the separate government departments and therefore will not serve the best interests of the torture victims. The two IRCT member centres consider that the absence of a specific plan for each relevant government department shows a lack of interest in complying with the law. They are also concerned that the lack of funding designated to implement a rehabilitation programme means that the expertise and human resources capacity necessary to establish specialised rehabilitation services for torture victims is unlikely to be prioritised.

In **Serbia**, torture victims have the right to access healthcare as with any other Serbian citizen but they are not recognised by law as a group needing specialised health services. There is no specialised centre for comprehensive, holistic rehabilitation services provided or financed by the government. Access to public health services is limited meaning torture victims who need a medical or psychological examination often have to wait months to be seen by a specialist in a public health institution and often these examinations are not free. The public health services lack the holistic nature necessary to ensure a torture victim receives appropriate rehabilitation. In addition, the governmental institutions responsible for delivering the right to rehabilitation do not have the knowledge or expertise needed to deliver appropriate rehabilitation services to torture victims.

In **Mexico**, rehabilitation services provided by the state to torture victims are not of a sufficient quality and do not adequately guarantee confidentiality or security for the victims. Services are short-term and lack the specialised and comprehensive features required by international standards. The services available tend to lack a psychosocial element and they are not tailored to meet the victim's individual needs. State-run services are concentrated in Mexico City making access difficult for victims located in other regions. The lack of geographical spread of services also means that there are lengthy waiting times. Victims in need of psychological support have reported that they experience a lack of professional understanding or support and this negative environment can stigmatise the victim and re-traumatise them. There is a high level of bureaucracy in terms of accessing public services and victims often have to pay for their own transport to the services.

In **Kenya**, specialised rehabilitation services for torture victims are only available from the IRCT's member centres.⁴² Some government hospitals provide rehabilitation services to women victims of torture or gender-based violence but these services are limited. Where a court has awarded rehabilitation under the Criminal Procedure Code, which relates to criminal charges for GBH or assault (it does not cover torture), the torture victim is sent to services provided by the state, not the more specialised rehabilitation services provided by IRCT member centres.

No protection mechanisms for victims and witnesses

In Kenya, IRCT member Mateso has ten clients who have not filed a complaint

The two IRCT member centres consider that the absence of a specific plan for each relevant government department shows a lack of interest in complying with the law.

about torture. According to Mateso, this is due to a number of reasons including a fear of reprisals or intimidation and a lack of trust in the efficiency of the legal system and its ability to protect them.

In Uganda, most of ACTV's clients choose not to file complaints about torture due to a lack of trust in the criminal justice system and a fear of reprisals by the perpetrators. It is hoped that the plan to introduce witness protection legislation (the Witness Protection Bill is currently in the final legislative stages in Parliament) would offer victims who decide to file a complaint about torture the much-needed protection against intimidation or reprisals and perhaps would encourage more torture victims to make complaints in the future.

Victims use alternative avenues to seek redress

Even where anti-torture legislation is in place, other avenues are often used by torture victims to seek redress which prove to be more cost or time-efficient.

In Kenya, anti-torture legislation has only recently been enacted (in April 2017). To date, torture victims have used the Criminal Procedure Code to file a complaint to the police (referred to as a P3 Complaint) and seek some form of remedy including compensation or rehabilitation. The use of the Criminal Procedure Code provides the victim with an opportunity to resolve the complaint through mediation or an alternative dispute resolution process. However, the Criminal Procedure Code only covers criminal offences such as GBH and assault and does not cover torture. Therefore, the compensation awarded is commensurate with these lesser offences and not to acts of torture. In addition, although the victim may get paid compensation, the allegation of torture is not effectively investigated and the



Military towers of the Crveni Krst concentration camp, Serbia.

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perpetrator would only be convicted of one of the lesser criminal offences covered by the Criminal Procedure Code. In addition, compensation awards can take as long as two years to be paid to the victim due to the failure of the state to allocate sufficient funds from its budget.

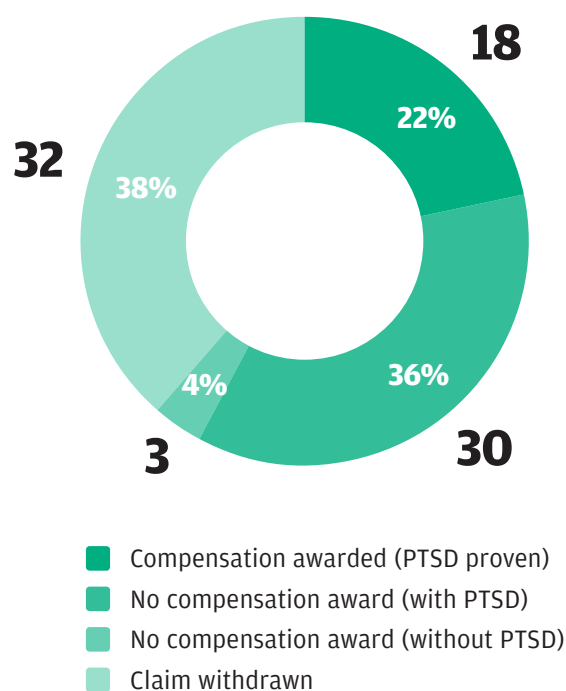
Serbia: Statutes of limitation bar torture victims from accessing historical redress

The law criminalising torture in Serbia places a limitation period of 10 years on the time within which a criminal case against the perpetrator can be brought. This in practice has barred all torture victims from the Balkans war from seeking redress or reparations for the torture suffered through the criminal law procedures. The only alternative avenue available to torture victims is to file a civil law claim for compensation for the damages suffered due to their unlawful deprivation of liberty during the war. However, this legal avenue is also subject to a statute of limitations - a claim can only be filed either within five years from the event or three years from the day of the claimant's knowledge of the damage caused to them and the perpetrator.⁴³ Therefore many torture victims who were forcibly mobilised during the past war are also barred from filing a compensation claim under the civil law as they are unable to meet the five year statutory limitation period.

Despite this serious obstacle to accessing reparations, some torture victims have managed to claim compensation by arguing that the three year limitation period - which runs from the time the claimant knows of the damage - should in fact run from the date when a medical or psychological doctor diagnoses the victim as suffering from Post-Traumatic Stress Disorder (PTSD), thereby proving the damage caused. This potentially allows torture victims to access this avenue for compensation, even where the diagnosis takes place years after the torture occurred. The torture victims that IAN treats that chose to seek reparations for the torture they suffered all filed a claim for compensation for damages using this line of argumentation.

Eighty-three (83) of IAN's clients filed a compensation claim using the Law of Obligations for torture they suffered perpetrated by Serbian authorities but in Croatian territory (which was under the jurisdiction of Serbian authorities during the war). Of these, under a quarter (18 clients) received compensation on the basis that the evidence that they have PTSD as a result of the torture was

Figure 10. The Outcome of Compensation Claims filed by Torture Victims in Serbia



accepted by the court. The compensation awarded ranges from 1,500 to 3,000 Euros and the money has been paid out to the victims. Unfortunately, the majority of IAN's clients who filed these claims either did not get compensation, despite showing evidence that they suffer from PTSD, or they withdrew their claims. There were also a few clients who were not diagnosed as suffering from PTSD but filed a claim relying on other damage suffered. However, these compensation claims were also rejected by the courts.

The majority of clients who decided not to make a complaint about torture were tortured in Croatia or Bosnia and Herzegovina by Croatian and Bosnian perpetrators and were unable to file a complaint in those countries whilst living in Serbia, in part as they were unable to access legal assistance in those countries. It can also be noted that some victims who survived torture in Serbia did not want to file a complaint against the Serbian authorities because Serbia accepted them as refugees after the war and later granted them citizenship.

Case Study

Claiming compensation for unlawful deprivation of liberty

During the Balkans War (1991-1995), Nicolas fled from Croatia to Serbia. He managed to find his family and they reunited again and settled in a town in south Serbia. The same day that he registered as a refugee in the Commissariat for Refugees, police officers took him and other refugees to a Serbian paramilitary camp in Erdut (a town in Croatia which was under the jurisdiction of the Serbian authorities). When they got off the bus they received blows and insults. Members of the Serbian paramilitary forces (SPR) took their documents, valuables and shaved their heads. Nicolas spent a month in the camp. He was brutally tortured during that time. He was beaten, kicked, humiliated, forced to bark like a dog and tied up to a dog house. Several times he had to carry a 20 kg "rock of discipline". After a month he was sent to the battlefield in Bosnia and Herzegovina. He was forced to participate in combat. After the signing of the Dayton Agreement, he was returned to Erdut camp, and finally demobilised in 1996. Nicolas recollects that he was constantly frightened for his life. The worst thing for him was the fact that he had been captured and tortured by his "own people". As a consequence of the torture experienced, he suffered chronic Post-Traumatic Stress Disorder (PTSD). In September 2006, Nicolas claimed for compensation of non-material damages because of unlawful deprivation of liberty. A year later, in September 2007 his claim was rejected by the first instance court. The Judge refused to take into account evidence submitted in a medico-legal report that Nicolas suffered from PTSD. Although the decision was appealed to the high court, this was rejected in 2009.

CONCLUDING REMARKS

The data collected by the IRCT member centres in this report illustrates some of the developments in relation to the ability of torture victims to access redress and reparations and the willingness of states to invest in implementing their legal obligations to provide redress and reparations. What is apparent from the data is that the existence of anti-torture legislation or alternative legal avenues to redress does not necessarily mean that mechanisms exist or can be accessed effectively by torture victims who are seeking redress and reparations. Looking ahead there are a number of areas that need strengthening.

Firstly, the focus should remain on ensuring that the legal and policy frameworks laid out in existing anti-torture legislation are fully implemented. The collection of data by the IRCT member centres helps to illustrate where some of the implementation gaps lie. For example, the fact that very few torture victims make a complaint about torture compared to the numbers of incidents of torture recorded suggests that either it is difficult for victims to make complaints or victims are disillusioned by the legal process so prefer instead to focus on receiving rehabilitation. In addition, the lack of convictions of perpetrators shows that there is a failure to hold those carrying out acts of torture accountable for the damage caused.

Secondly, criminal justice processes in all five countries in this report need to be strengthened. Investigation and documentation procedures must meet the standards in the Istanbul Protocol. In addition, it is essential that the investigatory and judicial bodies are properly informed and trained to understand the clear obligations to promptly, effectively and impartially investigate and document torture and to consider medico-legal reports provided by independent experts as a vital part of that process. In addition, further investment is needed to avoid lengthy delays in the complaints or legal procedures and to develop proper protection mechanisms for victims which ensure their safety during the investigatory and legal procedures.

Thirdly, there is evidently a failure to invest sufficiently in reparation mechanisms, and this is essential if these avenues are going to be accessible to torture victims. The data shows that torture victims prioritise seeking reparations, especially compensation or rehabilitation, over filing a complaint or seeking justice for the harm caused. However, the report shows that all too often torture victims who are awarded compensation in fact never receive the money. This is often down to the failure of the state to allocate the necessary funds to be paid out to the victims. In addition, the countries in this report are a long way from establishing

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It is important to note that states have a responsibility to collect data to demonstrate that they are fully implementing their obligations under the UN Convention against Torture.

state-run rehabilitation services. To date there is also little indication that they are allocating the sufficient budgetary resources needed to establish the infrastructure to provide rehabilitation services of an acceptable quality. This is illustrated by the numbers of victims that the IRCT member centres treat and the lack of alternative rehabilitation services available to these victims through the state.

It is important to note in relation to this report that states have a responsibility to collect data to demonstrate that they are fully implementing their obligations under the UN Convention against Torture (UNCAT). For example, states are required to collect data on the number of complaints about torture or ill-treatment they receive, the number of torture victims who have accessed mechanisms and have obtained redress and reparation, including the amounts. States are also expected to collect data on the number of torture victims who have sought compensation, been awarded compensation, received rehabilitation services and on the rehabilitation facilities available and budget allocated to these services.⁴⁴

The majority of states do not collect sufficient data to show the full extent of torture and the availability and accessibility of redress and reparations mechanisms to torture victims. This makes it even more vital that the IRCT's member centres collect data which enables them to provide valuable, evidence-based information on the extent of torture in their country and its effects on the individual victims as well as the extent to which obligations to investigate, prosecute and convict perpetrators and to provide reparations, including rehabilitation, are being implemented by the state. In so doing, IRCT member centres are able to call states to account in their own human rights work at national, regional or global level.

Notes and references

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- ² These cases are referred to as the “Wheel of Torture” cases, in reference to the roulette wheel found. See Amnesty International, “Above the Law: Police torture in the Philippines”, December 2014, p.25. Available at: <https://www.amnestyusa.org/reports/above-the-law-police-torture-in-the-philippines/>
- ³ The Guardian, “Revealed: how raid by Kenyan police drove street children to their deaths”, published 10 October 2016. Available at: <https://www.theguardian.com/world/2016/oct/10/exposed-kenyan-polices-brutal-attacks-on-street-children>
- ⁴ Most of these particular incidents occurred in the area of Bagong Silang, an area within Metro Manila where people were forcibly resettled at the end of the Marcos regime. Policing in Balong Silang is mainly carried out by local government structures – known as the Barangay Justice System – originally established to unplug the formal court system as well as to introduce a culturally adapted system of conflict mediation. Tanods are community-based volunteers that enforce local laws and coordinate with police in relation to crime control.
- ⁵ It should be noted that data in ACTV’s previous database clearly indicated police to be the main perpetrators. However, due to technical issues, the information has not yet been included in the DFI database
- ⁶ Republic of the Philippines, Anti-Torture Act of 2009 (Republic Act No. 9745) of 27 July 2009, Section 13. Available at: http://www.lawphil.net/statutes/repacts/ra2009/ra_9745_2009.html
- ⁷ Ibid, Sections 7 and 8
- ⁸ Ibid, Sections 9 and 11
- ⁹ Ibid, Section 12
- ¹⁰ Ibid, Section 18
- ¹¹ Ibid, Section 19
- ¹² The Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014, Articles 136 and 137
- ¹³ UN Committee against Torture, Concluding observations on the second periodic report of Serbia, 3 June 2015, CAT/C/SRB/CO/2 §8
- ¹⁴ The Law of Obligations of the Republic of Serbia (‘Zakon O Obligationim Odnosima’). Available in Serbian at: http://www.paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html
- ¹⁵ Political Constitution of Mexico 1917, Articles 19, 20 and 22
- ¹⁶ Report of the UN Special Rapporteur on Torture on his mission to Mexico, 29 December 2014, A/HRC/28/68/Add.3, §13-14
- ¹⁷ Ley General de Víctimas, Nueva Ley publicada en el Diario Oficial de la Federación de México, 9 January 2013
- ¹⁸ Report of the UN Special Rapporteur on Torture – Mexico, 17 February 2017, A/HRC/34/54/Add.4, §54
- ¹⁹ Ibid, p.7
- ²⁰ Constitution of Kenya (2010), Articles 25, 50 and 159(2). Available at: www.kenyalaw.org
- ²¹ The Victim Protection Act 2014, published in the Kenya Gazette Supplement, No. 143, 19 September 2014, Article 3. Available at: www.kenyalaw.org
- ²² Ibid, Articles 10, 11 and 22
- ²³ Ibid, Articles 23 and 27-28
- ²⁴ National Police Service Act, No. 11A of 2011 [Rev. 2015], Article 95. Available from: www.kenyalaw.org
- ²⁵ The Republic of Kenya, The Prevention of Torture Act 2017, enacted 13 April 2017
- ²⁶ Ibid, Section 13(8)
- ²⁷ Ibid, Sections 17 and 19
- ²⁸ Ibid, Sections 5 and 7
- ²⁹ Ibid, Sections 8 and 9
- ³⁰ Prevention And Prohibition of Torture Act 2012, published in The Uganda Gazette No. 52 Volume CV, 18 September 2012
- ³¹ Report of the UN Special Rapporteur on Torture on his mission to Mexico, 29 December 2014, A/HRC/28/68/Add.3, §24; Report of the UN Special Rapporteur on Torture – Mexico, 17 February 2017, A/HRC/34/54/Add.4, §34
- ³² See: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Istanbul Protocol”). United Nations; 2004. HR/P/PT/ 8/Rev.1
- ³³ Report of the UN Special Rapporteur on Torture on his mission to Mexico, 29 December 2014, A/HRC/28/68/Add.3, §45.
- ³⁴ National Police Service Act 2011, Article 40(7)
- ³⁵ Joint Civil Society Report on Torture and Other Inhuman and Degrading Treatment or Punishment in the Philippines, submitted to the UN Committee against Torture by the United against Torture Coalition (UATC), 28 March 2016, p.30
- ³⁶ See “Documenting torture in Mexico: the case of Yecenia Armenta Graciano” Available at: <http://irct.org/advocacy/istanbul-protocol>. The Mexican Supreme Court also ruled that torture had been used to extract a confession in the case of Alfonso Martín del Campo in which the IRCT submitted an Amicus Brief in 2015
- ³⁷ Report of the UN Special Rapporteur on Torture – Mexico, 17 February 2017, A/HRC/34/54/Add.4, §34
- ³⁸ These include: the Department of Justice, the Public Attorney’s Office, the Philippine National Police, the National Bureau of Investigation and the Armed Forces of the Philippines
- ³⁹ Anti-Torture Act 2009 (RA 9745), Sections 18 and 19
- ⁴⁰ Awards are granted pursuant to Section 137A to 137O of the Criminal Procedure Code - Plea Agreements
- ⁴¹ Anti-Torture Act 2009 (RA 9745), Section 19. The law was enacted in 2009
- ⁴² IRCT has three member centres in Kenya: the Centre Against Torture (CAT-Kenya), the Independent Medico-Legal Unit (IMLU) and Mwatikho Torture Survivors Organisation (MATESO)
- ⁴³ See explanation in the previous section entitled “The legal avenues open to torture victims”
- ⁴⁴ UN Committee against Torture, General Comment no. 3 (2012): Implementation of article 14, CAT/C/GC/3, §§ 45-46

How to support the IRCT

We need your support to fight torture and to help torture survivors rebuild their lives. By donating even a small sum, you can assist us to put an end to torture and to ensure that torture survivors and their families receive much-needed treatment and other services

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Euro (EUR) Account

Registration No. 4183
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IBAN DK69 3000 3001 9571 71

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