

## EDITORIAL

The phenomenon of detention can be examined from numerous angles. Detention can be lawful or not, just or unjust, the treatment of detainees can be correct or inhumane and the conditions of detention can be decent or abhorrent. A person can be held in custody as a prisoner of war, as a civilian internee, as a security or administrative detainee, a political detainee or simply as a criminal; the status of detainees can also be doubtful. The aims of detention differ as much as its modes and procedures.

In situations of war and internal violence, persons in detention are often seen as enemies. As a US Supreme Court judge observed, "it is in our most challenging and uncertain moments that our commitment to due process is most severely tested; and it is in those times that we must preserve our commitment (...)." Detainees may be happy to have survived, lucky if they are not subjected to torture. Yet their daily life in prison is usually harsh, and even after their initial arrest and interrogation they may be plagued by hunger, illness or the sadism of jailers. Within a limited number of articles only a few specific aspects of these worldwide phenomena can be explored.

More than thirty years after the putsch in Chile, the government recently released a report on political detention and torture under the Pinochet regime. It tells that over 90 per cent of the 35,000 political detainees were ill-treated and that nearly all the women in custody were raped. Torture was systematic: as always, such a process needed organization, personal orders and willing executors. Courageously, the State has now assumed responsibility for the crimes committed in its name. Rather than focusing on the perpetrators, the torture report is more concerned with the victims of those crimes: by morally, legally and financially rehabilitating them, it aims to "heal wounds, and not open them."

Unfortunately, acts of ill-treatment and even torture by certain criminal individuals occur in every society. They are usually quickly punished in a democratic system based on the rule of law. However, torture looms large in war-torn or violence-prone authoritarian societies which ascribe paramount importance to national integrity and security. Torture is not trivialized there; on the contrary, it is seen as serious business even by torturers. It is perceived as a necessary means justified by extreme circumstances: the classic "ticking bomb" scenario is often invoked. For the "survival of the State" or the "imperatives of security," almost any measure is authorized to back up the goal of protecting society: the call for

strong and decisive action sets the social context for torture. What begins as a programme centred on a limited number of suspects usually expands over time to encompass an ill-defined group or category of people. In the ensuing discussions about what amounts to torture, another issue is obscured — the overriding of accepted constraints and the bypassing of scrutiny, supposedly for a good cause. Against all resistance, the highest authorities of any country must therefore give clear and unambiguous signals that inhumane treatment and torture are neither allowed nor tolerated — under any circumstances.

There have been frequent changes since 11 September 2001 in the pattern of armed confrontation: the warring parties are increasingly unequal, and as the principle of equality of arms does not apply to them, the militarily weaker party is tempted to resort to unlawful methods of warfare such as perfidy in order to overcome the adversary's military strength. Covert operations are superseding open battles; "special rules" are being made for "special situations." The fight against international terrorism seems to epitomize this kind of asymmetrical warfare.

Those changes are obviously also affecting the phenomenon of detention. Hostage-taking is being widely used to weaken and exert pressure upon the stronger enemy. The hostages are at the mercy of their guards and answer with their freedom or even their lives for failure to comply with the political or financial demands of their captors. The authorities react by taking every possible repressive means to quell the opponents' resistance. Suspected terrorists are placed outside the realm of the law: as they are operating under different rules, they are subjected to different rules — the proclaimed category of illegal combatants is clear evidence of this tendency. By holding detainees indefinitely, without granting them access to a judge or without charging them, established values and principles of law are deliberately disregarded and the very core of liberty, namely the freedom from imprisonment at the will of a government, is violated.

Even more disturbing is the phenomenon of undisclosed detention. Persons held off record are particularly vulnerable to torture and even extrajudicial killings. Because of the illegality of their detention and their potential ill-treatment, the authorities may not even be able to reinstate such detainees in the court system and are thus forced to keep them outside the law. The full scope of the "ghost detainees" phenomenon is not known and officials decline to discuss secret operations and programmes of that nature, which have often been devised as a means of extraditing terrorism suspects from one foreign State to another for interrogation and possibly prosecution. Critics contend that the unstated purpose of such "renditions" is to subject the suspects to aggressive methods of persuasion that are illegal in the sending State — including torture.

The combination of torture and ill-treatment in detention, the sealing of avenues for legal redress, and the silencing of public information about these clandestine detention abuses has created an increasingly hostile environment for

detainees in many countries. This renders detainees even more dependent on their jailers. It is therefore all the more important that safeguards, and especially monitoring systems, be incorporated and adhered to in this unequal relationship. Various mechanisms of human rights treaties provide for the protection of persons deprived of liberty. The International Committee of the Red Cross for its part aims to ensure that those persons can preserve their human dignity even in such extreme circumstances. In visiting prisons the International Committee of the Red Cross monitors and discusses, in its unique confidential dialogue with the detaining authorities, the treatment of detainees and their conditions of detention. For whereas human dignity is violated in some places by the use of torture or degrading treatment, in others it is the material conditions that are appalling, whether severe overcrowding, total isolation of sick prisoners or simply the lack of food. While media attention is presently focussing on detention in relation to international terrorism, this large majority of prisoners should not be forgotten.